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

EFFECTIVE DATE: _____, 2017

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1 **JOINT EXERCISE OF POWERS AGREEMENT**
2 **CREATING THE NORTH TULARE COUNTY REGIONAL WATER ALLIANCE**
3 **(NTCRWA)**
4

5 THIS Agreement (“Agreement”) is made and entered into effect ____ day of
6 _____, 2017, by and among the East Oroshi Community Services District,
7 Sultana Community Service District, and County of Tulare. Each entity listed above
8 is a political subdivision of the State of California, a public agency, and a “Party” to
9 this Agreement, and all the entities listed above together are the “Parties” to this
10 Agreement.
11

12 **RECITALS**

13 **WHEREAS**, Article 1, Chapter 5, Division 7, Title 1 of the California
14 Government Code (Section 6500 et seq.) permits two or more public agencies by
15 agreement to jointly exercise powers common to the contracting Parties; and
16

17 **WHEREAS**, the Parties are public agencies which have the common power
18 to make contracts necessary to exercise their respective powers; and
19

20 **WHEREAS**, the Parties each are public agencies which have the common
21 power to provide domestic water; and
22

23 **WHEREAS**, the Parties’ goal is to provide affordable drinking water over the
24 long-term for the Parties; and
25

26 **WHEREAS**, the Parties have a joint and mutual interest in the successful
27 planning, design, construction, and operation of a shared regional drinking water
28

1 solution; and

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

5 **NOW THEREFORE**, in consideration of their mutual promises, covenants
6 and conditions, hereinafter set forth, the sufficiency of which is acknowledged, the
7 Parties agree as follows:
8

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11 **ARTICLE I**

12 **DEFINITIONS**

13
14 **“Act” or “The Act”** shall mean the Joint Exercise of Powers Act, California
15 Government Code Title I, Division 7, Chapter 5, commencing with Section 6500.

16 **“Administrative Costs”** shall mean the non-volumetric overhead expenses
17 of running the Alliance (e.g. insurance, support staff, office supplies, etc.)

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

20
21 **“Board” or “Board of Directors”** shall mean the governing body of the
22 Alliance.

23 **“Capital Costs”** shall mean the costs to plan, design, build, acquire, finance,
24 or build a Water Project.

25
26 **“Fiscal Year”** shall mean July 1 through June 30 or that period of twelve
27 months which is established by the Board of Directors as the fiscal year of the
28

1 Alliance.

2 **“Government Code”** shall mean the California Government Code.

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

4 **“Director”** shall mean a member of the Board of Directors who represents a
5
6 Party to this Agreement.

7 **“Operating Costs”** shall mean the fixed and variable cost to operate and
8
9 maintain Water Project.

10 **“Project Agreement”** means an Agreement between any or all of the Parties
11 and the Alliance for the purpose of implementing a Water Project.

12 **“Water Project”** shall mean any planning, construction, modification,
13
14 operation, or supply project considered or undertaken to effect the increased or
15 more efficient or cost-effective provision of water to one or more of the jurisdictions
16 of the Parties.

17 **ARTICLE 2**

18 **PURPOSES OF THE AGREEMENT**

19
20 This Agreement is entered into by the Parties so that they may jointly pursue
21 regional drinking water supply and infrastructure projects to provide a long-term,
22 secure, reliable, safe water supply for the benefit of all the Parties in an efficient,
23 reliable, sustainable, cost-effective, and environmentally sound manner, develop
24 and submit solicitations or applications for funding for those projects, and construct,
25 own, operate, and maintain Water Project facilities.
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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 (“NTRWA” 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. 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

Except as to each and all limitations and conditions specified throughout this Agreement, including those within Article 2, the Alliance shall have all the common powers of the Parties and as otherwise granted by the Act to achieve the purposes of the Alliance as set forth above. The Alliance is authorized to do all acts

1 necessary or convenient to the exercise of said powers in furtherance of its
2 purposes. Such powers include, but are not limited to, the following:

