



# County of Santa Cruz <sup>0231</sup>

## DEPARTMENT OF PUBLIC WORKS

701 OCEAN STREET, ROOM 410, SANTA CRUZ, CA 95060-4070  
(831) 454-2160 FAX (831) 454-2385 TDD (831) 454-2123

JOHN A. FANTHAM  
DIRECTOR OF PUBLIC WORKS

AGENDA: MAY 9, 2000

April 27, 2000

SANTA CRUZ COUNTY BOARD OF SUPERVISORS  
701 Ocean Street  
Santa Cruz, California 95060

SUBJECT: COUNTY SERVICE AREA NO. 54, MT. CHARLIE WATER SYSTEM

Members of the Board:

On May 3 1, 1995, your Board, in response to a request for assistance from the Mt. Charlie Waterworks, Inc., users, authorized the filing of litigation setting a court-appointed receiver to operate the water department system. The system, serving 136 parcels in the Summit area, had been operated by Mt. Charlie Waterworks under Public Utilities Commission jurisdiction and had a long history of violations of the safe drinking water standards due to reliance on surface water sources and repeated service interruptions due to its dilapidated condition. The County Health Officer imposed a moratorium on new service connections in 1987.

On April 23, 1996, your Board approved the formation of County Service Area (CSA) No. 54 at the request of the users' steering committee to acquire and operate the water dissemination system. CSA No. 54 formation documents also included language that allowed for the system to be transferred to "its customers or an organization formed by or designated by its customers or representatives of its customers." The receivership was able to obtain a Department of Water Resources (DWR) loan in the amount of \$867,149.00 to finance the interconnection with the Montevina pipeline to provide a reliable source of clean water and to obtain the necessary agreements to purchase and transport clean water into the system. The interconnection project will be completed in September 2000. On October 28, 1997, your Board adopted a resolution of necessity and authorized the filing of a condemnation action. In August 1999, your Board, at the request of the water users' steering committee, approved the purchase of the water system from Mt. Charlie Waterworks, Inc., for \$140,000.00 payable over a seven-year period. CSA No. 54 now owns the water distribution system and will assume the DWR loan and water purchase and wheeling agreements with Redwood Mutual, Stagecoach Mutual, and Ridge Mutual water companies.

Recently the members of the water users' steering committee formed a non profit mutual benefit corporation, Santa Cruz Mountains Summit West, Inc. (Summit West) for the purpose of operating the water system under an agreement with CSA No. 54. The water users are now exploring several options to obtain ownership and control over the water system including the formation of a water district and a mutual water company in order to achieve more self governance over the operation and to achieve reduced operating costs as a free standing entity. Either option would require some time to implement.

The Department of Public Works' **Water/Wasterwater** staff has conducted a preliminary survey of the water system and believes that additional capital expenditures will be necessary to bring the system up to required State standards. It is estimated that such costs could be as much as \$50,000.00.

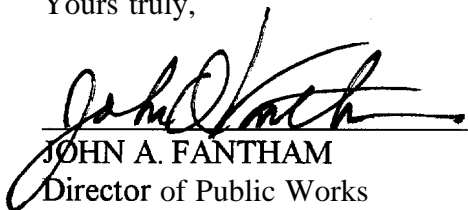
Attached is the proposed operation agreement (Attachment 1). The agreement is for fiscal year 2000/2001 and requires the contractor to operate the water system in compliance with all health standards. The contractor will bill the water users, and collect and remit to the Auditor/Controller the monthly water charges of \$152.00 approved by your Board's recent action. From the funds remitted to the Auditor/Controller, the contractor will be compensated \$202,820.00 payable in 12 monthly installments. The balance of the monies collected will be budgeted for an annual audit, Public Works' engineering services, a capital reserve, Auditor-Controller management services, and contingencies. In addition, \$28.00 per month will be collected and disbursed by the Auditor/Controller for debt service on the DWR loan. The contractor will be required to carry liability insurance and fidelity bonds and indemnify the County and CSA No. 54.

The representatives of Summit West have expressed concern over three items associated with the proposed agreement, the Public Works direct and indirect charges and the Auditor/Controller's audit fee. In order to address these concerns, we have taken the following steps to ameliorate these concerns: (1) To eliminate the concern over the 7% DPW overhead charges, the contract will be administered by the Auditor-Controller's Office for a management fee equal to 2% of the contract budget. This will eliminate the need to redesign the DPW cost accounting system. The DPW overhead rate is used consistently in accordance with a methodology that is in compliance with accounting policies and guidelines established by the State Controller and the County Auditor/Controller. Establishing a different rate for this contract would result in a inconsistent practice causing other Department of Public Works' customers subsidizing this activity and could result in audit exceptions and possible disallowance of otherwise allowable and reimbursable costs on a much larger scale than CSA 54. (2) The Auditor-Controller has set the budgeted amount for an audit at an estimate, as the conditions of the entity's records are unknown. If an audit can be performed for less, the CSA will be charged less and the savings will remain unspent. (3) The Department of Public Works believes that reducing the budget for the Public Works' staff services from \$10,000.00 to \$5,000.00, equivalent to approximately six hours per month, may not allow for adequate inspection and oversight of the system operations. If less inspections are required, the savings will accrue to the district.

