

NTC REGIONAL WATER ALLIANCE INTERAGENCY AGREEMENT

REGARDING THE

REGIONAL COLLABORATION FOR THE IMPLEMENTATION OF THE NORTHERN TULARE COUNTY
REGIONAL SURFACE WATER TREATMENT PLAN (SWTP) PROJECT

This Interagency Agreement is made as of the date first signed below by and between the Cutler PUD; East Orosi CSD; Orosi PUD; Sultana CSD (representing the communities of Sultana and Monson); Tulare County (representing the communities of Monson, Yettem and Seville and their water systems); hereafter called “the Parties”

Comment [DO1]: Ultimately need to decide where Monson goes – for now should be listed under County until consolidation goes through with sultana.

WHEREAS, the Parties desire to collaborate on the implementation of the project detailed in the study titled, Northern Tulare County Regional Surface Water Treatment Plan (SWTP) with the objective to provide finished surface water to the Parties.

WHEREAS all the Parties have the authority to implement through a Joint Powers Agreement (JPA) for constructing, operating, managing and maintaining the SWTP project facilities for safe drinking water;

NOW THEREFORE BE IT RESOLVED that the parties agree to collaborate to implement said project as follows:

Scope of Work:

1. DEFINITIONS. For purposes of this agreement, the words and phrases below shall have the following meanings:

1.1. “Administration Costs” mean the Project-related costs of Agency administration, legal services, program management, project financing and all other expenses with an administrative nature.

1.2. “Agreement” means this Interagency Agreement.

1.3. “Agency” means the “NTC Regional Water Agency” created by the Joint Powers Agreement.

1.4. “Bylaws” means the Bylaws of the Agency

1.5. “Board” or “Board of Directors” means the governing body of the Agency.

1.6. “Capital Costs” means any Project-related costs of construction, financing, acquisition, planning, and designing, the funding of a reasonable construction reserve, design, construction and all project related administration costs. Capital Costs may also include capital costs of project facilities development cost as well as water purchase contract approved by the Agency.

Comment [DO2]: May need to address design costs separately if the State does not include design in construction grant.

1.7. “Completion of Construction” means the final completion (not substantial completion) of construction of a particular Project Facility.

1.8. "Construction" means the Project-related procurement of material, parts and equipment, actual construction, construction management and related field services including project management activities, contractor management, and design assistance during construction, as-built-drawings, and startup testing.

1.9. "CEQA" means the California Environmental Quality Act.

1.10. "Design-Build Costs" mean the Project-related costs of property and rights-of-way acquisition, Permitting fees, engineering, design, design review, construction, implementation of and compliance with permitting and environmental mitigation measures and other requirements during construction, and construction-period monitoring of compliance with permitting requirements and environmental, water quality, endangered species and related laws and regulations.

1.11. "Dedicated Capacity Shares" means the capacity of the Project Facilities dedicated to each Project Participant.

1.12. "District" means the Alta Irrigation District.

1.13. "Environmental Documentation" means all activities and documents required to comply with federal and/or state environmental, water quality and endangered species laws and regulations (including CEQA) in connection with the permitting and the construction and operation of the Project, but not including implementation of and compliance with permitting and environmental mitigation measures and other requirements during construction and construction-period monitoring of compliance with permitting requirements and environmental, water quality, endangered species and related laws and regulations.

1.14. "Final EIR" means the Final Environmental Impact Report

1.15. "Final Engineering" means engineering and related activities that are necessary or appropriate to the development and preparation of final design plans, specifications, drawings, and bidding and construction documents for the Project.

1.16. "Fixed Operating Costs" mean those Project-related operating, maintenance and management costs that are incurred regardless of the amount of water sold. Fixed operating costs include but are not limited to, debt service, insurance, taxes, personnel expenses and reserves.

1.17. "Force Majeure" means delays or defaults due to acts of God, government (other than acts or failure to act by one of the Parties), litigation, including litigation challenging the validity of this Agreement or any element thereof, general strikes or other force or event beyond the responsible party's reasonable control.

1.18. "mgd" means million gallons per day

1.19. "Party" means the parties to the JPA

1.20. "Project Facilities" means the project facilities detailed in the study titled, Northern Tulare County Regional Surface Water Treatment Plan (SWTP) with the objective to provide finished surface water to the Agency Parties.

