

# NORTHERN TULARE COUNTY REGIONAL WATER AGENCY LIANCE

## DRAFT JOINT POWERS AGREEMENT (5/12/16)

*(Revised after feedback provided at the April 2, 2016 and April 30, 2016 Working Group meeting suggesting that the JPA keeps a narrower focus. Move details about the board and governance to bylaws and about the SWTP technicalities and costs to an interagency agreement. This JPA provides for the establishment of the Agency. Once established, the Agency will develop the Interagency Agreement for the regional project that may include a Surface Water Treatment Project to be approved by the Parties and Bylaws that will be approved by the Board. While the JPA is exclusively for the development of the Project, for the creation of the entity that would own and operate a regional project (s) the JPA could be amended in the future to deal with other projects.)*

This Joint Powers Agreement is made this XX day of XX 2016 by and between, the Cutler PUD (~~representing the community of Cutler~~); East Orosi CSD (~~representing the community of East Orosi~~); Orosi PUD (~~representing the community of Orosi~~); Sultana CSD (NOTE: may represent the communityies of Sultana and Monson if Monson is annexed); Tulare County (representing the communities of Monson, Yetttem and Seville ~~and their water systems~~); and who together agree to the following:

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

1.1. "Act" means the Joint Exercise of Powers Act, California Government Code title I, division 7, chapter 5 (commencing with Section 6500).

1.2. "Agreement" means this Joint Powers Agreement.

1.3. "Agency" means the "Northern Tulare County Regional Water Agency" created pursuant to this Agreement.

1.4. "Board" or "Board of Directors" means the governing body of the Agency as established by this Agreement.

"Bylaws" .....

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

~~1.6. "Completion of Construction" means the final completion (not substantial completion) of construction of a particular Project Facility.~~

1.7. "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. Construction also includes the final design of the Project.

1.8. "Director" means a member of the Board of Directors.

1.9. "Effective Date" means the effective date of this Agreement.

1.10. "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.

~~1.11. "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.~~

1.12. "Fiscal Year" means **July 1 through June 30** or such other fiscal annual period as the Board may determine.

~~1.13. "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.~~

~~1.14. "Individually Owned Project Facility" means a Project Facility to be financed and constructed by the Agency as part of the Project, but to be paid for, owned and operated by one of the Project Participants as may be later agreed to between the Agency and Project Participant.~~

~~1.15. "Initial Project" or "Initial Project Facilities" means the project facilities detailed in the study titled, Northern Tulare County Regional Surface Water Treatment Plant (SWTP) with the objective to provide finished surface water to the Agency Parties.~~

1.16. "~~Project~~Inter-Agency Agreement" means an Agreement between the ~~p~~PParties and the ~~a~~AAgency for the purpose of ~~implementing~~executing the a ~~p~~PProject ~~together and/or any form or collaboration between the parties and the Agency.~~

~~1.17. "MOA" means Memorandum of Agreement.~~

~~1.18. "Nonparticipating community" means a community that is NOT involved in the development of a project and therefore does not have any project capacity or project decision making role.~~

~~1.19. "Participating Community" means a community that is involved in the development of a project.~~

1.20. "Parties" mean the Cutler PUD, East Orosi CSD, Orosi PUD, Sultana CSD (**Sultana may also represents the community of **Monson if annexed****) and Tulare County as it represents the communities of, Yetttem, Monson and Seville. "Party" means either one of the Parties and any Agency that thereafter become a ~~p~~PParty in accordance to the terms and provisions of this Agreement

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, including, but not limited to, conducting required studies, endangered species act consultation, environmental documentation, public notifications, preparation of permit and license applications, consultation and negotiations with involved persons and organizations including regulatory agencies.

~~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" means ~~the Surface Water Treatment Project as generally described in recommended alternative identified in an the engineering sStudy completed by the JPA. a particular infrastructure project undertaken by the Agency as agreed by the Parties.~~

~~1.23. "Project Facility" or "Project Facilities" mean each facility or all facilities (as the case may be) identified as a Project Facility approved by the Board.~~

~~1.24. "Project Participants" mean the Parties and Participating communities 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.~~

~~1.25. "Retail Operations" means direct water sales to customer along the pipelines who are not part of or are customers of any of the Parties.~~

~~1.26. "Raw Water Intake" means the raw water diversion and intake facility.~~

~~1.27. "Raw Water Transmission Main" means the pipeline conveying untreated water from the Raw Water Intake to the project facilities.~~

1.28. "Study" means the Northern Tulare County Regional Surface Water Treatment Plant Study(SWTP) dated September 2015.

