JOINT EXERCISE OF POWERS AGREEMENT
CREATING
THE NORTH TULARE COUNTY REGIONAL WATER ALLIANCE

EFFECTIVE DATE: _____________, 2016
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JOINT EXERCISE OF POWERS AGREEMENT

CREATING THE NORTH TULARE COUNTY REGIONAL WATER ALLIANCE (NTRWA)

THIS Agreement ("Agreement") is made and entered into effect ___ day of __________, 2016, by and among the Cutler Public Utility District, Orosi Public Utility District, East Orosi Community Services District, Sultana Community Service District, and County of Tulare. Each entity listed above is a political subdivision of the State of California, a public agency, and a "Party" to this Agreement, and all the entities listed above together are the "Parties" to this Agreement.

RECITALS

WHEREAS, Article 1, Chapter 5, Division 7, Title 1 of the California Government Code (Section 6500 et seq.) permits two or more public agencies by agreement to exercise jointly powers common to the contracting parties; and

WHEREAS, the Parties each are public agencies which have the common power to make contracts necessary to exercise their respective powers; and

WHEREAS, the Parties each are public agencies which have the common power to provide domestic water; and

WHEREAS, the Parties' goal is to provide affordable drinking water over the long-term for the parties; and

WHEREAS, the Parties have a joint and mutual interest in the successful planning, design, construction, and operation of a large-scale surface water treatment facility, shared regional drinking water solution; and

WHEREAS, the Parties can through cooperation present more comprehensive and effective grant funding proposals with greater efficiency than they could obtain by their individual efforts; and

NOW THEREFORE, in consideration of their mutual promises, covenants and conditions, hereinafter set forth, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS

Commented [MCE1]: Other options include “deliver safe and quality drinking water” and use of the word “sustainable.” We discussed putting this language in the “Purposes” article.
“Act” or “The Act” shall mean the Joint Exercise of Powers Act, California Government Code Title I, Division 7, Chapter 5, commencing with Section 6500.

“Alliance” shall mean the North Tulare County Regional Water Alliance created by this Agreement.

“Board of Directors” shall mean the governing body of the Alliance.

“Fiscal year” shall mean July 1 through June 30 or that period of twelve months which is established by the Board of Directors as the fiscal year of the Alliance.


“Initial Project” means the project detailed in the study titled, Northern Tulare County Regional Surface Water Treatment Plan (SWTP) with the objective to provide a treated surface water supply for the Parties.

“NTCRWA” shall mean North Tulare County Regional Water Alliance.

“Party-representative Director” shall mean a member of the Board of Directors who represents a Party to this Agreement.

“Project Agreement” means an Agreement between the Parties and the Alliance for the purpose of implementing the Project.

“Qualifying Region” shall mean that region within which an entity must provide domestic water in order to qualify for membership in the Alliance, as established in the Alliance Bylaws.

“Supermajority” shall mean a majority of the Board plus one (1).

“Water Project” shall mean any construction, modification, operation, or supply agreement considered or undertaken to effect the increased or more efficient or cost-effective provision of water to the jurisdictions of the member Parties.

ARTICLE 2
PURPOSES OF THE AGREEMENT

This Agreement is entered into by the Parties so that they may jointly pursue regional drinking water supply and infrastructure project(s) to provide a long-term, secure, reliable, safe water supply for the benefit of all the Parties in an efficient, reliable, sustainable, cost-effective, and environmentally sound manner, and develop and submit solicitations or applications for grants or other funding for those projects. The Alliance
may also exercise such powers as are granted to it by the member Parties to administer or disburse the
funds obtained for any Water Project.

ARTICLE 3
TERM

This Agreement shall become operative upon signature by all parties and shall continue in full force
and effect until terminated as provided herein.

ARTICLE 4
CREATION OF THE ALLIANCE

Pursuant to the Act, there is hereby created a public entity separate and apart from the Parties, to be
known as the North Tulare County Regional Water Alliance (“NTCRWA” or “the Alliance”), with such powers
as are hereinafter set forth. The debts, liabilities, and obligations of the Alliance shall be the debts, liabilities,
or obligations of the Alliance alone and shall not constitute debts, liabilities, or obligations of any Party to this
Agreement notwithstanding the payment of respective costs and expenses as referenced in the Recitals,
Article 15, Article 16, and throughout the Agreement. The Alliance, its Board, officers, membership, and staff
shall be governed by this Agreement, the Bylaws, and other documents duly adopted by the Alliance.

