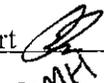
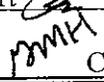
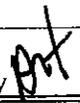
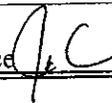




ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s) _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s) _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Study Session

Prepared By: Anthony Emmert  Agenda Item No. I-8
 Reviewed By: City Manager  City Attorney  Finance  Public Works 

DATE: November 20, 2009

TO: City Council

FROM: Mark S. Norris, Assistant Public Works Director
Public Works Department, Utilities Services Branch 

SUBJECT: Agreement with United Water Conservation District for Purchase of Supplemental Water

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute an Agreement with United Water Conservation District (United) for the Purchase of Supplemental Water (Agreement No. A-7247).
2. Authorize the Chief Financial Officer to make the required budget appropriation in the amount of \$962,500 consistent with Government Accounting Standards Board pronouncements.

DISCUSSION

Historically, approximately half of the City's water supplies have been imported water from Northern California, purchased from the Calleguas Municipal Water District, and the other half local groundwater, either purchased from United or produced by City wells. As the imported water has become less reliable, the City's overall strategy is to move toward a greater percentage of groundwater. The City's groundwater desalter, in service for approximately the past year, removes dissolved minerals from the groundwater. This allows the City to utilize more groundwater without compromising the water quality of the blended water it distributes to its customers.

United is acquiring certain properties along the Santa Clara River formerly used for gravel mining, which United will convert to groundwater recharge basins. Along with the property acquisition, United will obtain groundwater pumping credits and allocation. United has already obtained the Fox Canyon Groundwater Management Agency approval to collaborate with the City in making use of the groundwater pumping credits and allocation.

Agreement with United Water Conservation District for Purchase of Supplemental Water

November 20, 2009

Page 2

The proposed Agreement provides the City access to up to 19,000 acre-feet of additional groundwater supplies over a 9 year period. The City will pump some of this groundwater from its wells and obtain the balance through deliveries from United through the Oxnard-Hueneme Pipeline System. The payments for the access to the supplemental groundwater will assist United in financing the acquisition of the properties and groundwater rights, along with the conversion of the properties for use as recharge basins. The ultimate conversion of the former gravel mining properties for groundwater recharge will provide a benefit to the local groundwater basins and to local groundwater pumpers, including the City.

FINANCIAL IMPACT

Over the ten year term of the agreement, the total cost will be \$5,850,048, with the majority of the cost front-loaded to coincide with the delivery of water credits and allocation. The cost for the January – June 2010 period will be \$962,500, and will be funded from the Water Operating Fund fund balance. For the Fiscal Year 2010-2011 and subsequent fiscal years, the cost will be budgeted for and paid from the Water Operating Fund.

AAE

Attachment #1 – Agreement No. A-7247

**AGREEMENT BETWEEN UNITED WATER CONSERVATION DISTRICT AND THE
CITY OF OXNARD FOR THE PURCHASE OF SUPPLEMENTAL WATER**

United Water Conservation District ("United") and the City of Oxnard ("Oxnard") enter into this Agreement for the Purchase of Supplemental Water ("Agreement") on this _____ day of December, 2009, in Ventura County, California. United and Oxnard are collectively referred to as the "Parties".

This Agreement is entered into with reference to the following facts:

- a. United has accumulated over 11,000 acre-feet of Fox Canyon Groundwater Management Agency ("GMA") storage credits as a result of its past purchases of State Water Project water that has been used directly for groundwater recharge within the GMA. These credits are held in United's "Good Deed Credit Trust," established pursuant to GMA Resolution 2002-1.
- b. The Good Deed Credit Trust was established to facilitate good groundwater management practices. United obtained approval from the GMA on November 4, 2009, as set forth in Resolution 2009-7, as authorized by GMA Resolution 2002-1, for the use of a portion of the Good Deed Credit Trust credits ("GDCT Credits") as provided in this Agreement.
- c. United anticipates the completion of its purchase of certain property commonly referred to as the Ferro Property ("Ferro Property") in late 2009. United is the current legal owner of real property commonly referred to as the Rose Property. Upon completion of these transactions, United will acquire, along with the two Properties, certain GMA historical extraction allocations ("Ferro/Rose Properties Allocation").
- d. United anticipates a future project involving converting a portion of the Ferro and Rose Properties into groundwater retention basins, which will provide long-term water management benefits within United's and the GMA's boundaries.
- e. Oxnard obtains a portion of its water supplies from local groundwater resources, through its groundwater wells and from groundwater purchased from United. Oxnard purchases groundwater from United pursuant to the "Water Supply Agreement for Delivery of Water Through the Oxnard/Hueneme Pipeline" ("OH Agreement").
- f. Oxnard is also proceeding with its Groundwater Recovery Enhancement and Treatment ("GREAT") Program, to utilize recycled water in a manner that benefits Oxnard and the groundwater basins within United's and the GMA's boundaries.
- g. In addition to the GREAT Program, Oxnard has and will continue to obtain a portion of its water supplies through the use of local groundwater.
- h. Oxnard attempts to maximize its access to local groundwater supplies, consistent with the GMA's groundwater management plan and rules.