1.21. "Permitting" means all activities and documents to apply for and acquire the permits and licenses that are required under federal, state and/or local laws and regulations to construct and operate projects. Permitting also shall include the acquisition of water right permits, licenses and contract water supplies that are necessary or appropriate for the project.

1.22. "Project Participants" mean the Parties and Participating Parties which timely exercises their option to participate in projects. If a party does not timely exercise its option, then it will not be considered a Project Participant.

1.23. "Retail Operations" means direct water sales to customer along the pipelines who are not part of or are customers of any of the Parties.

1.24. "Raw Water Intake" means the raw water diversion and intake facility.

1.25. "Raw Water Transmission Main" means the pipeline conveying untreated water from the Raw Water Intake to the Regional Facility/facilities.

1.26. "Repair and Replacement Costs" mean the costs for major repair and replacement costs, excluding preventive maintenance, of project Facilities as determined in accordance with the Agency design-build-operate service contract and as otherwise determined by the Board.

1.27. "Study" means the Northern Tulare County Regional Surface Water Treatment Plan (SWTP)

1.28. "Technical Services" mean Agency Project-related services and activities.

1.29. "Transmission Piping" means the treated water transmission lines between the Regional Facility(s) to be constructed as part of project Facilities and the facilities owned by a particular party for the use in the community (s) the Parties provide service to.

Comment [D03]: Agency should own and maintain transmission piping.

1.30. "Variable Operating Costs" mean those Project-related operating and maintenance costs and other costs that are dependent on, and vary based on, the volume of water treated, stored and delivered.

2. PROJECT FACILITIES AND CAPACITY.

2.1. Subject to the restrictions and limitations of this Agreement and the completion of the Environmental Documentation and Permitting, and as required by law, the Agency is authorized to implement and undertake the planning, design, Final Engineering, financing, construction, operation, maintenance and management of and for the Project Facilities.

2.2. The final Project design plans shall include fixed points of delivery of water from the Transmission Piping to each Party's local distribution facilities.

2.3. The Agency shall secure the written approval of each Party before proceeding with the award of any contract for Final Engineering or Construction of the Initial Project Facilities. After securing these approvals, further Party approval will not be required as a precondition to Board actions and decisions about such project.

Comment [D04]: Will need to address change orders and cost overruns. Suggest Party approval of any cost over some fixed amount or percentage of a project.

NOTE. Will need to address change orders and cost overruns. Suggest Party approval of any cost over some fixed amount or percentage of a project.

2.4 Exhibit A shall list the Water Treatment Plant Project Facilities that would be jointly owned by the parties.

2.4. Dedicated Capacity. (Insert EXHIBIT B information from the NTCRSWTP study in here)

2.5. The daily flow limits in the attached table below (Insert Exhibit C from the NTCRSWTP study in here) are based on an Initial Project Facilities capacity of xx mgd. The actual total capacity of the as-built Regional Water Treatment Facility will be rated by the State Water Resources Control Board following required testing of the plant construction. If the total rated daily flow limit capacity differs from the total daily flow limit amount presented in the attached table, then each Project Participant's daily flow limit shall be adjusted accordingly and proportionately based on the Dedicated Capacity Shares.

2.6. If the Agency expands the Project Facilities to produce greater than xx mgd, then the foregoing daily flow limits in mgd as well as the corresponding percentages shall be adjusted as determined by the Board; however, the quantity (mgd) of Dedicated Capacity allocated to each party and the annual limit for each party shall not be increased without its written consent (i.e., if a party chooses not to consent to and participate in a Project expansion, then its Dedicated Capacity and annual limit would remain fixed and its percentage share of the expanded Project would be reduced accordingly or the percentages may be revised by written agreement between the Parties to reflect a different basis for calculation).

2.7. After Completion of Construction of the Project Facilities, the Agency shall make available and deliver to each Project Participant a total amount of treated water up to its respective Dedicated Capacity Shares, subject to the terms and conditions of this Agreement and the availability of water.

2.8. The water shall be delivered to the points of delivery as shown on the final Project plans and specifications.

2.9. The Agency shall deliver treated water that meets all state and federal drinking water quality standards applicable to the Project at the time of the delivery.