ARTICLE 5
POWERS OF THE ALLIANCE

The Alliance shall have all powers set forth in the Act, and is hereby authorized to do all acts
necessary for the exercise of said powers in furtherance of its purposes. Such powers include, but are not
limited to, the following:

(a) To make and enter into contracts, including but not limited to contracts with the Parties
and/or the Federal Government, the State of California, other local governments, agencies, or special
districts;

(b) To incur debts, liabilities, and obligations;
(c) To acquire, hold, or dispose of property, contributions, and donations of property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities;

(d) To sue and be sued in its own name, and to settle any claim against it;

(e) To receive and use contributions and advances from the Parties as provided in Government Code Section 6504, including contributions or advances of personnel, equipment, or property;

(f) To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5;

(g) The Alliance may not appropriate, expend, or encumber funds in excess of any amounts actually approved and contributed by the Parties or actually received from any other source;

Pursuant to Government Code section 6509, the aforementioned powers shall be subject to those restrictions as apply to any of the Parties.

ARTICLE 6

BOARD OF DIRECTORS

(a) Composition of the Board of Directors

The Alliance shall be governed by the Board of Directors, which shall consist of nine (9) members and shall be composed as follows:

Two (2) member(s) from Orosi Public Utilities District

Two (2) member(s) from Cutler Public Utilities District

Two (2) member(s) from the County of Tulare

One (1) member from East Orosi Community Services District

One (1) member from Sultana Community Services District

One (1) member from the communities of Yettem and Seville ("Community Member")

One (1) member At-Large

Within 30 days after the execution of this Agreement by the Parties, each Party shall designate and appoint the representative(s) to serve as Director(s) on the Board. Each Party also shall appoint an alternate Director. For each Party, each representative Director shall be an existing board member of the legal entity party to this agreement.
The Community Member and At-Large Member shall be appointed by the Board via process established in its Bylaws.

Members of the Board shall serve until removed or replaced by the governing board of the Party they represent. If, for any reason, a member resigns, leaves office, or cannot fulfill the duties of that position, the alternate member appointed by the respective Party shall become the regular member for the remainder of the applicable term.

If, for any reason, the At-Large Member resigns or cannot fulfill the duties of that position, the remaining members of the Board of Directors shall appoint a new At-Large Member to complete the remainder of the At-Large Member’s term.

(b) Voting Protocols

A majority of the membership of the Board of Directors shall constitute a quorum for the transaction of business. Approval of proposed actions requires a simple majority vote of the whole Board of Directors, except as provided herein. The following actions shall require a supermajority: (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 Qualifying Region; (v) admission of any new Party to the Agency; (vi) expulsion of any Party.

(c) Compensation

Compensation, if any, for Board and/or officer service may be established by the Board in its bylaws or by resolution. Nothing in this section prohibits the payment of compensation by a Party’s governing board to its representatives.
ARTICLE 7

POWERS OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers and functions:

(a) The Board of Directors shall exercise all powers and conduct all business of the Alliance, either directly or by delegation to its officers and staff.

(b) The Board of Directors shall elect the officers of the Alliance and shall appoint or hire necessary staff in accordance with Articles 9 and 10 hereof.

(c) The Board of Directors shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Alliance.

(d) The Board of Directors shall develop, or cause to be developed, and shall review, modify as necessary, any solicitation or grant application for a Water Project and administrative services necessary to carry out such solicitation or grant application or the receipt, administration and disbursement of any grant funds received.

(e) The Board of Directors shall provide for necessary services to the Alliance, by contract or otherwise, which may include, but shall not be limited to, accounting, auditing, and legal services.

(f) The Board of Directors shall provide general supervision and policy direction to the staff of the Alliance.

(g) The Board of Directors shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Alliance, including, but not limited to, establishing ad hoc or standing committees.

ARTICLE 8

MEETINGS OF THE BOARD OF DIRECTORS

(a) The Board of Directors shall hold at least one regular meeting each year and shall provide for such other regular meetings and for such special meetings as it deems necessary.

(b) The staff of the Alliance shall provide for the keeping of minutes of regular and special meetings of the Board of Directors, and shall provide a copy of the minutes to each member of the Board of Directors at the next scheduled meeting.
ARTICLE 9
OFFICERS

The Board of Directors shall elect from its membership a Chair and Vice Chair of the Board of Directors, to serve for a term of one (1) year. The Chair, or in his or her absence, the Vice Chair, shall preside at and conduct all meetings of the Board of Directors.