1.29. "Supermajority Decision" shall mean any decision by the Board of Directors ~~that to (i) initiate litigation in the name of the Agency, (ii) issue bonds or other form of indebtedness obligating the Agency for an amount in excess of \$100,000, (iii) adopt or amend the Agency's Bylaws, (iv) change any Participation Percentage and/or amendments to the Agency's service area (v) admit any new Member to the Agency (vi) terminate any Member (vii) changing the Parties' respective Dedicated Capacity shares.~~ A Supermajority Decision shall require the affirmative vote of majority plus one of the members of the Board of Directors.

## **2. RECITALS. This Agreement is made with reference to the following background recitals.**

2.1. The Parties each have the ~~Agency and the~~ common powers to develop, construct, operate and maintain, own and administer water supply facilities.

2.2. The Parties goal is to jointly ~~consider~~pursue the development ~~and~~ implementation and ownership of a regional project (s) that ~~could~~involves, planning, financing, designing, Permitting, implementing constructing, operating, maintaining and administering the Project of new or modified water supply sources, production, treatment and distribution of water and appurtenant infrastructure facilities and managerial and financial best practices to provide safe, affordable drinking water over the long term to the communities the Parties serve.

2.3. The Parties desire to implement this goal by creating ~~this Agency~~ **Joint Powers Agency (Agency)** to exercise their ~~common established~~ powers for their mutual benefit. ~~As stated above the principal goal is to provide a long term, secure, reliable, safe water supply for the benefit of all the Parties in an, efficient, reliable, cost-effective and environmentally sound manner.~~

2.4. The ~~first~~ objective of the Agency is to provide safe drinking water to the Parties ~~through a sustainable water source.~~

2.5. Through this Agreement the Parties establish that they will share in the costs of Project-related expenses, including but not limited to ~~pre-construction project expenses, the development of the Project Agreement, water supply rights agreements acquisition, water supply contracts, Environmental Documentation, and p~~ pre-construction project expenses, the development of the Project Agreement, water ~~supply rights agreements acquisition, water supply contracts, Environmental Documentation, and p~~ supply rights agreements acquisition, water supply contracts, Environmental Documentation, and p ~~Permitting, design, final engineering, financing, property and rights-of-way acquisition, construction, operation, maintenance and management of the p~~ Permitting, design, final engineering, financing, property and rights-of-way acquisition, construction, operation, maintenance and management of the p ~~Project on and subject to the terms of this Agreement. Participation in the Agency does not bind Parties to implement the Project unless the Party executes the Project Agreement.~~

~~2. . The Project Agreement will specify details of the Project, including cost allocation. Parties that execute the Project Agreement will be bound to participate in the Project, subject to the withdrawal provisions in the Project Agreement.~~

~~2.6. The Agency may have the power to provide finished water to individual customers, residential or commercial, who are located within 400 feet of a distribution line or at the discretion of the board policy, and who are not customers of any of the Parties but have requested the service from the Agency. The Agency has the power to contract with another Agency to provide these services.~~

2.7 The Agency's ~~boundary service area~~ is identified in Exhibit A of this Agreement. Amendments to the ~~Agency boundary service area~~ shall be done by a Supermajority decision of the ~~b~~ Board and in accordance with ~~any other regulations and laws the State Water Resources Control Board.~~

### 3. CREATION OF AGENCY.

**3.1. Agency.** This Agreement is authorized by, and entered into pursuant to, the California Joint Exercise of Powers Act and other applicable laws.

**3.2. Agency Created.** The Agency is hereby created as a public ~~A~~ Agency to be known as the **"Northern Tulare County Regional Water Agency"** The Agency shall be a public ~~A~~ Agency separate from the Parties. The Agency may change its name at any time through adoption of a resolution by the Board of Directors.