- 3
4 (a) To exercise jointly the common powers of the Parties in studying, planning,
5 designing and implementing Water Projects.
- 6
7 (b) To treat water for the Parties to provide for domestic use and to assist any
8 Party in providing extraterritorial water service, subject to Local Agency
9 Formation Commission approval, if necessary, in accordance with scope of
10 powers of the parties under Government Code § 56133, Government Code
11 § 61101, Public Utilities Code § 16474 and other applicable laws.
- 12
13 (c) To make and enter into contracts, leases, and other agreements, including but
14 not limited to contracts with the Parties and/or the Federal Government, the
15 State of California, other local governments, agencies, special districts, and/or
16 private parties;
- 17
18 (d) To apply for and receive grants and loans, including with principal forgiveness,
19 for the study, planning, design, and/or implementation of Water Projects in
20 accordance with the terms of this Agreement;
- 21
22 (e) To receive other gifts, contributions, and donations of property, funds,
23 services, and other forms of assistance from persons, firms, corporations, and
24 any governmental entity;
- 25
26 (f) To acquire, receive, hold, lease, or dispose of real and/or personal property,
27 in the name of the Alliance;
- 28

- 1 (g) To design, acquire, construct, manage, maintain and operate buildings, works
2 or improvements;
- 3
- 4 (h) To hold, manage, operate and maintain all Alliance property, facilities,
5 buildings, structures, vehicles, apparatus and equipment;
- 6
- 7 (i) To obtain in its own name all necessary and appropriate governmental
8 permits, licenses, entitlements, opinions and rulings;
- 9
- 10 (j) To contract for or employ staff, consultants, or other agents or employees;
- 11
- 12 (k) To incur debts, liabilities or obligations subject to limitations set forth in this
13 Agreement;
- 14
- 15 (l) To sue and be sued in its own name, and to settle any claim against it;
- 16
- 17 (m) To assess contributions and advances from the Parties pursuant to
18 Government Code Section 6504 and Article 12 below, for the purposes set
19 forth in this Agreement;
- 20
- 21 (n) To invest any money in its treasury that is not required for its immediate
22 necessities, pursuant to Government Code Section 6509.5;
- 23
- 24 (o) The Alliance may not appropriate, expend, or encumber funds in excess of
25 any amounts actually approved and contributed by the Parties or actually
26 received from any other source.
- 27
- 28 (p) Pursuant to Gov. Code § 6502, the operations of the Alliance hereunder must
at all times be located within the jurisdiction of one or more of the Parties.

1 (q) The Alliance may not appropriate, expend, or encumber funds in excess of
2 any amounts actually approved and contributed by the Parties or actually
3 received from any other source.
4

5 Pursuant to Government Code section 6509, the aforementioned powers shall be
6 subject to those restrictions as apply to any of the Parties.
7

8 **ARTICLE 6**

9 **BOARD OF DIRECTORS**

10 (a) Composition of the Board of Directors

11 The Alliance shall be governed by the Board of Directors, which shall consist
12 of three (3) members and shall be composed as follows:
13

- 14 • One (1) member from the County of Tulare
- 15 • One (1) member from East Orosi Community Services District
- 16 • One (1) member from Sultana Community Services District
- 17
- 18

19 Within sixty (60) days after the execution of this Agreement by the
20 Parties, each Party shall designate and appoint its representative to serve as
21 Director on the Board. Each Party also shall appoint an alternate Director for
22 each of its Director seats. Directors and alternate Directors must at all times
23 be an existing board member of the Party which designated them. During the
24 absence of a Party's representative Director at a duly held board meeting, the
25 alternate from that Party shall assume all rights of the absent Director. A
26 Party's alternate shall also have the authority to act in lieu of that Party's
27
28

1 Director when said Director has an actual, apparent, or potential conflict of
2 interest which results in that Director's non-participation in any decision of the
3 Alliance's governing body.
4

5 Members of the Board shall serve until removed or replaced by the governing
6 board of the Party they represent. If, for any reason, a member resigns, leaves
7 office, or cannot fulfill the duties of that position, the alternate member appointed by
8 the respective Party shall become the regular member for the remainder of the
9 applicable term.
10

11 (b) Voting Protocols
12

13 The Board may only act by ordinance, resolution, or motion. A majority of the
14 membership of the Board of Directors shall constitute a quorum for the transaction
15 of business.