ARTICLE 10
ADMINISTRATION

The following staff members shall be appointed by and serve at the pleasure of the Board of Directors:

(a) Auditor-Treasurer. The duties of the Auditor-Treasurer are set forth in of this Agreement.

Pursuant to Government Code Section 6505.5, the Auditor-Treasurer shall be the Auditor-Controller of Tulare County. Pursuant to Government Code Section 6505, the charges to the Alliance for the services of the Auditor-Treasurer shall be determined by the Tulare County Board of Supervisors, subject to approval by the Alliance.

(b) Other Staff. The Board of Directors shall provide for the appointment or hire of such other staff as may be necessary for the administration of the Alliance.

ARTICLE 11
DEVELOPMENT, FUNDING, AND IMPLEMENTATION OF SOLICITATIONS OR GRANT FUNDING APPLICATIONS
(a) **Solicitations or Grant Funding Applications.** The Alliance shall develop, fund, and cause to be submitted solicitations or grant funding applications to the appropriate state or federal agency or other funding sources for the funding of Water Projects.

**ARTICLE 12**

**ACCOUNTS AND RECORDS**

(a) **Annual Budget.** Within 90 days after the first meeting of the Board, and thereafter prior to the commencement of each fiscal year, the Board shall adopt an operating budget.

(b) **Funds and Accounts.** The Auditor-Treasurer of the Alliance shall establish and maintain such funds and accounts as may be required by generally accepted accounting practices and by the Board of Directors. Separate accounts shall be established and maintained for each project under development or adopted and implemented by the Alliance. Books and records of the Alliance in the hands of the Auditor-Treasurer shall be open to inspection at all reasonable times by authorized representatives of the Parties.

The Alliance shall adhere to the standard of strict accountability for funds set forth in Government Code Section 6505.

(c) **Auditor’s Report.** The Auditor-Treasurer, within one hundred and twenty (120) days after the close of each fiscal year, shall give a complete written report of all financial activities for such fiscal year to the Board of Directors and Parties.

(d) **Annual Audit.** Pursuant to Government Code Section 6505, the Alliance shall either make or contract with a certified public accountant to make an annual fiscal year audit of all accounts and records of the Alliance, conforming in all respects with the requirements of that section. A report of the audit shall be filed as a public record with the Parties also with the county auditor of the county where the home office of the Alliance is located and shall be sent to any public agency or person in California that submits a written request to the Alliance. The report shall be filed within six months of the end of the fiscal year or years under examination. Costs of the audit shall be considered a general expense of the Alliance.
ARTICLE 1
RESPONSIBILITIES FOR FUNDS AND PROPERTY

(a) The Auditor-Treasurer shall have the custody of and disburse the Alliance’s funds. He or she may delegate disbursing authority to such persons as may be authorized by the Board of Directors to perform that function, subject to the requirements of (b) below.

(b) Pursuant to Government Code Section 6505.5, the Auditor-Treasurer shall:

(1) Receive and acknowledge receipt of all funds of the Alliance and place them in the treasury to the credit of the Alliance;

(2) Be responsible upon his or her official bond for the safekeeping and disbursements of all Alliance funds so held by him or her;

(3) Pay any sums due from the Alliance, as approved for payment by the Board of Directors or by any body or person to whom the Board of Directors has delegated approval authority, making such payments from Alliance funds upon warrants drawn by the Auditor;

(4) Verify and report in writing to the Alliance and to the Parties, as of the first day of each quarter of the fiscal year, the amount of money then held for the Alliance, the amount of receipts since the last report, and the amount paid out since the last report;

(c) Pursuant to Government Code Section 6505.1, the Chair, the Vice Chair, and such other persons as the Board of Directors may designate, shall have charge of, handle, and have access to the property of the Alliance;

(d) The Alliance shall secure and pay for a fidelity bond or bonds, in an amount or amounts and in the form specified by the Board of Directors, covering all officers and staff of the Alliance, and all officers and staff who are authorized to have charge of, handle, and have access to property of the Alliance.

ARTICLE 14
RESPONSIBILITIES OF PARTIES

The Parties shall have the following responsibilities under this Agreement:
The governing board or authority of each Party shall appoint representative(s) to the Board of Directors, pursuant to Article 6 hereof.

