

HOUSEHOLD TANK PROGRAM AGREEMENT
BETWEEN THE CITY OF DINUBA AND THE
COUNTY OF TULARE

This Household Tank Program Agreement ("Agreement") is made this _____ day of _____ 2016 by and between the City of Dinuba ("CITY") and the County of Tulare through its Office of Emergency Services ("COUNTY").

RECITALS

WHEREAS, the purpose of this Agreement is to supply water to COUNTY, on a temporary basis when drought conditions exist;

WHEREAS, COUNTY is a general law county and CITY is a chartered city within the State of California duly, and both were duly formed and operate under the laws of the State, and are empowered to enter into contracts to manage water supply available for the benefit of their constituents;

WHEREAS, COUNTY desires to have sufficient alternative water sources solely for use during drought or other emergency conditions;

WHEREAS, CITY has minimal water available and, in order to assist COUNTY and its drought relief efforts within the service area described hereafter, is agreeable to selling or transferring some of such water, on a temporary basis, to COUNTY pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, CITY desires to require that COUNTY use the water to assist only residents within the Dinuba Unified School District Boundary, as defined in Exhibit A;

WHEREAS, CITY and COUNTY acknowledge that CITY's sale or transfer of water as provided herein in no way contemplates the transfer, whether permanent or otherwise, of any or all of CITY's entitlement(s) or rights, whether contractual or otherwise, to any water right(s) or water supply that CITY holds as of the date of this Agreement and that COUNTY is not acquiring any present or future right or entitlement, permanent or otherwise, to receive water from CITY's sources of water.

AGREEMENT

1. Recitals. The recitals and facts set forth above are true and correct and are incorporated by reference.

2. Term. This Agreement shall terminate at 11:59:59 P.M. local time on July 31, 2016, unless mutually extended by the parties; provided that each party hereto shall have the right to terminate this Agreement without cause upon providing written notice to the other party at least fifteen (15) days prior to the effective date of termination.

3. Delivery and Cost of Water to COUNTY.

a. CITY will make available to COUNTY up to 200,000 gallons per month of water for delivery from the effective date of this Agreement, through July 31, 2016 pursuant to a written schedule mutually approved by the parties managerial staff.

b. COUNTY shall be responsible for the safe transportation of all water acquired under this Agreement, which may occur through an appropriate vehicle such as a tanker truck. The point of delivery of water to COUNTY shall be a water meter located at the fire hydrant assigned by CITY staff, where the water shall be loaded by COUNTY onto its transport vehicle(s). Transfer of ownership of or responsibility for the water shall occur upon exit from said water meter. CITY may and COUNTY shall monitor the amount of water delivered to COUNTY during the term of this Agreement in order to ensure continued compliance with the requirements of this Agreement.

c. Not less than five (5) business days prior to the first transfer of water from CITY to COUNTY, COUNTY shall contact CITY and the parties must develop a mutually agreeable schedule for water deliveries, which must occur only during CITY's non-peak water-use hours and, in particular, such transfers must occur between 8:00 A.M. and 12:00 noon on weekdays.

d. Once water is delivered as indicated above, COUNTY shall become the owner of said water and shall be responsible for ensuring the water reaches its ultimate destination and shall be responsible for the quality and potability of said water.

e. COUNTY shall compensate CITY for the actual metered amount of water provided, at the rate of \$1.75 per hundred cubic foot which shall be due for each calendar month when this Agreement is in effect. The parties agree that CITY's actual cost for the delivered water may vary and, accordingly, may be adjusted upon prior written notice from CITY at least ten

(10) Business days before the effective date of the rate increase, especially if unanticipated expenses are incurred by CITY.

f. Notwithstanding any other provision within this Agreement, CITY shall not be obligated under this Agreement to supply any water to COUNTY six months after the effective date of this Agreement, unless this Agreement is extended in writing signed by both parties. No notice shall be required from CITY prior to discontinuing supplying water under the terms of this Agreement.

g. No later than the fifth business day of each calendar month, CITY shall provide COUNTY with a final accounting which shall include the total amount of water delivered in the preceding month, the rate per cubic foot and a total amount due.

h. COUNTY shall compensate CITY for the total amount due within twenty (20) business days of the date listed on the accounting provided by CITY.

i. Notwithstanding any other provision in this Agreement, CITY management may, at any time, immediately suspend the transfer and sale of water under this Agreement if in the sole discretion of management it is believed that water which would otherwise be transferred and sold should be preserved for use by customers of CITY.