16 Approval of proposed actions requires a minimum of two (2) affirmative votes,
17 except as provided herein.

18 The following actions shall require unanimity:

- 19 (i) initiation of litigation in the name of the Alliance;
- 20 (ii) adoption or amendment of the Alliance's Bylaws;
- 21 (iii) submission of any application for funding from the State of
22 California (or other government funder) exceeding \$75,000;
- 23 (iv) approval, renewal, or extension of any Water Supply Agreement
24 which would provide any amount of water to any Party who
25 presently is, or at any time within the preceding twelve (12) month
26 period, either: (A) in default on any term of this Agreement; (B)
27 causing the Alliance to be in violation of any State permit
28

1 requirement(s)/condition(s); or (C) in violation of any ordinance,
2 policy, resolution, rule or regulation of the Alliance.

3 (v) selection and hiring of particular consultants and professional
4 services providers.

5 (vi) issuance of bonds or incurring any form of obligation or
6 indebtedness obligating the Alliance for an amount in excess of
7 \$75,000;

8
9 (c) Compensation

10 Compensation, if any, for Board and/or officer service may be established by
11 the Board in its bylaws or by resolution. Nothing in this section prohibits the
12 payment of compensation by a Party's governing board to its representatives.
13
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16 **ARTICLE 7**

17 **POWERS OF THE BOARD OF DIRECTORS**

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

19 (a) The Board of Directors shall exercise all powers and conduct all
20 business of the Alliance, either directly or by delegation to its officers and staff.
21

22 (b) The Board of Directors shall elect the officers of the Alliance and shall
23 appoint or hire necessary staff in accordance with Articles 9 and 10 hereof.
24

25 (c) The Board of Directors shall cause to be prepared, and shall review,
26 modify as necessary, and adopt the annual operating budget of the Alliance by May
27 first (1st) each year. Each budget will be distributed to each and all of the Parties
28

1 within ten (10) days after adoption of the same.

2 (d) The Board of Directors may develop, or cause to be developed, and
3 may review, and modify as necessary, any solicitation or funding application for a
4 Water Project, authorized in accordance with all of the applicable terms, conditions
5 and limitations within this Agreement, and administrative services necessary to
6 carry out such solicitation or funding application or the receipt, administration and
7 disbursement of any funds received.
8

9
10 (e) The Board of Directors shall provide for necessary services to the
11 Alliance, by contract or otherwise, which may include, but shall not be limited to,
12 administrative, accounting, auditing, operations, and legal services.
13

14 (f) The Board of Directors shall provide direction to the staff of the Alliance
15 and establish Alliance policy.

16 (g) The Board of Directors shall have such other powers and duties as are
17 reasonably necessary to carry out the purposes of the Alliance, including, but not
18 limited to, establishing ad hoc or standing committees.
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24 **ARTICLE 8**

25 **MEETINGS OF THE BOARD OF DIRECTORS**
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1 (a) The Board of Directors shall hold at least one regular meeting each
2 year and shall provide for such other regular meetings and for such special
3 meetings as it deems necessary. The Board shall determine the time and place of
4 regular meetings by resolution or bylaws adopted by the Board.
5

6 (b) The Secretary of the Board shall provide for the keeping of minutes of
7 regular and special meetings of the Board of Directors, and shall provide a copy of
8 the minutes to each member of the Board of Directors at the next scheduled
9 meeting.
10

11 (c) All meetings of the Board of Directors shall be called, noticed, held,
12 and conducted in accordance with the provisions of Government Code Section
13 54950, et seq. (the "Ralph M. Brown Act").
14

15 (d) The Alliance shall provide each of the Parties the agenda, including
16 any supplements thereof, and any supporting agenda materials of all meetings of
17 the Board of Directors not later than the time that the Alliance publishes notice of
18 such meetings pursuant to paragraph (c), immediately above.
19

20 (e) Pursuant to Government Code Section 54956.96, confidential
21 information received by a Party's representative in closed session may be disclosed
22 to the following persons, if that information has direct financial or liability
23 implications for that Party:
24

25 (i) The Party's legal counsel for purposes of obtaining advice on
26 whether the matter has direct financial or liability implications for the
27 Party;
28

1 (ii) Other members of the Party's legislative body present in a
2 closed session of that Party; and/or

3 (iii) The Party's designated alternate who is attending a meeting as
4 the Party's representative in place of the regular representative.
5

6
7 **ARTICLE 9**

8 **OFFICERS AND STAFF**

9
10 The Board of Directors shall elect from its membership a Chair, Vice Chair,
11 and Secretary of the Board of Directors, to serve for a term of one (1) year.
12