It is therefore recommended that the Board of Supervisors take the following action:

1. Approve the attached agreement with Santa Cruz Mountains Summit West Inc., for the operation of the County Service Area 54 water system from July 1, 2000, to June 30, 200 1.
2. Accept the assignment of the Department of Water Resources' loan contract E5 1407 and authorize the County Administrative Officer to execute any necessary assignment documents.
3. Authorize the County Administrative Officer to enter into assignments and/or agreements with Redwood Mutual, Stagecoach Mutual, and Ridge Mutual water companies for the purchase and transport of water on behalf of the County Service Area 54 water system.

Yours truly,




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JOHN A. FANTHAM  
Director of Public Works

Yours truly,



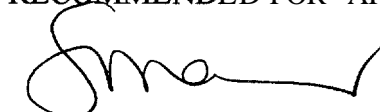

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GARY KNUTSON  
Auditor/Controller

CDK:mg

Attachment

RECOMMENDED FOR APPROVAL,:




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County Administrative Officer

copy to:      Public Works  
                  Auditor/Controller  
                  County Counsel  
                  Santa Cruz Mountains Summit West, Inc.  
                  Christopher Ashworth, Esquire

MOT2M.WPD

COUNTY SERVICE AREA NO. 54  
SUMMIT WEST OPERATING AGREEMENT  
FY 2000/01

## REVENUE

139 households at \$152.00/mo.	<u>\$253,536.00</u>
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## EXPENDITURES

Water purchase and power purchase	\$ 69,840.00
Independent contractors	81,780.00
Additional professional services	16,400.00
Insurance	9,000.00
Materials expense	18,000.00
Administration and Miscellaneous	<u>7,800.00</u>
<b>OPERATING EXPENSES TOTAL</b>	<b>\$202,820.00</b>
County Auditor annual operations audit	5,000.00
Public Works services (oversight & inspection)	10,000.00
Auditor/Controller Management Services	5,200.00
Reserve for contingencies and capital improvements	<u>30,516.00</u>
<b>TOTAL EXPENDITURES</b>	<b><u>\$253,536.00</u></b>

**INDEPENDENT CONTRACTOR AGREEMENT**

0235

This Agreement entered into this o\_\_ day f \_\_\_\_\_, 20\_\_, by and between the COUNTY OF SANTA CRUZ, COUNTY SERVICE AREA 54, A CALIFORNIA COUNTY SERVICE AREA hereinafter CSA 54, and SANTA CRUZ MOUNTAINS SUMMIT WEST, INC., a California non profit mutual benefit corporation, hereinafter SUMMIT WEST, is entered into with respect to the following recitals.

WHEREAS, CSA 54 was created for the purpose of acquiring, owning and operating a domestic water distribution system; and,

WHEREAS, CSA 54 has acquired by eminent domain the Mountain Charlie Waterworks, Inc., water distribution system, which serves some 142 service connections within the boundaries of CSA 54; and,

WHEREAS, neither CSA 54 nor the County of Santa Cruz has the present staff resources to operate a domestic water distribution system; and,

WHEREAS, Summit West was formed and is controlled by water customers of the former Mountain Charlie Waterworks, Inc., water system who have been adequately operating the water distribution system since 1997 under a court appointed receiver; and,

WHEREAS, Summit West desires to undertake the obligations and duties to operate the CSA 54 water distribution system and CSA 54 wishes to contract the operational duties and obligations of operating the water distribution system to Summit West, subject to the terms and conditions set forth in this agreement.

**THE PARTIES AGREE AS FOLLOWS:**

1. **TERM.** The term of this agreement shall commence on July 1, 2000, and expire on June 30, 2001. This agreement shall automatically renew thereafter for a one year period each and every July 1<sup>st</sup>, unless either party on or before April 1<sup>st</sup> of the current term gives the other party written notice of non renewal. In the event of notice of non renewal, the agreement shall terminate as of June 30 of the current term.

2. **EARLY TERMINATION.** Either party may terminate this agreement prior to the end of the term by giving the other party written notice of such intent to terminate at least 90 days prior to the proposed effective date of termination.