2.10. The Agency shall consult with the Project Participants on a regular basis to determine specific schedules of deliveries, and, consistent with the terms of this Agreement, the Agency shall use its best efforts to meet the requirements of the Project Participants.

2.11. If a Project Participant does not desire or take its full entitlement of available water, then the amount of water not delivered to that Project Participant may be made available at no cost for the raw water and delivered to other Project Participants that are interested in additional water deliveries. Participants should have the option to market excess or unused water within or outside of service area. Project Participants can also make agreements to store unused water (on site or off site with Alta ID or with other Project Participants).

2.12. The Agency shall keep and maintain a monthly schedule of the actual quantities of water delivered to each of the Project Participants.

2.13. Any two or more of the Project Participants may adjust their respective Dedicated Capacity shares and the redistribution may be temporary or permanent. The redistribution shall be in writing approved and signed by the involved Project Participants and filed with the Agency. If temporary, the writing shall indicate the effective dates of the redistribution. The redistribution also may reallocate the Project

Participants' respective payment shares, in which case the writing also shall indicate whether the change is temporary or permanent, and, if temporary, the effective dates of the changes.

2.14. Reduction in Availability of Project Water. If, for any reason (including, but not limited to, water supply availability, drought, restrictions on diversion, regulatory requirements, damage, or maintenance), the daily water available for delivery is less than xx mgd (or an expanded Project capacity as later may be approved by the Board) at any time, and such reduction is not due to an act or omission of any Project Participant, then the available water supply shall be allocated among the Project Participants based on their Dedicated Capacity or such other allocation as may be determined by the Board; provided, however, that any reduction in water from the supplemental water purchase shall be reduced based on the cost allocation set forth in this agreement, unless the Parties agree to a different allocation of this water.

2.15. If reductions in both the daily water delivery capacity and the annual limit were to occur, then available daily water delivery capacity shall be allocated first, and the available annual limit then shall be allocated in a manner that is consistent with the allocated daily water delivery capacity. If the reduction is due to an act or omission of a Project Participant, then that Project Participant shall be responsible for absorbing the amount of the reduction attributable to its act or omission from its share of Dedicated Capacity or annual limit.

3. NONPARTICIPATION BY A PARTY

3.1. Party Commitment to Project. By approving this Interagency Agreement, each Party commits to proceeding with the planning, design, Construction and/or operation of the Initial Project Facilities and to funding the Capital Costs of the Project Facilities on and subject to the terms of this Agreement.

Commitment to the project is important for when a party decides not to proceed in further phases of the project, for example, from planning to design or from design to construction, the project may have to be rescaled and cost allocations recalculated.

3.2 Each Party approves the Implementation of Regional Project Milestone Schedule ("Schedule") that is attached as Exhibit XX and each Party shall diligently and in good faith strive to take and implement the Schedule actions in accordance with the Schedule deadlines.

3.2. Missed Deadline. If a Party fails to take an action in accordance with the Schedule (which includes the failure of the Agency Board to timely approve a contract to design and construct the Project Facilities due to the failure of a Party's Directors to vote in favor of the contract), the other Parties may give written **Notice of Missed Deadline** to the Party missing the deadline. The Notice of Missed Deadline will inform about the nature of the missed deadline, state the noticing Party's intention to proceed with the Project with the remaining Parties per this section 3, and provide the Party missing the deadline with 60 days to cure the missed deadline. If the Party missing the deadline fails to satisfactorily cure the matter within the 20-day cure period, then the other Parties (the "Participating Community") may give written notice (the "Go-It-Alone Notice") to the Agency Secretary and the Party missing the deadline (the "Nonparticipating Party") that the Participating Parties are exercising their option to proceed with the Project pursuant to this section 3.

On the first day of the month following receipt of the Go-It-Alone Notice by the Secretary, the sections below will apply to the Project and the contractual relations between the Parties and the Agency. If

Comment [DO5]: There are two scenarios that need to be addressed. One if withdrawal and the other is a material change in demand. May need to reconfigure the following sections. Order needs to be adjusted to keep section regarding these two scenarios together.

there are any irreconcilable inconsistencies between this section and another provision of this Agreement, this section will govern.