(b) Power of Party-representative Directors to bind their Party:

Each Party to this Alliance invests in their representative Director(s) the ability to bind the Party...???, except as provided herein.

(c) Each Party shall appoint an officer or employee of the Party to be responsible and serve as a liaison between the Party and the Alliance for all matters relating to the Alliance.

(d) Each Party shall provide the Alliance such other information or assistance as may be necessary for the Alliance to develop and implement Water Projects under this Agreement.

(e) Each Party shall cooperate with and assist the Alliance and other contractors in all matters relating to this Agreement, and shall comply with all Bylaws, and other rules by the Board of Directors.

(f) Each Party shall have such other responsibilities as are provided elsewhere in this Agreement, and as are established by the Board of Directors in order to carry out the purposes of this Agreement.

ARTICLE 15

ALLOCATION OF COSTS

(a) The costs incurred by the Agency, Alliance in carrying out its functions shall be allocated between the Parties. Each of the Parties agrees that it will be responsible for paying its respective costs to the Alliance in accordance with the budget and payment schedule adopted by the Board of Directors and consistent with this Article, the Alliance Bylaws, policies, any Project Agreement, and any bonds or certificates of financing issued or financing agreements entered into by the Agency.

(b) Allocation of costs for specific projects, Water Projects, shall be determined on a project-by-project basis. For a Party to be allocated costs for any Water Project, that Party must receive approval of the governing board or authority of that Party and declare intent to participate in the project through the signing of a Project Agreement. Non-participation in a Water Project does not affect Alliance membership.

(bc) Allocation of costs may be set by a majority of the Board if:
(1) allocation of costs is in proportion to the Party’s number of seats on the Board; or

(2) allocation of costs is in proportion to the number of residential domestic water customers served by a Party. For the purposes of this section, the number of residential domestic water customers served by the County of Tulare shall mean those customers in the communities of Seville, Yettem, and Monson.

(c) Allocation of costs must be set by unanimous Board approval if the allocation of costs will not be proportionate as described in section (b) of this Article.

ARTICLE 16

WITHDRAWAL AND TERMINATION (this section is a work in progress)

(a) Any Party may terminate its membership in the Alliance and its obligations under this Agreement upon 180 days advance written notice to the other Parties and the Alliance. The written intent to terminate may be withdrawn no later than 120 days prior to the end of the 180 day termination period.

(b) If any Party ceases to provide domestic water within the region currently identified in Article 21 as the qualifying region for new party admission, that Party shall become disqualified from Alliance membership, and that Party’s membership will be terminated upon thirty (30) days from the qualifying event, unless special dispensation is sought by the disqualified Party and granted by a supermajority of the remaining Board members.

(b) Upon withdrawal or disqualification of a Party from the Alliance and this Agreement, any capital contributions of said Party shall be returned to the Party less that Party’s share of ongoing obligations of the Alliance incurred during that Party’s membership in the Alliance. Contributions by a Party for operating expenses and costs of preparation of any solicitation or application for grants funding authorized or incurred prior to the effective date of withdrawal shall not be returned upon withdrawal.

(c) Upon termination of this Agreement, all assets of the Alliance remaining after all existing obligations of the Alliance have been disposed of shall be distributed among the Parties in proportion to their cash and in-kind contributions and property contributed (at market value when contributed). The Board of
Directors shall determine such distribution within six (6) months after disposal of the last obligation of the Alliance.

(d) This Agreement and the Alliance shall continue to exist until such time as the final disposition of all claims, distribution of all assets, and performance of all other functions necessary to conclude the affairs of the Alliance.

ARTICLE 17
LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS, AND LEGAL ADVISORS

The members of the Board of Directors, officers, committee members, and legal advisors to any board or committee of the Alliance shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent or employee selected with reasonable care, nor for loss incurred through investment of Alliance funds, or failure to invest, performed in good faith.

No director, officer, committee member, or legal advisor to any board or committee shall be responsible for any action taken or omitted by any other director, officer, committee member, or legal advisor to any board or committee. No director, officer, committee member, or legal advisor to any board or committee shall be required to give a bond or other security to guarantee the faithful performance of their duties pursuant to this Agreement.

The funds of the Alliance shall be used to defend, indemnify, and hold harmless the Alliance, the Auditor-Treasurer of the Alliance, any director, officer, committee member, contractor or retained expert or other staff appointed by the Alliance or loaned to the Alliance by any Party, or any counsel acting as legal advisor to any board or committee for their actions taken within the scope of the authority of the Alliance.