3. **DEFINITIONS.** Health Officer as used in this agreement means the Santa Cruz County Health Officer or director of Environmental Health Services, or designee thereof Auditor-Controller as used in this agreement means the Santa Cruz County Auditor-Controller, or designee.

Director of Public Works as used in this agreement means the Santa Cruz County Director of Public Works or designee.

4. **WATER SYSTEM OPERATION OBLIGATION.** Summit West shall operate, maintain and repair the water distribution system in compliance with industry standards and with all applicable federal, state and county laws, regulations and compliance orders, including, but not limited to, Health & Safety Code, Division 104, Part 12, and Santa Cruz County Code Chapter 7.71, as if it were a water purveyor directly subject to such laws, regulations and compliance orders. The obligation to operate, maintain and repair includes, but is not limited to, providing and paying for daily operation services, water testing, maintenance equipment, labor and supplies, repair equipment, labor and parts, billing and accounting services, audits, utility charges, water purchase and wheeling charges, employment and other taxes, worker's compensation, liability and other insurance and bond premiums, bank service fees, regulatory penalties and fines. Maintenance is defined to be necessary service to pumps, valves, meters and electrical equipment, repair of leaks, replenishing chlorine, and other tasks whose expense does not exceed \$500.00 in labor and materials.

5. **LICENSED WATER SYSTEM OPERATORS.** Summit West shall at all times employ or contract with a person or persons who possess a current, unexpired Grade I or higher water operators license from the State of California. The Grade I or higher licensed water operator shall be assigned the responsibility and duty by Summit West of the actual day to day operation of the water distribution system. Summit West shall submit to the Director of Public Works a copy of the current Grade I license. County Service Area 54 shall have the ongoing right to demand at any time to inspect the license of the water operator(s). Summit West shall, in addition to all other duties imposed by law and contract, maintain in good operating condition chlorination equipment at all storage facilities, carry out and report the results of periodic chlorination testing, carry out and report the results of quarterly bacteria testing, and report any water outages or shortages. Report as used in this paragraph means to submit timely written evidence to the Health Officer.

6. **WATER QUALITY PERFORMANCE STANDARDS.** Summit West Shall, in addition to all other duties imposed by law and under this agreement, carry out and report the results of periodic chlorination testing, carry out and report the results of quarterly bacterial testing, and carry out and report any water outages or shortages. Report as used in this paragraph means to submit timely written evidence to the Health Officer. In the event that water quality based on testing falls below the applicable standards, or that water supply falls below applicable minimums, Summit West shall within 24 hours of knowledge of such water quality or quantity issue notify the Health Officer. Summit West shall thereafter promptly issue any notice or boil order and promptly comply with any other remedial action ordered by the Health Officer.

7. **COMPENSATION.** County Service Area 54 shall pay to Summit West each month the sum of \$16,902.00, representing one twelfth (1/12) of the system operating expenses as set forth in the operating budget for the current term as approved by Summit West and County Service Area 54. A copy of the budget for the current term ending June 30, 2001, is attached hereto as Exhibit A. Payment is conditioned upon (1) sufficient revenue from water charges being available in the County

Service Area 54 fund after payment of accrued CSA 54 expenses; (2) receipt from Summit West of an invoice specifying the monthly operating expenses in a format as set forth by the Auditor-Controller; and (3) approval of that invoice by the Auditor-Controller. Auditor-Controller may reject an invoice if the water distribution system is not in compliance with all applicable health regulations, as determined by Santa Cruz County Environmental Health Services. CSA 54 may advance to Summit West the sum of one's month compensation on a one time basis provided that sufficient funds for such advance exist in the CSA 54 budget. Annually, or more frequently at the discretion of the Auditor-Controller, the contract compensation shall be reconciled with the actual amounts billed to SUMMIT WEST for water and electrical energy costs.

8. BUDGETS. On or before April 1, 2001, and every year thereafter that this agreement is to be renewed, Summit West shall submit to County Service Area 54 for approval a proposed fiscal year budget for the subsequent fiscal year (July 1 to June 30) agreement. The parties shall use their best efforts in good faith to agree to the proposed budget. County Service Area 54 shall from time to time as necessary adopt by ordinance an increase or decrease in the water charges and other charges and fees to conform with the approved operating budget. Summit West shall operate within this approved budget, with the exception of extraordinary expenses or as mutually agreed upon from time to time by County Service Area 54 and Summit West.