**3.3. Liabilities.** The debts, liabilities, contracts and obligations of the Agency shall be the debts, liabilities, contracts and obligations of the Agency alone. No debt, liability, contract or obligation of the Agency shall be or constitute a debt, liability, contract or obligation of the Parties ~~or any of them~~. The Agency shall not ~~have the Agency to~~ bind the Parties ~~or either of them~~ to any debt, liability, contract or obligation except through the Project Agreement as approved by the Parties. ~~However, a Party or Parties separately may contract for, or otherwise expressly assume responsibility for, a specific debt, liability, contract or obligation of the Agency, but only the Party or Parties expressly assuming responsibility shall be so bound, and no other Party then shall be liable for such debt, liability, contract or obligation.~~

**3.4. Effective Date.** The effective date of this Agreement and of the legal existence of the Agency shall be after all parties have executed this Agreement~~xx xx xx~~, and this Agreement and the Agency shall continue in full force and effect until terminated as provided in Section 10

**3.5. No Restriction on Other JPAs.** Nothing in this Agreement shall prevent the Parties from entering into other joint powers Agreements.

#### **4. ORGANIZATION, BOARD AND OFFICERS.**

**4.1. Membership.** ~~The member are Cutler PUD, East Orosi CSD, Orosi PUD, Sultana CSD (Sultana also represents the community of Monson or Tulare County?) and Tulare County as it represents Monson, Yettem and Seville. The Agency Board may by resolution approve additional members. Prior to being admitted as a new Member, a party shall (i) execute an Agreement that could be a resolution, an MOA or an interagency Agreement to be bound by the terms of this Agreement as if such party had been an original signatory hereto and (ii) pay an amount set by the Board of Directors to make the contributions to Agency activities by all Members (including the new Member) equitable. The admission of a new Member and determination of such amount shall be done by a Supermajority decision.~~

**4.2. Board of Directors.** ~~The authorized number of directors of the JPA AGENCY ("Directors") shall be determined by the following method.~~

##### ~~One Option #1~~

~~The Board shall consist of 7 ~~d~~Directors, with 2 appointed by Cutler PUD, 2 appointed by Orosi PUD, 1 appointed by East Orosi CSD, 1 appointed by Sultana CSD ~~and the community of Monson~~, 1 appointed ~~by assignment~~ by Tulare County to represents the communities of Yettem, Monson and Seville. Each Party shall also ~~appoint~~select one alternate ~~Director representative as established in the Agency bylaws.~~ Each Director shall be entitled to one vote. Each Party also shall appoint one alternate Director.~~

##### ~~Another Option #2~~

~~The Board shall consist of 5 ~~d~~Directors, with 1 appointed by Cutler PUD, 1 appointed by Orosi PUD, 1 appointed by East Orosi CSD, 1 appointed by Sultana CSD ~~and the community of Monson~~, 1 appointed ~~by assignment~~ by Tulare County to represents the communities of Yettem, Monson and Seville. Each Party shall also ~~appoint~~select one alternate ~~Director representative as established in the Agency bylaws.~~ Each Director shall be entitled to one vote. Each Party also shall appoint one alternate Director.~~

~~Alternates Directors shall assume all rights of a Director representing the appointing Party entity and shall have the authority to act in the absence of a Director or in the event that a Director has a conflict of interest that precludes participation by the Director in any decision-making process of the Agency. Each Party shall give written notice to the Agency Secretary of the names of its Director(s) and alternate Director. The names of all ~~d~~Directors and alternates shall be on file with the Agency. All actions taken by the alternate are binding in nature.~~

**4.3. Selection of Initial Directors.** Within 30 days after the execution of this Agreement, each Party shall designate and appoint their ~~representative (s) to serve as~~ representative(s) to serve as Directors ~~(S) and alternate(s) on the Board.~~

Each of the Directors and alternate Directors shall hold office from the first meeting of the Board ~~after the appointment of the Director or alternate Director~~ until a successor is selected per the **Bylaws** of the Agency.