3.3. Agency Board Action. The Board of Directors will continue to be representative of the remaining participating Parties; however, for the purposes of transacting any business of the Board pertaining directly or indirectly to the Project (including Construction, operation, expansion and financing related decisions), a quorum shall consist of the majority of Directors who represent the Participating Parties, and an affirmative vote by Participating Parties shall be required for any Board action. For the sake of clarity, the intent of this paragraph is that the Nonparticipating Party not be able to prevent the Participating Parties or the Agency from proceeding with the Project.

Comment [BS6]: This will need to be addressed in the JPA

3.4. Modification of Project Facilities. The Agency Board will modify the scope and design of the Project Facilities so that the Project Facilities are reduced to provide capacity and water supply for only the Participating Parties, including, but not necessarily limited to, a reduction of the Regional Water Treatment Facility capacity to a size as determined by the Board and removal of the Transmission Piping for the Nonparticipating Party. The Agency will proceed with the design, Construction and operation of the modified Project Facilities for the sole use and benefit of the Participating Parties.

3.5. Dedicated Capacity and Use of Project Facilities. All Agency lands, easements, Permitting, contracts, staffing, Agency funds and reserves on hand and other assets will be provided for the sole benefit and use of the Participating Parties. Upon Completion of Construction of the modified Project Facilities, all Project Facilities and the full Dedicated Capacity of the Project Facilities will be provided for the sole benefit and use of the Participating Parties.

3.6. Water Rights. The full water supply available under Agency Water Right contract agreement with the Alta Irrigation District will be provided for the sole use (through the Agency) of the Participating Parties.

Comment [DO7]: Address transfers of water outside parties?

3.7. Cost Allocation. Starting on the first day of the month following the Go-It-Alone Notice, the Participating Parties will be solely liable and responsible for all Agency and Project Capital Costs, Fixed Operating Costs, Variable Operating Costs, Repair and Replacement Costs and other costs and expenses; except that the Nonparticipating Party will remain liable for payment to the Agency for (a) its share of Agency and Project costs incurred prior to the first day of the month following the Go-It-Alone Notice (as calculated, charged and assessed pursuant to section 6).

3.8. Reimbursement for Redesign Costs. If, after the date we commence construction, a Party fails to take an action in accordance with the Schedule and the other Party gives a Go-It-Alone Notice pursuant to section 3.2, then the Nonparticipating Party will pay or reimburse the Agency for the Agency's and Participating Parties' direct, actual and reasonable costs to redesign the Project Facilities for just the Participating Parties and including staff and administrative costs directly related to the redesign.

3.9. Limited Rights of Nonparticipating Party. The Nonparticipating Party will not receive any water supply from the Project, it will not have any Dedicated Capacity in the Project Facilities, and it will not have any intake and diversion capacity in the Raw Water Intake. The Directors representing the Nonparticipating Party will have no voting rights on the Board as indicated by section 3.3.

3.10. Re-participation by Nonparticipating Party. If, following a Go-It-Alone Notice, the Nonparticipating Party desires to re-participate in the Project, then it and the Participating Parties may negotiate a fair

and equitable amendment of this Agreement to address the terms of such re-participation and buy-in to the Project Facilities. Re-participation by the Nonparticipating Party will be allowed only pursuant to the terms of an amended Agreement mutually approved by the governing board of each Party. If the Nonparticipating Party expresses an interest in re-participation, then the Participating Parties will negotiate in good faith on fair and equitable terms of an amended Agreement and will not unreasonably refuse re-participation by the Nonparticipating Party.

LIST OF EXHIBITS

Exhibit A Water Treatment Plant Project Facilities

EXHIBIT x Dedicated Capacity information from the NTCRSWTP study

Exhibit x Daily Flow Limits

Exhibit x Project Service Area and Water Right Place of Use

Exhibit x Implementation of Regional Project Milestone Schedule

Exhibit x Contract Agreement with Alta Irrigation District regarding water rights

EXHIBIT A

List of NTCRSWTP Project Facilities. Agency facilities -- Project facilities to be constructed, owned and operated by the Agency:

1. Regional Water Treatment Facility
2. Raw Water Intake
3. Agency-Only Intake Facilities
4. Raw Water Transmission Main
5. Joint Transmission Piping