13 (a) Chair and Vice Chair

14 The Chair, or in his or her absence, the Vice Chair, shall preside at and conduct
15 all meetings of the Board of Directors. Pursuant to Government Code Section
16 6505.1, the Chair, the Vice Chair, and such other persons as the Board of Directors
17 may designate, shall have charge of, handle and have access to the property of the
18 Alliance.
19

20 (b) Secretary

21
22 The Secretary shall keep or cause to be kept the minutes of the all meetings
23 of the Board and maintain the records of the Agency.
24

25 (c) Auditor-Treasurer

26 The Auditor-Treasurer shall be the Auditor-Controller of the County of Tulare,
27 unless the Board appoints, by resolution, a different Auditor-Treasurer, Auditor or
28

1 Treasurer in accordance with the Act. The Auditor-Treasurer or its designee shall
2 perform the functions described in the Act, including the receipt and payment of the
3 Alliance's funds and other duties set forth in Government Code 6505.5(a)-(e). The
4 Auditor-Treasurer shall strictly comply with all provisions of the Act regarding the
5 duties of Auditor and Treasurer. The Tulare County Board of Supervisors shall
6 determine charges against the Alliance for the services of the Auditor-Controller,
7 not to exceed the reasonable cost of providing those services, and subject to
8 approval of the Alliance.
9

11 (d) Staff

12 The Board may appoint or hire other staff as may be necessary for the
13 administration of the Alliance, subject to Board-approved appropriations therefore
14 within the Alliance's adopted budget.
15

16 The Alliance shall secure and pay for a fidelity bond or bonds, or equivalent
17 insurance or self-insurance if legally appropriate, in an amount or amounts and in
18 the form specified by the Board of Directors, covering all officers and staff of the
19 Alliance, and all officers and staff who are authorized to have charge of, handle,
20 and have access to the Alliance's property.
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24 **ARTICLE 10**

25 **ACCOUNTS AND RECORDS**

26
27 (a) Annual Budget.
28

1 Within ninety (90) days after the first meeting of the Board, and thereafter by
2 May first (1st) of each fiscal year, the Board shall adopt a budget.

3
4 (b) Accounts and Records. The Alliance shall maintain strict accountability
5 of all funds and reports of all receipts and disbursements in accordance with the Act
6 and the standards of the Governmental Accounting Standards Board (GASB) or its
7 successor. The Auditor-Treasurer shall establish and maintain funds and accounts,
8 including separate accounts for each Water Project, in conformity with GASB
9 standards and the Board's direction. The Alliance's books and records shall be
10 open to inspection at all reasonable times by any Party.

11
12 (c) Auditor's Report. The Auditor-Treasurer, within one hundred and
13 twenty (120) days after the close of each fiscal year, shall give a complete written
14 report of all financial activities for such fiscal year to the Board of Directors and
15 Parties.

16
17 (d) Annual Audit. Pursuant to Government Code Section 6505, the
18 Alliance shall either make or contract with an independent certified public
19 accountant to make an annual fiscal year audit of all accounts and records of the
20 Alliance, conforming in all respects with the requirements of that section. A report of
21 the audit shall be filed as a public record with the Parties and the Tulare County
22 Auditor-Controller and shall be sent to any public agency or person in California that
23 submits a written request to the Alliance. The report shall be filed within six (6)
24 months of the end of the fiscal year or years under examination. Costs of the audit
25 shall be considered a general expense of the Alliance.
26
27
28

1 (e) Pursuant to Government Code Section 6505.5, the Auditor-Treasurer
2 shall:

3
4 (i) Receive and acknowledge receipt of all funds of the Alliance and
5 place them in the treasury to the credit of the Alliance;

6
7 (ii) Be responsible upon his or her official bond for the safekeeping
8 and disbursements of all Alliance funds so held by him or her;

9
10 (iii) Pay any sums due from the Alliance, as approved for payment
11 by the Board of Directors or by anybody or person to whom the Board of Directors
12 has delegated approval authority, making such payments from Alliance funds upon
13 warrants drawn by the Auditor;

14
15 (iv) Verify and report in writing to the Alliance and to the Parties, as
16 of the first day of each quarter of the fiscal year, the amount of money then held for
17 the Alliance, the amount of receipts since the last report, and the amount paid out
18 since the last report;
19