4. Approvals.

a. COUNTY shall be responsible for the cost of obtaining any and all approvals legally required for purchase, sale, transfer and delivery of water under this Agreement.

b. The performance by both parties to this Agreement is contingent upon approval of the governing body of both CITY and COUNTY and any State or Federal agency from which approval is required prior to the sale and transfer of water.

c. Both parties shall cooperate in securing any and all necessary approvals.

5. Miscellaneous

a. Warranty. Each signatory hereto warrants that the foregoing recitals are true and correct, that each signatory to this Agreement has authority to enter into this Agreement on behalf their respective party.

b. Notices. Any notice to be given hereunder to either party shall be in writing and shall be given either by personal delivery (including express or courier service), telecopier transmission, or by registered or certified mail, with return receipt requested, postage prepaid and addressed as follows:

To: COUNTY c/o Andrew Lockman, Emergency Services Manager
COUNTY OF TULARE
5957 S. Mooney Blvd.
Visalia, California 93277
Facsimile: 559-624-7499

To: CITY Luis Patlan, City Manager
City of Dinuba
405 East El Monte Way
Dinuba, California
Phone: 559-591-5900
Fax: 559-528-2770

c. Indemnification. COUNTY agrees to protect, defend, indemnify and hold harmless CITY, its officers, agents, servants, employees and consultants from and against any and all losses, claims, liens, demands and causes of action of every kind and character on account of personal injuries, death or damage to property and without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by COUNTY hereunder or arising from the quality of water provided by CITY hereunder. This indemnification obligation of COUNTY includes any action by any person or governmental agency against CITY, whether for damages, civil penalties, equitable and/or declaratory relief, concerning any alleged harm to the claimant(s) or the claimant(s)' water rights, a misappropriation of water or violation of any law or regulation arising from or pertaining to a declared drought, allegedly arising to any degree from CITY's delivery of surplus water to COUNTY under this Agreement. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement, water supplied hereunder or any extension of this Agreement.

d. Successors and Assigns. The terms and provisions of this Agreement shall bind and shall inure to the benefit of the successors and assigns of the respective parties thereto.

e. Amendments. Amendments to this Agreement shall be effective only if in writing, and then only when signed by the authorized representatives of the respective parties.

f. Force Majeure. Except as otherwise provided herein, all obligations of the parties hereto shall be suspended so long as, and to the extent that, the performance thereof shall be prevented by earthquakes, fires, tornadoes, facility failure, floods, drowning, strikes, drought or other casualties or acts of God, orders of any court or

governmental agencies having jurisdiction over the subject matter thereof or other events or causes beyond the control of the parties hereto.

g. Contentions. Consistent with the provisions of Water Code §§ 475 and 1244, parties agree that neither this transfer nor this Agreement is evidence of the availability of additional water beyond the terms of this Agreement or lack of beneficial use by CITY of the water involved in this Agreement, and neither party shall contend otherwise.

h. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

i. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent allowed by law.

j. No Warranty or Guaranty of Water Quality. The parties further agree that CITY cannot and does not guaranty or warranty any minimum water quality and that the water sold to COUNTY under to this Agreement is sold as-is and with all faults, if any. Any minimum water quality obligations existing between COUNTY and its end-users shall remain the ultimate responsibility of COUNTY.

k. No Third-Party Beneficiaries Intended. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

l. Entire Agreement Represented. This Agreement represents the entire Agreement between CITY and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

m. Headings. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

n. Construction. This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

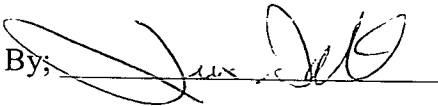
o. Waivers. The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

p. Exhibits And Recitals. The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

IN WITNESS THEREOF, the parties execute this Agreement on the date first written above.

