

EMERGENCY WATER PURCHASE AGREEMENT
BETWEEN THE CITY OF DINUBA AND THE
COUNTY OF TULARE

This Emergency Water Purchase Agreement ("Agreement") is made this 31st day of January 2017 by and between the City of Dinuba ("CITY") and the County of Tulare through its Office of Emergency Services ("COUNTY").

RECITALS

WHEREAS, COUNTY is a general law county and CITY is a chartered city within the State of California, 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, the purpose of this Agreement is to supply water to COUNTY, on a temporary basis, while ongoing drought conditions exist:

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, 2017, 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 the termination of this agreement (including any extension thereof), pursuant to a written schedule mutually approved by the parties' managerial staff. Water made available under this agreement shall only be utilized by COUNTY to assist residents within the boundaries of the Dinuba Unified School District.

b. 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. Water deliveries must occur only during CITY's non-peak water-use hours and, preferably, such transfers must occur between 8:00 A.M. and 12:00 noon on weekdays.

c. 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 and acceptance of said water into COUNTY receptacles. 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.

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 delivered to COUNTY, at the rate of \$1.75 per hundred cubic foot, which shall be due each calendar month while 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. Any water delivered to COUNTY prior to the effective date of a rate increase will be billed at the previous rate.

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 COUNTY's 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), facsimile 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
Phone: 559-624-7495
Facsimile: 559-624-7499

To: CITY

Luis Patlan, City Manager
City of Dinuba
405 East El Monte Way
Dinuba, California
Phone: 559-591-5900

c. Indemnification. To the fullest extent permitted by law, 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 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. While City complies with all regulatory water standards, the parties further agree that CITY cannot and does not guarantee 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.

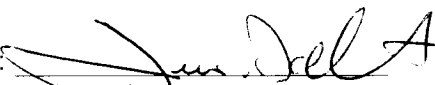
o. Waivers. The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered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

CITY OF DINUBA

Date: 6/13/2017

By: 
Luis Patlan
City Manager

COUNTY OF TULARE

Date: _____

By: _____
Pete Vander Poel
Chairman, Board of Supervisors

ATTEST: Michael C. Spata
County Administrative Officer/
Clerk of the Board of Supervisors

By: _____

Approved as to form:
County Counsel

By: 
Deputy County Counsel, 2017280