

**Memorandum of Understanding
Water Supply Feasibility**

This Memorandum of Understanding (“MOU”) is made and entered into effective _____, (the “Effective Date”) by and among the Cutler-Orosi Surface Water Plant Authority (“COSWPA”), a joint powers agency, and the County of Tulare, (“Tulare County”) collectively referred to herein as the “Parties.”

Recitals

- A. The Parties have concerns over water quality and water supply. The Parties are interested in developing a surface water supply to be used solely or in conjunction with existing groundwater wells to create a stable and potable water supply.
- B. The COSWPA was formed between the Cutler Public Utility District “CPUD” and the Orosi Public Utility District “OPUD” to seek grant funding to construct and operate a surface water treatment plant.
- C. By this MOU, the COSWPA and Tulare County are stating their joint interest and intent to participate in the planning for the construction and operation of such a plant.

NOW THEREFORE, the Parties agree as follows:

- 1. Funding. The Parties agree that they will share the preliminary costs as specified in this MOU based on the following proposed division:

COSWPA – 93.41%

Tulare County – 6.59% - Representing estimated capacity for the unincorporated communities of Yettem, Seville (4.39%), and potential users along the planned pipeline routes (2.2%) that would be able to receive treated surface water.

This cost allocation may be modified by separate amendment signed by both parties. The cost allocation is based on the approximate estimate of water each represented community would receive from the surface water treatment plant and the amount of water that would be reserved for use by Tulare County residents in areas adjacent to supply lines that could receive treated surface water.

All costs spent under this MOU shall be tracked by the Parties. Costs may be advanced by one Party on behalf of another Party by separate agreement. However, Parties will be responsible for reimbursing their respective share of all costs incurred.

Parties agree that interest will not be charged on the amounts owed but that they will make best efforts to reimburse the amounts owed as soon as possible.

Prior to adding additional parties, the Parties shall be required to agree in writing to the revised amount of costs owed. Cost responsibilities include amounts that will be incurred

moving forward and allocations of amounts previously spent that shall be considered an advanced cost and that will be subject to reimbursement from the additional parties.

2. Grant Funding and Reimbursement. Parties hereby state that it is the intention of the Parties to apply for and obtain grant funding for the construction of the surface water treatment plant, and to apply for and obtain grant funding to reimburse preliminary project costs incurred under this MOU. Parties agree that any eligible grant funding received shall be used to reduce the total amount incurred prior to dividing the applicable share of costs according to the cost share percentages stated in this MOU.

3. Term and Termination of MOU

a. The term of this MOU shall commence on the Effective Date and continue until terminated by a party or for thirty years as allowed under Public Utilities Code section 16885.

b. Each Party reserves the right to terminate this MOU upon sixty (60) days written notice to other party. The obligation to pay or reimburse for agreed-upon costs incurred under this MOU will survive the termination of this MOU and Parties agree to complete such reimbursement within five (5) years from the date of termination.

c. The agree that this MOU does not include the costs of construction, operation, or maintenance of a surface water treatment plant. Parties acknowledge that this MOU is intended to terminate prior to the commitment to fund construction of a surface water treatment plant, so that the Parties will have the opportunity to review the preliminary cost estimates of operating and maintaining the surface water treatment plant before being committed to additional costs. Should any or all Parties agree to jointly move forward with the construction, operation, and maintenance of a surface water treatment then that would be memorialized in a separate agreement, such as a Joint Powers Agreement, between the Parties and any other participating agencies. If no agreement can be reached involving all Parties, then COSWPA or any other Party may move forward with the surface water plant independently or with other participating agencies.

d. Parties agree that if a scheduling conflict occurs concerning the time to finalize any grant application that the COSWPA may decide whether to pursue the grant application, and such application would not be binding on another Participating Agency without that agency's separate approval.

4. Meetings. Any joint meetings of Parties shall be subject to the requirements of the Ralph M. Brown Act and all other California laws regarding open meetings and public records.

5. Costs Subject to Division. Under this MOU the Parties agree to divide the following types of costs based on the applicable cost share percentages listed above:

- a. Environmental review of potential site locations.
- b. Engineering review, including preparation of a preliminary engineering study of the proposed surface water treatment plant, this also includes geotechnical review of potential site locations.
- c. Preliminary discussions with property owner(s) – costs of right of way consultant, including costs to review title, appraisal costs, negotiations over a right of entry and site locations for the plant with the owner of land where site is currently being considered, may also include costs to negotiate an option to purchase the land.
- d. Costs to prepare and submit grant or loan applications for the surface water treatment plant.

This would include costs incurred prior to the Effective Date of this MOU.

Parties agree that prior to paying a negotiated amount for an option to purchase land that they would meet to discuss potential ownership and cost responsibility of purchase option if the grant application for construction has not been submitted and the membership of the JPA has not been modified to specifically address the ownership and operation of the plant by the additional communities participating in the grant application.

The costs to form and operate the COSWPA would not be included under this MOU.

6. Data, Studies, and Related Information. Parties agree to provide all data, studies, and related information for the construction of the surface water treatment and to provide such documents upon request between the Parties. All documents prepared or data gathered during the project shall belong equally and shall be shared between the Parties.

7. Notices. All notices relative to this MOU shall be given in writing and shall be personally served or sent by first class mail and be effective upon personal service or by depositing such notice in the United States mail. The Parties shall be addressed as follows, or at any other address as later designated by a Party:

COSWPA: Cutler-Orosi Surface Water Plant Authority
 Attn: Dennis Keller, Board Secretary
 P.O. Box 911
 Visalia, CA 93279

Tulare County: County of Tulare
 Attn: Denise England
 2800 W. Burrel Avenue
 Visalia, CA 93291

Any party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Participating Agencies in the manner provided for in this Paragraph.

9. Entire MOU. This MOU sets forth the entire agreement among the Participating Agencies and supersedes all other oral or written representations. This MOU may be modified only in a writing approved by all Parties. All exhibits and recitals to this MOU are herein incorporated by this reference

10. No Joint Powers Agreement. No Party or employee of any Party is an agent or employee of any other Participating Agency for any purpose and is not entitled to any of the benefits provided by a Party to its employees. This MOU shall not be construed as forming a partnership or any of other association or separate joint powers agency among the Parties or a separate special district.

11. Dispute Resolution. If a dispute arises between the Parties, then they agree to meet and confer in an attempt to resolve the matter. If no resolution is reached, then parties agree to seek non-binding mediation of the dispute. If resolution is still not reached, then parties may seek formal arbitration or have the matter heard by a court of appropriate jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement to be effective as of the date all parties have executed this agreement.

Cutler-Orosi Surface Water Plant Authority

Board President

Dated _____

County of Tulare

Chairman. Board of Supervisors

Dated _____

Approved as to Form

Tulare County Counsel

Dated _____