

**FACILITY USE AGREEMENT  
BETWEEN CITY OF CAPITOLA AND SOQUEL CREEK WATER DISTRICT**

THIS FACILITY USE AGREEMENT (“Agreement”) dated \_\_\_\_\_, 20\_\_\_\_, (“Effective Date”) is made and entered into by and between the City of Capitola, a municipal corporation, (“City”), and Soquel Creek Water District, a county water district, (“District”). City and District are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

A. WHEREAS, City is the owner of real property located at 420 Capitola Avenue, Capitola, California 95010, in the County of Santa Cruz, State of California (the “Premises”).

B. WHEREAS, District is in need of a permanent meeting room to conduct regular meetings of its Board of Directors; and

C. WHEREAS, it is the intent of the City to make its City Council Chambers (“Facilities”), located within the Premises, available for use by the District when not needed for City related business.

NOW, THEREFORE, with regard to the above recitals and for good and sufficient consideration, the adequacy of which is hereby acknowledged, the Parties agree to the following:

**AGREEMENT**

**1. Term.** The term (“Term”) of this Agreement shall run for three (3) years from the Effective Date set forth above, and will automatically renew for subsequent one (1) year periods unless terminated in accordance with section 2 of this Agreement.

**2. Termination.** Either Party may terminate this Agreement for any reason by ninety (90) days’ advance written notice. If any actions by District are creating a hazard or causing damage to the facilities, City may terminate this Agreement immediately.

**3. Fees, Costs, and Charges.** District agrees to pay City FIVE THOUSAND DOLLARS per year (\$5,000.00/year) as defined below. Use fees shall be paid annually with said payment no later than the fifteenth day of each January.

**4. District’s Use of City’s Premises.**

- a. City will make available to District the Facilities for the purpose of conducting District Board of Director Meetings (“Board Meetings”) on the first and third Tuesdays of each month, from 6:00 p.m. until the conclusion of the meeting, for the Board’s regular meetings. If a conflict arises wherein the City needs to use the Facilities at the same time as the District is scheduled to use the Facilities, City will have priority in using the Facilities. City agrees to provide the District as much notice as practically possible so that the District may notify its constituents of the change in venue in a timely manner. The Board may request use of the Facilities on

other dates and times as needed, and the City may approve or deny such requests in its discretion. If the request is approved, City and District agree that no further payment obligations will arise unless by separate agreement of the Parties. The District may further use the Facilities for special meetings based on availability.

- b. Subject to District's payment obligations in Section 3, City shall pay for all water, gas, electricity, light, heat, telephone, power, and other utilities and communications services for the Premises during the Term of this Agreement.
- c. City will provide District a key to access the Facilities prior to the first Board Meeting in March 2023, and District shall return all keys immediately following the termination of this Agreement.
- d. During its use of the Facilities, District shall maintain the Facilities in a lawful, fully operable, safe, neat, clean, and sanitary condition, free from waste and debris. District shall not permit any waste or nuisance in or about the Facilities, nor store materials hazardous to health or safety of the public, nor shall District permit the use of the Facilities for any illegal purposes at all times during the Term of this Agreement. After the conclusion of each Board Meeting, District shall return the Facilities to the condition it was in prior to when the Board Meeting began.
- e. Should District not maintain Facilities in a fully operable, safe, neat, clean, and sanitary condition, free from waste and debris, the City shall be entitled to additional payments from the District to recover costs necessary to return the property to fully operable, safe, neat, clean, and sanitary condition, free from waste and debris. Such costs shall be determined at City's sole discretion.
- f. The District acknowledges this agreement does not include City staff/technical assistance to help set up or troubleshoot issues prior to or during meetings.
- g. District shall report any personal injuries or property damage arising at any time during, and/or in any way connected with, District's use or occupancy of the Facilities to City staff in writing and as soon as practicable.
- h. City will make available the following equipment and services for each Board Meeting:
  - i. Tables,
  - ii. Chairs, and
  - iii. Audio-visual equipment.

**5. Indemnification.** District shall indemnify, defend, and hold harmless City and its officers, employees, and agents from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property arising at any time during and/or arising out of or in any way connected with District's use or occupancy

of the Facilities, unless solely caused by the active negligence or willful misconduct of City or its officers, employees, or agents.

**6. Insurance Requirements.**

- a. District must hold adequate general liability insurance for bodily injury and property damage that applies to that person or group's use of the Facilities. The insurance should provide coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Proof of such insurance must be furnished upon request by City.
- b. District must hold employer's liability insurance of at least \$1,000,000 per accident for bodily injury and property damage.
- c. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. District may meet its obligation in this section through equivalent self-insurance.

**7. Assignment; Subleases; Transfers.** District shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of District's interest in this Agreement or the Facility.

**8. Severability.** Each provision of this Agreement is severable from the other provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

**9. No Waiver.** The failure of either Party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults.

**10. Miscellaneous.**

- a. District shall comply with all local, state, and federal laws and regulations related to the use of the Facilities. District agrees to abide by all applicable federal and state accessibility standards and regulations.
- b. Each Party agrees that this Agreement is made and accepted on and subject to the condition that there be no discrimination against or segregation of any person or group of persons, on account of race, color, sex, sexual orientation, age, handicap, marital status, religion, nation origin or ancestry in the use, occupancy, tenure or enjoyment of the Facilities, nor shall any Party, or any person claiming under or

through it, establish or permit any practice or practices of discrimination or segregation with reference to the Facilities.

- c. District shall not admit a larger number of individuals than can lawfully, safely, and freely move about the Facilities. In no event may District admit a number of individuals than that permitted by the Fire Marshal for the Facilities.

**11. Applicable Law and Venue.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of California. Venue for any action filed with respect to the Agreement shall be in the courts of the County of Santa Cruz and all Parties agree to submit to the jurisdiction of said courts.

**12. Notices.** Should any notice be required, such notice shall be in writing and delivered either in person at the normal offices of the other party, or, in the alternative, may be given by depositing such notice in the United States mail, postage fully prepaid, and addressed to the parties as follows:

CITY OF CAPITOLA  
420 Capitola Ave  
Capitola, CA 95010  
Attn: City Manager

DISTRICT  
5180 Soquel Dr.  
Soquel, CA 95073  
Attn: General Manager

**13. Entire Agreement.** This Agreement, including any specified attachments, constitutes the entire agreement between the Parties with respect to use of the Facilities and supersedes and replaces any and all previous agreements entered into or/and negotiated between City and District relating to the Facilities covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by City and District. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by City and District in writing.

**14. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and District have executed this Agreement as of the date first written above.

CITY OF CAPITOLA

SOQUEL CREEK WATER DISTRICT

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_