**4.4. Bylaws, Policies and Rules and Regulations.** Within the first 90 days of the Agency creation, the Board shall adopt ~~the a set of~~ Bylaws which ~~will should~~ provide the operating structure of the Agency. Additionally, a set of policies or rules and regulations can be adopted to establish everyday operations of the Agency. The ~~b~~Bylaws may be amended from time to time by the Board ~~of Directors~~ as it may deem necessary. Amendment of the Bylaws shall require a Supermajority ~~d~~Decision.

**4.5. Quorum.** A simple majority ~~in number of the members~~ of ~~the Board of~~ Directors shall constitute a quorum for the transaction of business. ~~As stated above each member of the Board of Directors shall be entitled to one vote. Any member of the Board of Directors abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.~~ A Supermajority Decision shall require the affirmative vote of majority plus one of the members of the Board of Directors.

4.6 Supermajority Decisions. The following actions shall require a Supermajority Decision by the Board (i) initiation of litigation in the name of the Agency, (ii) issuance of bonds or other form of indebtedness obligating the Agency for an amount in excess of \$100,000, (iii) adoption or amendment of the Agency's Bylaws, (iv) amendments to the Agency's boundary (v) admit any new Party to the Agency (vi) terminate any Party.

Note: need provision for adding a Party

## **5. POWERS AND PURPOSES.**

**5.1. Purposes.** The purpose of this Agreement is to jointly exercise some or all of the Party's foregoing common powers, as appropriate, and for the exercise of such additional powers as may be authorized by law in the manner set forth in this Agreement, in order to consider the development and implementation of the Project. provide for the most cost efficient and timely acquisition of water rights, water supply contracts, environmental documentation, permitting, design, final engineering, financing, property and rights-of-way acquisition, construction, operation, maintenance and management of a Project. The Project Agreement will approved by each Party and the Agency prior to any expenditures related to the Construction of the Project.

### **5.2. Powers.**

5.2.1 All of the powers and authorities of the Agency shall be exercised by the Board. Subject to the conditions and restrictions in this Agreement, the Agency, in its own name, shall have the common powers of the Parties and as otherwise granted by the Act, in order to achieve the purposes of the Agency.

The Agency is authorized in its own name to do all acts necessary to exercise its and accomplish its purpose, including but not limited to any or all of the following:

5.2.2. To make and enter into contracts, and to execute leases, ~~installment sale contracts or installment purchase contracts~~ in accordance with procedures and requirements as permitted by law.

5.2.3. To contract for or employ clerical, administrative, technical or professional staff or consultant support of any kind including engineers, attorneys, planners, financial consultants or other agents or employees.

5.2.7. To incur debts, liabilities or obligations subject to limitations set forth in this Agreement.

5.2.8. To sue and be sued in its own name.

5.2.9. To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity.

5.2.10. To apply for and accept appropriate grants and loans under any federal, state or local programs for assistance in developing the Project, or any future authorized modifications to the Project.

5.2.12. To obtain, in its own name, all necessary and appropriate permits, licenses, entitlements, opinions and rulings.

5.2.13. To procure bonds, insurance and self-insurance as it deems advisable to protect the Parties and Agency and its property, officers, employees, contractors and agents.

5.2.19. To levy and collect revenue and funding as authorized by law.

The following are authorities of the Agency however will not be exercised unless specifically provided for in the Project Agreement.

5.2.4. To design, acquire, construct, manage, maintain and operate any buildings and water work related projects.

5.2.5. To acquire real or personal property, including, without limitation, by purchase, lease, gift, bequest, devise, or exercise of the power of eminent domain; to hold, manage, lease and dispose of any such property.

5.2.6. To hold, manage, operate and maintain all Agency property, facilities, buildings, structures, vehicles, apparatus and equipment.