9. WATER CHARGE REVENUE COLLECTION. Summit West shall bill to and collect from the users the water service charges as authorized and allowed by County Service Area 54 Ordinance 1-00. All revenues collected from the COUNTY SERVICE AREA 54 users belong to COUNTY SERVICE AREA 54 and shall be deposited into a bank account established by Summit West in the name of COUNTY SERVICE AREA 54, who shall be solely authorized to withdraw at its direction the funds contained in that account. Monthly, the balance of this bank account shall be swept into the COUNTY SERVICE AREA 54 general fund. Summit West shall maintain an accounting of water service charge payments and delinquent accounts and provide a copy of this accounting to the Auditor-Controller on a monthly basis or as otherwise requested by the Auditor-Controller.

10. EXISTING UTILITY AGREEMENTS. Summit West shall initiate and maintain, or accept the assignment of, all utility service accounts for electrical power, telephone service and other utility services for the water distribution system, and shall be responsible for the payment of all amounts due under those accounts during the term of this agreement.

11. WATER PURCHASE AND WHEELING. Notwithstanding that County Service Area 54 is a party to the water sale agreement with Redwood Mutual and the water wheeling agreements with Ridge Mutual and Stagecoach Mutual, Summit West shall during the term of this agreement arrange to directly receive all billings for water purchases from Redwood Mutual and billings for wheeling charges from Ridge Mutual and Stagecoach Mutual and timely pay all such bills.

In the event that Summit West must import water to provide adequate supply, Summit West shall purchase water only from properly licensed water vendors.

12. **EXTRAORDINARY PROJECT EXPENSES.** Any proposed repair, replacement, upgrade, enhancement or other extraordinary project to any portion or portions of the water distribution system which is not set forth in the operating budget, or any maintenance project exceeding the amount of \$500.00 in labor and materials, shall be subject to the advance approval by County Service Area 54. The Director of Public Works shall review and prepare recommendations for any proposed extraordinary project or maintenance project. County Service Area 54 shall exercise its authority to approve or disapprove any proposed extraordinary or maintenance project in good faith, taking into consideration the needs of the water customers as well as the financial integrity of County Service Area 54. At the time of approval, the parties shall agree on a revenue source to pay for the proposed project. In the event that an extraordinary project will require additional funding, County Service Area 54 may act to increase the water charges by revisions to the rate ordinance.

13. **EMERGENCY REPAIRS.** In the event of an unforeseen event resulting in a water outage or imminent water quality public health threat, Summit West, upon advance approval by the Director of Public Works, or designee, shall make emergency repairs to the water distribution system necessary to return the system to an operational state or to alleviate any water quality public health threat. Said emergency repairs shall not exceed the authorized limit as set by the Director of Public Works. Said emergency repairs shall be reimbursed by County Service Area 54 as additional compensation, except to the extent that such repairs are provided by the Summit West at its sole expense.

14. **UNAUTHORIZED REPAIRS.** Summit West shall not undertake any repair, upgrade, remodel, replacement or other work to the water distribution system without the prior authorization from the Director of Public Works, except budgeted maintenance work or emergency repairs approved under Paragraph 12.

15. **PUBLIC BIDDING.** Any proposed project, replacement or repair which will cost \$4000 or more, whether set forth in the current budget or not, shall be managed by County Service Area 54, and shall be subject to all required public purchasing and bidding regulations

16. **AUDITS AND ACCOUNTINGS.** The collection of water charges, including late charges and interest and connection fees, and the disbursement of operating expenses shall be recorded and accounted for using practices and methods in accordance with General Accounting Principles and which will facilitate the preparation of an annual audit to be approved by the Santa Cruz County Auditor-Controller. Summit West and the Santa Cruz County Auditor-Controller shall use their best efforts in good faith to agree on any modifications to accounting and reporting practices to best serve the customer interests and to satisfy County Service Area 54 and general accounting standards. The Santa Cruz County Auditor-Controller, or an auditor approved by the Auditor-Controller, shall audit the Summit West water system operations at least once a year on an agreed upon schedule and in accordance with GAP.

17. **EARLY TERMINATION REIMBURSEMENTS.** In the event of early termination,



or non renewal of this agreement, Summit West shall tender to County Service Area **54** all water system operation records, including, but not limited to, inventories, system maps, plans and diagrams, payroll, billing, and purchasing records, accounts, bank account statements, customer lists, or copies of such records. Summit West shall use their best efforts in good faith to assist the transition of the operation and maintenance function from Summit West to County Service Area 54 or such other entity selected by County Service Area 54.

18. **DEBT SERVICE FUNDS.** All amounts collected by Summit West from water users for debt service for the Department of Water Resources (DWR) Safe Drinking Water Act Loan, Contract #E5 1407, shall be remitted to County Service Area 54 along with all other revenues. County Service Area 54 shall assume the obligation to transmit debt service payments to the DWR.