20
21 **ARTICLE 11**

22 **RESPONSIBILITIES OF PARTIES**

23
24 The Parties shall have the following responsibilities under this Agreement:

25 (a) The governing board or authority of each Party shall appoint
26 representative(s) to the Board of Directors, pursuant to Article 6 hereof.
27
28

1 (b) Each Party shall appoint an officer or employee of the Party to serve as
2 a point of contact between the Party and the Alliance for day-to-day matters relating
3 to the Alliance.
4

5 (c) Each Party shall provide the Alliance such other information or
6 assistance as may be necessary for the Alliance to develop and implement Water
7 Projects under this Agreement.
8

9 (d) Each Party shall cooperate with and assist the Alliance and other
10 contractors in all matters relating to this Agreement, and shall comply with all
11 Bylaws, and other rules adopted by the Board of Directors.
12

13 (e) Each Party shall have such other responsibilities as are provided
14 elsewhere in this Agreement, and as are established by the Board of Directors in
15 order to carry out the purposes of this Agreement.
16

17 **ARTICLE 12**

18 **ALLOCATION AND PAYMENT OF ALLIANCE COSTS**

19 **(a) Payment Allocation**

20 (i) This Article will be amended to determine allocation of project related
21 costs. Allocation of Capital and Operating costs for specific Water Projects shall be
22 determined on a project-by-project basis in the Project Agreement or other separate
23 agreement, or the resolution approving such project. A Project Agreement must be
24 executed before a binding funding agreement is signed. Any contribution by any
25 Party shall be subject to approval of the governing board of that Party.
26
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1 (ii) Allocation of administrative costs shall be as set forth in **EXHIBIT A**,
2 “Member Demand Share.”

3 (b) Payment Obligations

4 The Board shall annually assess on the Parties the Alliance’s projected costs,
5 which may include a reasonable cash reserve for that fiscal year, as set forth in the
6 Alliance’s annual budget and consistent with the project cash flow needs of the
7 Alliance.
8

9 Each Party shall be responsible for paying its respective share of the
10 Alliance’s costs, and any budgeted cash reserve assessed, in accordance with the
11 payment schedule adopted by the Board pursuant to this section and consistent
12 with the cost allocation methodology set forth in this Article. If the revenues are
13 insufficient to satisfy the Alliance’s actual costs, then the Board of Directors may
14 assess such deficiency in the same manner as the annual assessment or amend
15 the annual budget to cut costs. If collected assessments exceed the Alliance’s
16 actual costs and budgeted cash reserves, they shall be considered excess
17 revenues and applied to next fiscal year’s costs to reduce each Party’s respective
18 share of next year’s costs.

19 If a Party fails to pay its assessed share of the Alliance’s costs, the unpaid
20 amounts shall bear interest at the highest legal rate allowed by law beginning on
21 the payment due date. The Alliance may exercise any available remedy to enforce
22 payment by the defaulting Party, including expulsion from the Alliance.
23

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27 **ARTICLE 13**
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1 **WITHDRAWAL, EXPULSION, AND TERMINATION**

2
3 (a) Voluntary Withdrawal

4 The notice requirements for, and surviving obligations of, voluntary
5 withdrawal are governed by the stage of the Water Project, as set forth below, and
6 by each Party's obligations under any applicable Project Agreement(s). A
7 withdrawing party is liable for its share of the Alliance's costs that are incurred prior
8 to the effective date of withdrawal.
9

10 Except as expressly stated in this Article, there shall be no limitation on any
11 Party withdrawing from the Alliance before the Alliance applies for drinking water
12 planning or construction funding from the State Water Resources Control Board or
13 any other funding source, and any Party withdrawing from the Alliance prior to the
14 Alliance's application for said funding shall not owe any obligation or debt to the
15 Alliance or any of its members arising in any way from the Alliance's application or
16 acceptance of the aforementioned funding. The Alliance shall not have authority to
17 adopt any ordinance, resolution, policy or funding application contrary to the
18 provisions hereof.
19
20
21

22 (i) Before and Through Alternatives Analysis; Before Design

23
24 At any time before Project Agreement is executed for the design of a Water
25 Project, any party may voluntarily withdraw its membership in the Alliance upon one
26 hundred eighty (180) days' advance written notice to the other Parties and the
27
28

1 Alliance. The written intent to withdraw may be retracted no later than one hundred
2 twenty (120) days prior to the end of the 180 day termination period.