~~5.2.7. To incur debts, liabilities or obligations subject to limitations set forth in this Agreement.~~

~~5.2.8. To sue and be sued in its own name.~~

~~5.2.9. To receive gifts, contributions and donations of property, funds, services and other forms of assistance from persons, firms, corporations and any governmental entity.~~

~~5.2.10. To apply for and accept appropriate grants and loans under any federal, state or local programs for assistance in developing the Project, or any future authorized modifications to the Project.~~

~~5.2.12. To obtain, in its own name, all necessary and appropriate permits, licenses, entitlements, opinions and rulings.~~

~~5.2.13. To procure bonds, insurance and self-insurance as it deems advisable to protect the Parties and Agency and its property, officers, employees, contractors and agents.~~

~~5.2.14. To form and administer nonprofit corporations to do any part of what the Agency could do, or to perform any proper corporate function, and enter into Agreements with such entity.~~

5.2.15. To issue bonds and certificates of participation in accordance with applicable statutes, including, but not limited to, the following: Article 2, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6540; Chapter 6, Title 5, Division 2 of the California Government Code, commencing with Section 54300; and, Article 4, Chapter 5, Title 1, Division 7 of the California Government Code, commencing with Section 6584.

5.2.16. To use other financing acts, including, but not limited to the Improvement Bond Act of 1915.

5.2.17. To exercise any of the powers set forth in the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of the Act).

5.2.18. To enter into Agreements incident to the issuance of bonds and certificates of participation for the purpose of enhancing the credit or liquidity of such bonds, or to place such bonds on a different payment schedule, such as an interest rate swap, cap or similar instrument, or in connection with the investment of the proceeds of such bonds.

~~5.2.19. To levy and collect revenue and funding as authorized by law.~~

5.2.20. To enter into Agreements with the Parties and ~~Parties~~ **Participating Agencies** for the ownership, construction, operation, maintenance and/or management ~~theof~~ **Project Facilities**.

Notwithstanding the foregoing, the Agency shall have any additional powers conferred under the Act, insofar as such additional powers may be necessary or desirable to accomplish the purposes of the Agency.

## **6. ALLOCATION OF COSTS, FINANCE AND ACCOUNTING**

**6.1. Cost Allocation & Payment Obligations.** Each of the Parties agrees that they will be responsible for paying its respective costs to the Agency in accordance with the payment schedule adopted by the Board and consistent with the Agency Bylaws, policies, ~~the Project~~ **interagency a** Agreement and any bonds or certificates of financing issued or financing agreements entered into by the Agency.

The Agency should generate sufficient revenues to meet the obligations of the Agency including funds to be set aside in reserve accounts for that fiscal year as set forth in the Agency's annual budget. The schedule should include any and all bonds or financing ~~A~~ **agreements** entered into by the Agency.

~~Costs of the Agency will be allocated to the Parties based on \_\_\_\_\_.~~

~~**6.2. Revenue Pledge.** For the purpose of securing project financing, the Agency shall require revenue pledging from the participating parties. Project participating parties will be responsible for sharing in the cost of the project benefiting their area.~~

~~**6.3. Cost associated with Individually Owned Project Facilities.** If approved by the Agency Board and agreed to in writing by the Agency and a Project Participant, an Individually Owned Project Facility or Facilities may be included as part of projects and financed, designed or constructed by the Agency. Upon Completion of Construction of any Individually Owned Project Facility, the Agency will convey all of its~~



right, title and interest in the completed Individually Owned Project Facility to projects Participant that is served by that Project Facility and that Project

The Project Participant shall accept the conveyance of the completed Project Facility and thereafter be responsible for the ownership, debt payment if any, operation, maintenance, repair, replacement, modification and improvement of that Project Facility. The Agency shall have no obligation to operate, maintain, repair, replace, modify or improve any Individually Owned Project Facility.

## **7. PROJECT FACILITIES ~~AND CAPACITY.~~**

**7.1. Authorized Project Facilities.** ~~An~~The Inter-~~a~~Agency Agreement ~~should be created for each project and will be approved by each Party and the Agency prior to any expenditures related to the Construction of the Project.~~—Each project should be subject to the restrictions and limitations of this JPA and the Interagency Agreement for the Project Facilities as shown in Exhibit C for the regional surface water treatment plant project, the Initial Project.

Before any project is initiated, the Agency shall secure the written approval of each Party however, the party commitment is subject to the approval by its voters/community at a special meeting called for that purpose. After securing these approvals, further Community approval will not be required as a precondition to Board actions and decisions about such project.