19. **RECORD KEEPING.** Summit West shall maintain in a secure location for a minimum of ten (10) years all water system operation records, including, but not limited to, inventories, system maps, plans and diagrams, payroll, billing, and purchasing records, accounts, bank account statements, customer lists.

20. **INSURANCE.** During the full term of this agreement, including any and all extensions, Summit West, at its sole cost and expense, shall obtain and maintain comprehensive or commercial general liability insurance coverage in the minimum amount of \$2,000,000.00 combined single limit, including bodily injury, personal injury and broad form property damage, contractual liability, products, and completed operations and cross-liability or severability coverages. Such insurance coverage shall be primary coverage as respects County Service Area 54 and the County of Santa Cruz, and any insurance or self-insurance maintained by County Service Area 54 and the County of Santa Cruz shall be excess of Summit West's insurance coverage and shall not contribute to it. If Summit West utilizes one or more subcontractors in the performance of this agreement, Summit West shall obtain and maintain independent contractor's insurance as to each subcontractor or otherwise provide insurance coverage for each subcontractor equivalent to that required of Summit West in this agreement, absent express modification or waiver of this requirement. Such policy or policies shall name the County Service Area 54 and County of Santa Cruz as additional named insureds as respects the operations of the named insured. Summit West agrees to provide Auditor-Controller, County Service Area 54 at or before the effective date of this agreement, and periodically as required, with a current certificate of insurance for the required coverage.

21. **INDEMNITY.** Summit West shall exonerate, indemnify, defend and hold harmless County Service Area 54, County of Santa Cruz, and its respective officials, employees and agents, from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which County Service Area 54 or the County of Santa Cruz may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the Summit West's performance under the terms of

this agreement or the operation of the water distribution system, including claims related to water quality and quantity, industrial injuries of Summit West employees or contractors, and termination of water service. Such indemnification includes any damage to the persons or properties of Summit West and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to Summit West's performance of this agreement, including without limitation, unemployment insurance, social security and payroll tax withholding.

22. **EQUAL EMPLOYMENT OPPORTUNITY.** During and in relation to the performance of this Agreement, Summit West agrees as follows:

A. The Summit West shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sex, sexual orientation, age (over 18), veteran status, pregnancy, and gender or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment upgrading, demotion, or transfer. The CONTRACTOR agrees to post in conspicuous places, available to all employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$50,000 to CONTRACTOR and if CONTRACTOR employs fifteen (15) or more employees, the following requirements shall apply:

(1) The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sex, sexual orientation, age (over 18), veteran status, or any other non-merit factor unrelated to job duties. In addition, the CONTRACTOR shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in CONTRACTOR's solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) The CONTRACTOR shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.

(3) In the event of the CONTRACTOR's non-compliance with the non-

discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said CONTRACTOR may be declared ineligible for further agreements with the COUNTY.

(4) The CONTRACTOR shall cause the foregoing provisions of this Subparagraph 7B to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

23. FIDELITY BOND. Summit West shall provide to County Service Area 54 a fidelity bond acceptable to Auditor-Controller in the amount of \$250,000 on behalf of the corporation and its officials to guarantee the proper handling of all funds collected and managed by such officials on behalf of the County Service Area 54.

24. CUSTOMER SERVICE. Summit West shall maintain a dedicated telephone line with 24 hour per day voice mail or answering service capability for the purpose of receiving complaints or questions from the County Service Area 54 users. Any complaint received by Summit West of a water outage or quality incident shall be promptly reported within 12 hours to the Director of Public Works, or designee.

25. ASSIGNMENT. This agreement shall not be assigned without the express written consent of County Service Area 54.

26. INSPECTIONS AND SECURITY. Summit West shall at all times keep secure the water distribution system facilities. Summit West shall provide to the Director of Public Works a duplicate key or entry code for any locking device used to keep the facilities secure. Summit West shall accompany the Director of Public Works on a semi-annual inspection tour of the water distribution facilities at a time convenient to both parties.

27. NOTICES. Any notice to be given by one party to the other under this agreement shall be given by first class mail to the following addresses:

CSA 54 Auditor-Controller  
County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

Summit West Mr. Les Seltzer  
2823 7 Pierce Road  
Los Gatos, CA 95030

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ, County Service Area 54

SUMMIT WEST

By: \_\_\_\_\_

By: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

APPROVED AS TO FORM:

DISTRIBUTION:

By: Hanya Oberhelman III  
County Counsel 4/28/00

CAO

Auditor

County Counsel

Contractor

Risk Management

Public Works