3
4 (ii) After a Project Agreement

5 At any time after a Project Agreement is executed for any stage of a Water
6 Project, the terms of that Project Agreement will govern the Parties' ability to
7 withdraw and the notice required.
8

9
10 (b) Effect of Voluntary Withdrawal

11 After a Party has served its written notice of intent to withdraw from the Alliance
12 pursuant to the provisions of this Article, that Party cannot be assessed by the
13 Board for its share of costs incurred after the effective date of withdrawal. A
14 withdrawing party is liable for its share of the Alliance's administrative costs that are
15 due after notice but prior to the effective date of withdrawal, as well as for any
16 obligations voluntarily incurred through a Project Agreement.
17

18
19 Notwithstanding anything to the contrary in this Agreement, a withdrawing Party
20 shall not be obligated or indebted to the Alliance or anyone else on any application
21 to, and/or agreement with, any funding source, when the same are submitted or
22 entered into after said Party provided notice of withdrawal from the Alliance. Any
23 assets contributed on loan by the withdrawing Party, or the value of said loaned
24 assets at the date of withdrawal, will as promptly as reasonably possible be
25 returned to the withdrawing Party provided said assets are not obligated as
26 described in this Agreement. Payments by a Party for Capital Costs, Operating
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1 Costs, or Administrative Costs, and costs of preparation of any solicitation or
2 application for funding authorized or incurred prior to the effective date of
3 withdrawal shall not be returned. The withdrawal of the Party shall have no effect on
4 the continuance of this Agreement among the remaining Parties.
5

6 (c) Involuntary Withdrawal
7

8 A Party may be expelled from the Alliance for any of the following:
9

10 (i) Non-payment, or repeatedly untimely payment, as defined in the
11 Bylaws, of each and all amounts due under this Agreement;

12 (ii) Two or more instances, within any twelve (12) month period,
13 causing the Alliance or its operations to be in violation of any law or regulation,
14 permit, or applicable maximum contaminant level (MCL) set by regulators;
15

16 (iii) Causing the Alliance to become liable for civil penalties or creating
17 a risk thereof;
18

19 (iv) Imperiling the proper operation of or wellbeing of infrastructure of
20 the Alliance or otherwise creating a significant risk of liability of the Alliance; and
21

22 (v) Two (2) consecutive, unexcused absences from the Board
23 meetings. Absences may be excused by the Board.
24

25 (vi) Subject to section (f) of this Article, if any Party ceases to provide
26 domestic water within that portion of its jurisdictional boundaries which overlap with
27 those of the Alta Irrigation District, that Party shall become disqualified from Alliance
28

1 membership, and that Party's membership will be terminated upon at least thirty
2 (30) days written notice provided by the Alliance to the Party after the date of the
3 qualifying event, as found and declared by the Board based upon substantial
4 evidence, unless special dispensation is sought by the disqualified Party and
5 granted by the remaining Board members.
6

7
8 (d) Effect of Involuntary Withdrawal

9 A Party that withdraws involuntarily from the Alliance shall remain liable for its share
10 of the Alliance's costs that are incurred prior to the effective date of withdrawal.
11 The withdrawing Party shall not be entitled to the return of any payments or
12 contributions to the Alliance, except for its share of excess revenues, if any.
13

14 Upon involuntary withdrawal of a Party from the Alliance and this Agreement,
15 no capital contributions of said Party shall be returned to said Party. An
16 involuntarily withdrawing Party as provided herein shall continue to be liable for its
17 share of the outstanding obligations or debts incurred by the Alliance, including
18 remaining unfunded capital expenditures, and for expenses under any water supply
19 contract between the Alliance and any third-party water supplier representing the
20 withdrawing Party's portion of water, incurred or approved prior to the date of
21 involuntary withdrawal of such Party. Contributions by an involuntarily withdrawing
22 Party for annual operating expenses and costs of preparation of any solicitation or
23 application for funding authorized or incurred prior to the effective date of
24 withdrawal shall not be returned upon said involuntary withdrawal. The involuntary
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1 withdrawal of the Party shall have no effect on the continuance of this Agreement
2 among the remaining Parties.