**7.2 Project Facilities Expansion or Modification.** Following Construction of Project Facilities, the Agency may expand, or increase its facilities as the board may deem necessary.— Facility expansions or modifications involving change in the water rights change in place of use are subject to the approval of the State Water Resources Control Board requirements.

### **7.3 Financial Obligations for the Project Facilities.**

7.3.1 Financial obligations which are planned at a certain cost at the time of purchase or acquisition and the price changes above a 10% thresholds cost overrun should go back to the Party boards for approval

7.3.2. To the extent possible the Agency shall assist the individual parties with the Prop 218 requirements.

## **~~8. NONPARTICIPATION BY A PARTY~~**

**8.1. Party Commitment to Project.** By approving this Joint Powers Agreement, each Party commits to proceeding with an Interagency Agreement detailing the planning, design, Construction and/or operation of project facilities and to funding the capital costs of the project facilities subject to the terms of the Interagency Agreement; however, the party commitment is subject to the approval by its voters/community at a special meeting called for that purpose.

**8.2. Limited Rights of Nonparticipating Community.** The Nonparticipating Community will not receive any water supply from the particular Project they are not participating; 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.

~~**8.3. Nonparticipating Community Project Re-entry.** If at any time during the project stages a Nonparticipating Community desires to re-enter the Project, then it and the Agency Board may negotiate a fair and equitable Agreement to address the terms of such re-participation and buy-in to the Project Facilities.~~

## **9. INDEMNIFICATION.**

**9.1. By Agency.** The ~~e~~Directors, officers, employees, agents and volunteers of the Agency shall be entitled to defense and indemnification by the Agency as provided under Government Code title 1, division 3.6, part 2, chapter 1, article 4 (commencing with Section 825) and title 1, division 3.6, part 7 (commencing with section 995). The Agency shall indemnify, defend, protect, and hold harmless each Party, and its officers, employees, agents and volunteers, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with the Agency's performance under this Agreement or failure to perform under this Agreement. The Parties acknowledge that the Agency's insurance and indemnity-related costs will be costs of Agency operations for which they will be liable for under section 6.

**9.2. By a Party.** ~~A Participating~~ Party shall indemnify, defend, protect, and hold harmless the Agency and the other Parties, and their respective directors, officers, employees, agents and volunteers, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with the Party's performance under this Agreement or failure to perform under this Agreement.

**9.3. Survival.** These indemnification obligations shall survive and continue in full force and effect after termination of this Agreement for any reason with respect to any actions or omissions that occurred before the date of termination.

~~**9.4. Agency Not Liable for Operation Beyond Point of Delivery.** The Agency and its directors, officers, agents, contractors, employees and volunteers shall not be liable for the control, carriage, handling, use, disposal, or distribution of Project water supplied to a Party after such water has passed the point of delivery to that Party, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond that point of delivery; and each Party shall indemnify and hold harmless the Agency pursuant to section 9.2 from any such damages, claims or liability. The Agency shall have no right, title or interest in Project water after the water has passed the point of delivery to a Party.~~

~~**9.5. Parties Not Liable for Operation Upstream From Point of Delivery.** A Party and its officers, agents, contractors, employees and volunteers shall not be liable for the control, carriage, handling, use, disposal, or distribution of Project water before such water has passed the point of delivery to the Party; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water before it has passed that point of delivery; and the Agency shall indemnify and hold harmless the Party pursuant to section 9.1 from any such damages, claims or liability.~~

9.6. The indemnification and hold harmless provisions of this section 9 shall apply in lieu of the right of contribution provisions at **Government Code Sections 895-895.8.**

## **10. TERM, WITHDRAWAL AND DISSOLUTION.**

**10.1. Term.** This Agreement and the Agency shall continue in existence until terminated and dissolved in accordance with the terms of this section 10.

10. . Withdrawal Prior to the Design and Construction of the Project. A Party may withdraw from the Agency by providing 30 days written notice to the Board and all Parties. The Party shall be obligated for their share of all liabilities and expenses of the Agency incurred prior to the effective date of the withdrawal.

10. . Withdrawal After Commencement of Design and construction of the Project. Withdrawal shall be subject to the withdrawal terms of the Project Agreement.

10. . Termination of a Party due to non-payment. ....