CITY OF DINUBA

COUNTY OF TULARE

By: 

Luis Patlan, City Manager

By: _____

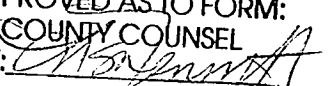
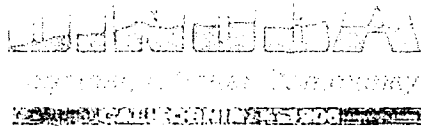
APPROVED AS TO FORM:
COUNTY COUNSEL
BY: 
DEPUTY 2/22/16

EXHIBIT A



Construction Water Meter Application

Applicant / Contractor Name:	County of Tulare, Office of Emergency Services		
Billing Address:	5957 S. Mooney Blvd., Visalia CA 93277		
Phone Number:	559-624-7495	Cell Phone:	
Email:	alockman@tularehhsa.org		
Project Name / Description:	Household Tank Program		
Location of Use:	Dinuba Unified School District boundaries		

Explanation of Fees

Description of Fees	Amount
Nonrefundable Administrative & Rental Fee	\$ 65.00
Deposit	\$285.00
TOTAL	\$350.00

Agreement Declaration

The deposit collected at time of rental will be refunded upon return of the meter to the City in a clean and operating condition. The Deposit will be forfeited if the meter is in a condition that does not allow immediate re-issue to others, costs to repair/replace meter exceed deposit amount or if meter is stolen. Deposit may also be applied to water charges when meter is returned. You will be billed monthly for any amount of water used.

The hydrant meter needs to be read and inspected once a month. Please bring the meter in, between the 1st and 8th of each month to 1088 E. Kanun Ave., Public Works Department. If the 8th falls on a weekend, please bring in the next business day. All readings must be done in person and you will receive a service order showing that the meter was read.

Signature by the Contractor below signifies understanding of the proceeding paragraphs and the following:

- A. If the meter is lost or stolen the cost of the meter will be charged, plus a prorated charge for the estimated water usage.
- B. I agree to accept those terms and conditions as stated above. Further, I accept full responsibility for the fire hydrant meter.

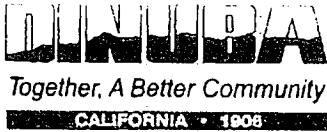
Applicant: _____

Date: _____

APPROVED AS TO FORM:

COUNTY COUNSEL

BY: 
DEPUTY 7/27/11



PUBLIC WORKS DEPARTMENT

1088 E Kamm Avenue • Dinuba, CA 93618
Phone: (559) 591 – 5924

ISSUED DATE: 2/2/2016

FEE TOTAL: \$0.00
(See below for Fee Details)

**Construction Water Meter Agreement
2016-00014002**

PROJECT NAME / DESCRIPTION: HOUSEHOLD TANK PROGRAM	
LOCATION OF USE COMMENTS: DINUBA UNIFIED SCHOOL DISTRICT BOUNDARIES	
METER NUMBER: 8418789	INITIAL READ: 3.3
ISSUED TO NAME: COUNTY OF TULARE, OFFICE OF EMERGENCY SERVICES	PERMIT ISSUED TO TYPE: Other
ADDRESS: 5957 S. MOONEY BLVD. VISALIA, CA 93277	PHONE: 559-624-7495
EMAIL: alockman@tularehhsa.org	CELL PHONE:

PERMIT CHARGE DETAIL BELOW		
Charge Description	Amount Paid	Balance Due
Water Meter Deposit	\$0.00	\$285.00
Water Meter Nonrefundable Administrative & Rental Fee	\$0.00	\$65.00
TOTALS:	\$0.00	\$350.00
APPROVED AS TO FORM: COUNTY COUNSEL BY: <i>[Signature]</i> DEPUTY 3/22/16		

AGREEMENT DECLARATION

The deposit collected at time of rental will be refunded upon return of the meter to the City in a clean and operating condition. The Deposit will be forfeited if the meter is in a condition that does not allow immediate re-issue to others, costs to repair/replace meter exceed deposit amount or if meter is stolen. Deposit may also be applied to water charges when meter is returned. You will be billed monthly for any amount of water used.

The hydrant meter needs to be read and inspected once a month. Please bring the meter in, between the 1st and 8th of each month to 1088 E. Kamm Ave., Public Works Department. If the 8th falls on a weekend, please bring in the next business day. All readings must be done in person and you will receive a service order showing that the meter was read.

Signature by the Contractor below signifies understanding of the proceeding paragraphs and the following:

- A. If the meter is lost or stolen the cost of the meter will be charged, plus a prorated charge for the estimated water usage.
- B. I agree to accept those terms and conditions as stated above. Further, I accept full responsibility for the fire hydrant meter.

Applicant Name (print): _____ Applicant Signature _____

Received Copy (initial): _____ Date _____

FOR OFFICE USE ONLY	
CITY PROJECT: No	BILL FOR WATER USAGE: Yes
CITY EMPLOYEE APPROVAL: _____	DATE: _____
ACCOUNT 230-409.5130	