

## AMENDMENT

### TO DRINKING WATER SUPPLY PROJECT JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE CITIES OF CERES AND TURLOCK

THIS AMENDMENT TO AGREEMENT is made this July 1, 2018, between the City of Ceres, a general law city, and the City of Turlock, a general law city, who agree as follows:

**1. Recitals.** This Amendment is made with reference to the following background recitals:

1.1. On December 15, 2015, the Participants entered into the Amended Drinking Water Supply Project Joint Exercise of Powers Agreement Between the Cities of Ceres and Turlock for the Purpose of Creating a Joint Powers Authority Responsible for Decisions in Certain Matters Pertaining to the Municipal and Industrial Water Supply Programs for the Aforementioned Public Entities (the "Agreement"), which is on file in the Authority office. Capitalized terms used in this Amendment will have the meanings as set forth in the Agreement.

1.2. The Authority plans to apply to the State of California for a loan under the State Revolving Fund program to fund the costs to design and construct the Project. The Authority and Participants desire to amend the Agreement to clarify and enhance the financial position of the Authority and to better secure any future loan agreement.

1.3. The Participants have reconsidered the desirability of providing for alternates to serve on the Authority Governing Board and have decided to revise the Agreement to so provide and to update and clarify the Governing Board provision.

1.4. The Participants therefore now desire to amend the Agreement as set forth below.

**2. Amendments to Agreement.** The Participants amend the Agreement as follows:

2.1. Article I, section E is amended to read:

E. "Bonds" mean and include bonds, certificates of participation, installment purchase agreement, installment sale agreement, loan, or other evidence of indebtedness issued by the Authority under the Act or other applicable law.

2.2. Article IV is amended to read:

#### ARTICLE IV. TERM AND TERMINATION:

A. Term: This Agreement will become effective upon the date of its execution by all of the Participants and shall continue in full force and effect until terminated as provided below.

B. Termination Before Bonds: Prior to Governing Board approval of any Bonds, either Participant may terminate this Agreement and dissolve the Authority upon giving the other Participant and the Board 90-days prior written notice of termination. In the event of any such termination, each Participant shall be and remain (post-termination) obligated for its share of all liabilities and expenses of the Authority incurred prior to the effective date of such termination. Upon Governing Board receipt of any notice of termination under this section, the Authority shall be prohibited from approving or issuing any Bonds.

C. Termination After Bonds: After Governing Board approval of any Bonds, this Agreement may be terminated and the Authority may be dissolved only pursuant to a dissolution agreement approved by the city council of each Participant under section D. The Authority shall not be dissolved until all Bonds and other liabilities of the Authority have been discharged or assumed in accordance with this Agreement and the dissolution agreement. During the outstanding term of any Bonds, this Agreement shall not be terminated unless (i) the indebtedness is first paid off in full, or (ii) the indebtedness is assigned to and assumed by one or both of the Participants or a responsible successor entity and there is alternate security for repayment of the remaining indebtedness in a form and manner approved by Authority bond counsel as lawful and adequately protecting the interests of any holders of evidence of indebtedness of the Authority, and the Authority's creditors consent to such assignments and assumptions.

D. Dissolution Agreement: As provided in section C, this Agreement may be terminated and the Authority may be dissolved pursuant to a dissolution agreement approved by the city council of each Participant that terminates the Agreement and provides for the (i) dissolution of the Authority, (ii) utilization, distribution, transfer, and assignment of the Authority funds, assets, and property (including any completed or partially constructed Project Facilities), and (iii) transfer, assignment, and assumption of the rights, liabilities, and obligations of the Authority. If, at the time of dissolution, the Authority has completed any Project Facility, then the dissolution agreement also must provide for one of the Participants or a responsible successor entity to own and assume the rights, liabilities, and obligations to continue the operation and maintenance of the Project Facility or Facilities. Upon dissolution of the Authority pursuant to a dissolution agreement approved pursuant to this section, the funds, assets, property, rights, liabilities, and obligations of the Authority shall be utilized, distributed, transferred, and assigned as provided by the dissolution agreement.

2.3. Article V, section A is amended to read:

A. Governing Board. The Authority shall be governed by a legislative body known as the Governing Board. The Governing Board shall consist of four Directors, with two appointed by each Participant. Each Director shall be entitled to one vote. Each Participant shall appoint two representatives to serve as Directors and one alternate Director. Each representative and alternate must be a city council member of the appointing Participant. An alternate Director shall have the authority to act in the absence or unavailability of a Director or in the event that a Director has a conflict of interest that precludes participation by the Director in a particular matter. Each Participant shall give written notice to the Secretary of the names of its Directors and

alternate Director and of any changes. The Secretary shall maintain a list of the current Directors and alternate Directors. Each of the Directors and alternate Directors shall hold office from the time of their appointment by the Participant until the earlier of the following: resignation of the Director or alternate Director from the Governing Board; the Director or alternate Director ceases to be a member of the Participant city council; the Participant city council removes the Director or alternate Director; or, the Participant appoints a successor Director or alternate Director. Upon the occurrence of any vacancy in the position of a Participant's Director or alternate Director, the Participant shall appoint a successor. Directors and alternate Directors shall serve at the pleasure of their appointing city council and may be removed at any time, with or without cause, at the sole discretion of the city council. The Governing Board may from time to time designate an individual or individuals to serve as an ex officio Director in a nonvoting, advisory capacity. Any such ex officio Director shall not participate in any closed session meeting of the Governing Board.

2.4. Article IX, sections A and B are amended to read:

A. The Governing Board and every officer, employee, and official of the Authority shall be limited in the making of expenditures to the amount of the appropriations allowed by the budget as adopted by the Governing Board or as may be revised by the Governing Board, in accordance with procedural rules for expenditures and obligations of funds as adopted by the Governing Board.

B. Except as otherwise provided by law, warrants issued and expenditures made in excess of any budget appropriation are not a liability of the Authority or a liability for any Participant.

2.5. Article XXXIII is amended to read:

#### ARTICLE XXXIII. ISSUANCE OF BONDS:

The Authority shall have the power to approve, issue, and sell Bonds in accordance with the Act or other applicable law for the purpose of raising funds to finance or refinance the Project or to carry out or implement any other powers or purposes authorized by this Agreement.

**3. No Effect on Other Provisions.** Except for the amendments in section 2, the remaining provisions of the Agreement are unaffected and remain in full force and effect.

CITY OF CERES

CITY OF TURLOCK

By:

  
\_\_\_\_\_  
City Manager

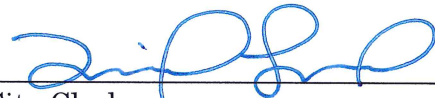
By:

  
\_\_\_\_\_  
City Manager

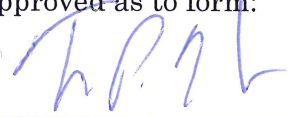
Attest:

  
\_\_\_\_\_  
City Clerk *Reso No. 2018-80; 8/13/2018*


Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney

Approved as to form:

  
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City Attorney