**10.2. ~~Dissolution~~Withdrawal Prior to the design and construction of the ~~Project-Facilities~~.** Prior to design and construction of the ~~p~~Project facilities, the Parties may terminate this Agreement and dissolve the Agency upon giving all the Parties and the Agency Board 90 days prior written notice of termination; provided, however, the Parties shall be obligated for their share of all liabilities and expenses of the Agency incurred prior to the effective date of such termination. If the Agency Board has received such notice of termination, it shall be prohibited from issuing any bonded indebtedness or participation in debt or awarding any contracts for Construction. ~~If this Agreement is terminated pursuant to this section 10.2, then the Parties shall ask the funders to reallocate accordingly any funding pursued and obtained for this project.~~

**10.3. Dissolution.** This Agreement and the Agency may be terminated and dissolved by only by the mutual approval of the Parties expressed by resolution of the governing board of each Party approving a dissolution Agreement pursuant to section 10.4. The Agency shall not be dissolved until all debts and liabilities of the Agency have been discharged or assumed in accordance with this Agreement and the dissolution Agreement. During the outstanding term of any Agency bonds, certificates of participation or other indebtedness, this Agreement and the Agency shall not be terminated unless (a) the indebtedness is first paid off in full before the effective date of the termination, or (b) the indebtedness is assigned to and assumed by one or some of the Parties or a responsible successor entity and there is alternate security for the indebtedness in a form and manner approved by bond counsel selected by the Agency as lawful and adequately protecting the interests of any holders of evidence of indebtedness of the Agency.

**10.4. Dissolution Agreement.** Subject to section 10.3 above, this Agreement and the Agency may be dissolved pursuant to a dissolution Agreement approved by **all Parties** that provides for the dissolution of the Agreement and the Agency, the utilization, distribution, transfer and assignment of the funds, assets and property (including any completed or partially constructed the Project ~~Facilities~~) of the Agency, and the transfer and assignment of the rights, liabilities and obligations of the Agency. If, at the time of dissolution, the Agency has completed theany Project ~~Facility~~, then the dissolution Agreement

also must provide for one of the Parties or a responsible successor entity to assume the rights, liabilities and obligations to continue the operation and maintenance of the Project ~~Facility or Facilities~~. The dissolution Agreement also must provide for the transfer and assignment of the Agency water ~~supply right permits and licenses or~~ contracts to the Parties or a responsible successor entity that will hold, maintain and exercise ~~contract the permit or license~~ for the benefit of the Project ~~P~~participants. ~~If, at the time of dissolution, the Agency is a party to a water supply Agreement with Alta ID, then the dissolution Agreement also must provide for one of the Parties or a responsible successor entity to assume the rights, liabilities and obligations under the Alta ID water supply Agreement.~~ Upon dissolution of the Agency pursuant to a dissolution Agreement approved pursuant to this section, the funds, assets, property, rights, liabilities and obligations of the Agency shall be utilized, distributed, transferred and assigned as provided by the dissolution Agreement.

## **11. GENERAL PROVISIONS.**

**11.1. Integration.** This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the Parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or Agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

**11.2. Construction and Interpretation.** It is agreed and acknowledged by the Parties that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

**11.3. Waiver.** The waiver at any time by any Party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

**11.4. Remedies Not Exclusive.** The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any other remedies that may be provided by law or equity. The exercise by either Party of any remedy under this Agreement shall be without prejudice to the enforcement of any other remedy.

**11.5. Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

**11.6. Successors and Assigns.** Except as otherwise provided by law or legally ordered by the Tulare County Local Agency Formation Commission as part of a local government organization or reorganization proceeding, the rights and duties of the Parties under this Agreement shall not be assigned or delegated without the prior written consent of the other Party. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

Any approved assignment or delegation shall be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Agency then in effect, and may be subject to such additional reasonable conditions of approval imposed by the Party approving the assignment or delegation.

**11.7. No Third Party Beneficiaries.** This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the participating communities

#### LIST OF EXHIBITS

Exhibit A ~~Agency Boundary~~Initial Project Service Area

~~Exhibit C Interagency Agreement on the Project Facilities?~~