Nothing herein shall limit the right of the Alliance to purchase insurance to provide such coverage as is hereinabove set forth.
ARTICLE 18

BYLAWS

The Board of Directors may adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Alliance. To be effective, adopted Bylaws and any changes or amendments thereto must be approved by a supermajority of the Board of Directors.

ARTICLE 19

NOTICES

The Alliance shall address notices, billings, and other communications to the member Parties as directed by the Parties. Each Party shall provide the Alliance with the address to which communications are to be sent. Each Party shall address notices and other communications to the Alliance at the office address of the Alliance as set forth in the Bylaws.

The Alliance shall promptly give each Party a copy of any notice provided to the Alliance from anyone, including but not limited to any notice from any other Party, or of any notice provided by the Alliance to anyone.

ARTICLE 20

AMENDMENT

Any matter in this Agreement may be modified from time to time by the written consent of the governing bodies of all the Parties without, in any way, affecting the remainder.

ARTICLE 21

ADMISSION OF NEW PARTIES

Any city, county, or special district with the power to provide domestic water which is significantly involved in regional water problems serves customers within the Qualifying Region may become a party to the NTCRWA, upon such terms and conditions as established by the Board, by adoption of this agreement. 

Commented [MCE22]: At the June 10th meeting, it was established that the boundaries of the Altia Irrigation District made the most sense for now. However, in reviewing the 5/17 working draft, it appears the parties anticipating being able to change the qualifying region with a supermajority vote (see Article 6(b)), so I wasn’t sure if they want it set in the JPA itself, or not.

Commented [MCE23]: Majority vote?
and the execution of a written addendum thereto agreeing to the terms of this Agreement and agreeing to any additional terms and conditions that may be established by the Board.

ARTICLE 22

PROHIBITION AGAINST ASSIGNMENT

No Party may assign any right, claim, or interest, or delegate any obligation that it may have under this Agreement, and no creditor, assignee, or third party beneficiary of either Party shall have any right, claim, or title to any part, share, interest, fund, premium, or asset of the Alliance.

ARTICLE 23

GOVERNING LAW

The Parties agree that for the purposes of venue, performance under this Agreement is to be in Tulare County, California. The rights and obligations of the Parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

ARTICLE 24

SEVERABILITY

In the event any provisions of this Agreement are held by a court of competent jurisdiction to be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine how to mutually amend such provisions with valid and enforceable provisions, and the remaining provisions of this Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

ARTICLE 25

AGREEMENT COMPLETE

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this

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Agreement. This Agreement may be executed in one or more original counterparts, all of which together will constitute one and the same agreement.

ARTICLE 26
FILING WITH SECRETARY OF STATE

The Chair of the Board of Directors of the Alliance shall file a notice of this Agreement with the Office of California Secretary of State within 30 days of its effective date, as required by Government Code Section 6503.5, and within 70 days of its effective date as required by Government Code Section 53051.

ARTICLE 27
DISPUTE RESOLUTION

If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties; otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute. Any 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 any Party of any remedy under this Agreement shall be without prejudice to the enforcement of any other remedy.

IN WITNESS WHEREOF, Cutler Public Utility District, Orosi Public Utility District, East Orosi Community Services District, Sultana Community Service District, and the County of Tulare have executed this Joint Exercise of Powers Agreement Creating the North Tulare County Regional Water Alliance as of the day and year first hereinabove written.

COUNTY OF TULARE
Michael Ennis,
Chairman, Board of Supervisors

Attest:

_______________________________
Clerk of the Board/County Administrative Officer
By _________

CUTLER PUBLIC UTILITIES DISTRICT

?????,
Chairman

Attest:

????
By _________

EAST OROSI COMMUNITY SERVICES DISTRICT

?????,
Chairman

Attest:

????
By _________

OROSI PUBLIC UTILITIES DISTRICT

?????,
Chairman

Attest:
SULTANA COMMUNITY SERVICES DISTRICT

By

Attest:

By
APPROVED AS TO LEGAL FORM

Kathleen Bales-Lange,
County Counsel, County of Tulare

Patrick Sullivan,
Counsel, Cutler Public Utilities District

Matthew Pierce,
Counsel, East Orosi Community Services District

Moses Diaz,
Counsel, Orosi Public Utilities District

Matthew Pierce,
Counsel, Sultana Community Services District