3
4 (e) Termination

5 This Agreement may be terminated by the mutual consent of the Parties
6 through resolution of all Parties' governing boards, as long as the Alliance has no
7 outstanding debt or obligation. The Alliance's assets that remain after satisfaction
8 of its existing obligations shall be distributed among the Parties in proportion to the
9 historic allocation of Alliance costs.
10

11 The Board of Directors shall determine such distribution within six (6) months
12 after disposal of the last obligation of the Alliance. This Agreement and the Alliance
13 shall thereafter continue to exist until such time as the final disposition of all claims,
14 distribution of all assets, and performance of all other functions necessary to
15 conclude the affairs of the Alliance.
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18 (f) Assignment of County's Duties and Obligations

19 Upon formation or expansion of one or more special districts to serve as
20 domestic water supplier for the communities of Yettem and Seville, the County of
21 Tulare, if at that time it is a Party hereto, shall be authorized to, in a separate writing
22 between the involved Parties, assign and delegate to such newly formed or
23 expanded district the County's seat on the Board and the proportionate share of its
24 interest and obligations under this Agreement which pertains exclusively to the
25 newly formed or expanded district(s). Such assignment must occur within sixty (60)
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1 days after final approval of the district creation or expansion by LAFCO, otherwise
2 assignment will require approval by the Alliance's Board of Directors. If the County
3 of Tulare assigns all of its interest in, and obligation to, the Alliance under this
4 Agreement as to all of the aforementioned communities, upon receipt of written
5 notice thereof, the County of Tulare may cease to be a Party hereto, or may remain
6 a non-voting Party in order to maintain the initial area of Alliance jurisdiction. In the
7 absence of any separate written agreement being submitted to the Alliance
8 regarding the County's seat on the Board, each successor entity and the County
9 shall alternate in filling said seat while they remain an existing Party hereto.
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14 **ARTICLE 14**

15 **LIABILITY OF BOARD OF DIRECTORS, OFFICERS, COMMITTEE MEMBERS,**
16 **AND LEGAL ADVISORS**
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18 The members of the Board of Directors, officers, committee members, and
19 legal advisors to any board or committee of the Alliance shall use ordinary care and
20 reasonable diligence in the exercise of their powers and in the performance of their
21 duties pursuant to this Agreement. They shall not be liable for any mistake of
22 judgment or any other action made, taken, or omitted by them in good faith, nor for
23 any action taken or omitted by any agent or employee selected with reasonable
24 care, nor for loss incurred through investment of Alliance funds, or failure to invest,
25 performed in good faith.
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28 The Alliance shall hold harmless, defend, and indemnify the Parties, their

1 agents, officers, and employees from and against any liability, claims, actions,
2 costs, damages, or losses of any kind, including death or injury to any person
3 and/or damage to property (including property owned by any Party), arising out of
4 the activities of the Alliance, its agents, officers, and employees under this
5 Agreement. The foregoing indemnification obligations shall continue beyond the
6 term of this Agreement as to any acts or omissions occurring under this Agreement.
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9 No director, officer, committee member, or legal advisor to any board or
10 committee shall be responsible for any action taken or omitted by any other
11 director, officer, committee member, or legal advisor to any board or committee. No
12 director, officer, committee member, or legal advisor to any board or committee
13 shall be required to give a bond or other security to guarantee the faithful
14 performance of their duties pursuant to this Agreement.
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16 The funds of the Alliance shall be used to defend, indemnify, and hold
17 harmless the Alliance and each Party, the Auditor-Treasurer of the Alliance, any
18 director, officer, committee member, contractor or retained expert, or other staff
19 appointed by the Alliance or loaned to the Alliance by any Party, or any counsel
20 acting as legal advisor to any board or committee, for their actions taken within the
21 scope of the authority of the Alliance. Nothing herein shall limit the right of the
22 Alliance to purchase insurance to provide such coverage as is herein set forth.
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ARTICLE 15
INSURANCE

The Alliance shall obtain general liability and environmental insurance containing liability coverage in such amounts as the Board shall determine will be necessary to adequately insure against the risks of liability that may be incurred by the Alliance. The Parties, their officers, directors, and employees, and any operators of any facilities owned by the Alliance, shall be named as additional insureds.