i. The purpose of this Agreement is to set forth how the Parties shall utilize a portion of the GDCT Credits and the Ferro/Rose Properties Allocation to offset some of the costs of the Ferro Property acquisition.

NOW, THEREFORE, in consideration of the preceding recitals, which are incorporated herein by reference as set forth in full and the mutual covenants and promises presented below, the Parties agree as follows:

Section 1. Purpose. This Agreement establishes the terms and conditions under which United will make available to the City a total of 11,000 acre-feet ("AF") of GDCT Credits and a total of 8,000 AF of Ferro/Rose Properties Allocation for use pursuant to this Agreement.

Section 2. Condition Precedent. This Agreement is contingent upon United acquiring title to the Ferro Property and the Ferro/ Rose Properties Allocation.

Section 3. GMA Approval and Compliance. As may be necessary to undertake this Agreement, United shall: a) obtain all approvals required from the GMA for the use of the GDCT Credits and Ferro/Rose Properties Allocation, and b) provide all compliance and monitoring reports consistent with GMA requirements. Oxnard shall cooperate and coordinate with United in obtaining approvals from and making any required compliance reports to the GMA.

Section 4. Use of GDCT Credits and Ferro/Rose Properties Allocation. United shall make available to Oxnard and Oxnard shall use the GDCT Credits and Ferro/Rose Properties Allocation as follows:

4.1. For calendar year 2010, Oxnard shall have available up to 5,500 AF of GDCT Credits.

4.2. For calendar year 2011, Oxnard shall have available up to 5,500 AF of GDCT Credits.

4.3. Annually, from July 1, 2011, through June 30, 2019, Oxnard shall have available up to 1,000 AF of Ferro/Rose Properties Allocation, for a combined total of 8,000 AF of Ferro/Rose Properties Allocation.

4.4. In each year, the Parties agree that the associated pumping of groundwater shall occur from either or both the Oxnard-Hueneme System (the El Rio well field, or the "OH System") and from wells located at Oxnard's Blending Stations #1 and #3.

4.5. The Parties shall coordinate their groundwater reporting to the GMA to account for the above use of GDCT Credits and the Ferro/Rose Properties Allocation.

Section 5. Consideration. Oxnard shall make the following payments to United:

5.1. Oxnard shall make 24 monthly payments of \$160,416.67, concurrent with and included in the OH System invoices to Oxnard for the period of January 2010 through December 2011.

5.2. Concurrent with OH System invoices for the period July 1, 2011 and each month following, through and including June 30, 2019, Oxnard will pay monthly to United \$20,833.83. These monthly payments are in addition to those provided in subsection 5.1.

5.3. To the extent the City obtains a portion of the groundwater from the OH System, the monthly payments made pursuant to subsections 5.1 and 5.2 are in addition to any other costs incurred by Oxnard for OH System water purchases and deliveries.

Section 6. Restrictions on Use of GDCT Credits or Ferro/Rose Properties Allocation.

6.1. The Parties agree that, while the intent of this Agreement is to provide access to the GDCT Credits and Ferro/Rose Properties Allocation consistent with the schedule provided in Section 4 above, the Parties acknowledge there may be periods in which Oxnard may not be able to fully utilize these water supplies because of extraordinary conditions within the GMA. Nonetheless, the Parties agree that Oxnard has the right to use a total of 19,000 AF of groundwater as provided herein.

6.2. Oxnard agrees to use its reasonable efforts to utilize the GDCT Credits and Ferro/Rose Properties Allocation in a manner which minimizes any significant impacts on groundwater resources. United agrees to use its reasonable efforts to assist Oxnard in making full use of the GDCT Credits and the Ferro/Rose Properties Allocation as provided herein.