ARTICLE 16
BYLAWS

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

ARTICLE 17
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 may change its address by giving written notice to the Alliance and all other Parties. Each Party

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ARTICLE 19

ADMISSION OF NEW PARTIES

Any public agency with the power and authority to provide domestic water which serves customers within a region adjacent to the Alliance’s existing boundaries may become a Party to the Alliance by amendment to this Agreement, whether by addendum or otherwise, which shall become effective upon approval by the Parties.

ARTICLE 20

PROHIBITION AGAINST ASSIGNMENT

Other than pursuant to the terms of Article 13, subsection (f), 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 any Party shall have any right, claim, or title to any part, share, interest, fund, premium, or asset of the Alliance.

ARTICLE 21

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.

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ARTICLE 22

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 23

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 Agreement. This Agreement may be executed in one or more original counterparts, all of which together will constitute one and the same agreement. The Parties acknowledge that in executing this Agreement they have relied on legal advice from their attorneys.

1 **ARTICLE 24**

2 **FILINGS**

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4 The Chair of the Board of Directors of the Alliance shall cause the following to
5 be done upon signature of this document or any amendment hereto by all parties:

- 6 (a) file the required form of notice of this Agreement, and any amendment
7 hereto, with the Office of California Secretary of State, within thirty (30) days
8 of its effective date, as required by Government Code Section 6503.5;
- 9 (b) file a full copy of the original Joint Powers Agreement, and any amendment
10 hereto, with the State Controller and Tulare County LAFCO, within thirty (30)
11 days of its effective date, as required by Government Code Section 6503.6;
- 12 (c) file the required form of notice with the Secretary of State and with the Tulare
13 County Clerk within seventy (70) days of its effective date, as required by
14 Government Code Section 53051;
- 15 (d) File notice of any changes to the information filed under (c) within ten (10)
16 days of the change.
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22 **ARTICLE 25**

23 **DISPUTE RESOLUTION**

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25 If a dispute arises out of or relating to this Agreement, or the breach thereof,
26 and if said dispute cannot be settled through negotiation, the Parties agree first to try
27 in good faith to settle the dispute by non-binding mediation before resorting to
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1 litigation or some other dispute resolution procedure, unless the Parties mutually
2 agree otherwise. The mediator shall be mutually selected by the Parties, but in case
3 of disagreement, the mediator shall be selected by lot from among two nominations
4 provided by each Party. All costs and fees required by the mediator shall be split
5 equally by the Parties; otherwise each Party shall bear its own costs of mediation. If
6 mediation fails to resolve the dispute within 30 days after the commencement of
7 mediation, either Party may pursue litigation to resolve the dispute. Any remedies
8 provided in this Agreement are cumulative and not exclusive, and are in addition to
9 any other remedies that may be provided by law or equity. The exercise by any Party
10 of any remedy under this Agreement shall be without prejudice to the enforcement of
11 any other remedy.
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15 **ARTICLE 26**

16 **COUNTERPARTS**

17 This agreement may be executed in any number of counterparts, each of
18 which when executed and delivered shall constitute a duplicate original, but all
19 counterparts together shall constitute a single agreement.
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1 IN WITNESS WHEREOF, East Oroshi Community Services District, Sultana
2 Community Service District, and the County of Tulare have executed this Joint
3 Exercise of Powers Agreement Creating the North Tulare County Regional Water
4 Alliance as of the day and year first hereinabove written.
5

6 **COUNTY OF TULARE**

7
8 _____
9 Pete Vander Poel,
10 Chairman, Board of Supervisors

11 Attest: Michael C. Spata
12 Clerk of the Board/County Administrative Officer

13 By _____
14 Deputy Clerk

15 **EAST OROSI COMMUNITY SERVICES DISTRICT**

16 _____
17 Chairman

18 Attest:

19 _____
20 By _____

21 **SULTANA COMMUNITY SERVICES DISTRICT**

22 _____
23 Chairman

24 Attest:

25 _____
26 By _____
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1 APPROVED AS TO LEGAL FORM

2

3 Deanne Peterson,
4 County Counsel, County of Tulare

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6 Matthew Pierce,
7 Counsel, East Orosi Community Services District

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9 Matthew Pierce,
10 Counsel, Sultana Community Services District

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EXHIBIT A
Member Demand Share

Member Agency	Expected Demand Share (%)
County of Tulare (for Monson, Seville, and Yettem)	29.16
East Orosi Community Services District	22.79
Sultana Community Services District	48.05

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