Section 7. OH System. Nothing in this Agreement is intended to modify the OH Agreement. The Parties acknowledge that Oxnard may opt out of OH Agreement on or about 2016. In the event the OH Agreement is terminated, the Parties shall continue to comply with their commitments under this Agreement, with Oxnard taking delivery of the entirety of the Ferro/Rose Properties Allocation through Oxnard's groundwater wells.

Section 8. Term and Termination. This Agreement will be effective upon the date written at the top of page 1 and will remain in effect through the later of: a) Oxnard making the full and final payments, as required in section 5, or b) United making available and Oxnard making use of 11,000 AF of GDCT Credits and 8,000 AF of Ferro/Rose Properties Allocation.

Section 9. Suspension of Payment.

9.1. The monthly payments required in Section 5 shall be reduced or suspended in proportion to any restriction imposed on Oxnard to reduce or suspend its use of the GDCT Credits or the Ferro/Rose Properties Allocation. For example, if United or a third-party requires Oxnard to reduce its use of GDCT Credits or Ferro/Rose Properties Allocation such that Oxnard may only obtain 50% of the GDCT Credits or Ferro/Rose Properties Allocation amortized over the period in which the restriction applies, Oxnard shall only be required to pay United for 50% of the payment associated with the GDCT Credits or Ferro/Rose Properties Allocation.

9.2. The reduction or suspension in payments shall only apply during the period of the restriction or suspension of use.

9.3. The Parties agree to apply their reasonable best efforts to lift any restriction as promptly as possible.

9.4. Should any restrictions or suspensions be imposed on Oxnard's access to the GDCT Credits or Ferro/Rose Properties Allocation, the anticipated periods of use provided in Section 4 shall be extended so that Oxnard has access to and ability to make use of the full amount of GDCT Credits and Ferro/Rose Properties Allocation as provided in this Agreement. Oxnard's payment obligation shall also continue during any extended period of use so that United receives the total anticipated payments provided in Section 5. Any final payment(s) shall be adjusted in that proportion necessary to make up for any periods of reduced or suspended payments.

Section 10. Assignment. Neither Oxnard nor United may assign this Agreement, nor any right or duty hereunder, without prior written approval. This Agreement is binding upon and shall inure to the benefit of the successors of Oxnard and United.

Section 11. Authorization. Oxnard acknowledges that the person executing this Agreement on its behalf has been duly authorized to do so. United acknowledges that the person executing this Agreement on its behalf has been duly authorized to do so.

Section 12. Notices. Any notices to Oxnard may be delivered personally, or sent by U.S. mail addressed to the Director of Public Utilities, 300 West Third Street, Oxnard, CA 93030. Any notices to United may be delivered personally, or sent by U.S. mail addressed to General Manager, 106 North 8th Street, Santa Paula, CA 93060.

Section 13. Construction. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any Party, as each Party has participated in the drafting of this document and had the opportunity to have its counsel review it. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and all masculine shall include the feminine and neuter, and vice versa.

Section 14. Cooperation. The Parties shall, whenever and as often as reasonably requested to do so by the requesting Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all documents and instruments as may be necessary, expedient or proper in the reasonable opinion of the requesting Party to carry out the intent and purposes of this Agreement, provided that the requesting Party shall bear the costs and expense of such further instruments or documents (except that each Party shall bear its own attorneys' fees).

Section 15. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action against any Party to this Agreement.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

Section 17. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and executed by the Party so waiving. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants, or agreements contained herein, and in any documents delivered or to be delivered pursuant to this Agreement. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

Section 18. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements and promises, either oral or written, on the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year and at the place first written above.

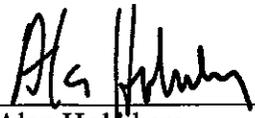
CITY OF OXNARD

By _____
Dr. Thomas E. Holden
Mayor

ATTEST:

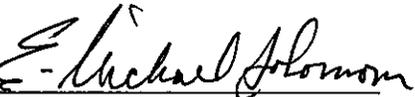
By _____
Daniel Martinez
City Clerk

APPROVED AS TO FORM:

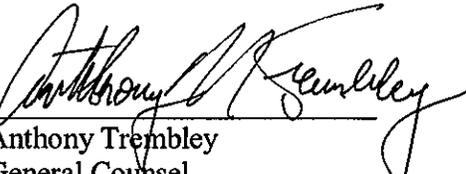
By  _____
Alan Holmberg
City Attorney

//signatures continue on following page

UNITED WATER CONSERVATION
DISTRICT

By 
E. Michael Solomon
General Manager

APPROVED AS TO FORM:

By 
Anthony Trembley
General Counsel