

DRINKING WATER SUPPLY PROJECT

JOINT EXERCISE OF POWERS AGREEMENT
BETWEEN

THE CITIES OF CERES, MODESTO, 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

THIS AGREEMENT, dated for convenience as of September 27, 2011, is by and between the Cities of Ceres, Modesto, and Turlock, hereinafter "Participants", being municipal corporations duly organized and existing under the laws of the State of California.

WHEREAS, the intent of the parties to this Agreement is to create a Joint Powers Authority that would purchase water from the Turlock Irrigation District (hereinafter referred to as "TID"), would treat such water and would make such treated water available At Cost to the Participants; and

WHEREAS, Participants are interested in finding and evaluating surface water supply options and facilities to serve municipal and industrial water to the customers within their service areas; and

WHEREAS, Participants desire to develop a safe, dependable, economical, and long-term municipal and industrial water supply system; and

WHEREAS, the Participants desire to tailor the project to individual community needs; and

WHEREAS, each of the Participants has heretofore been participating in a Project to seek an alternative surface water supply; and

WHEREAS, All Participants desire to establish a joint powers authority by this Agreement so they may collectively discuss, develop and negotiate alternatives regarding the aforementioned Project; and

WHEREAS, The Participants desire to secure a reliable source of surface water for municipal and industrial water and other municipal purposes; and

WHEREAS, each of the Participants is authorized to develop, obtain, and serve a municipal and industrial water supply, pursuant to California law.

NOW, THEREFORE, the Participants, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

ARTICLE I. DEFINITIONS:

Section 1.01. Definitions. Unless the context otherwise requires, the words and terms defined in this Article shall, for the purpose hereof, have the meaning herein specified.

A. "Act" means Articles I through 4 (commencing with section 6500) of chapter 5, division 7, Title 1 of the Government Code of the State of California.

B. "Agreement" means this Agreement.

C. "At Cost" means the actual cost per million gallons of project water paid by each Participant. The components of cost will include engineering costs, construction costs, project operating and maintenance costs, raw water costs, project sunk costs, and financing costs.

D. "Authority" means the Stanislaus Regional Water Authority established pursuant to this Agreement.

E. "Bonds" means certificates of participation or bonds of the Authority issued pursuant to Article 2 (commencing with section 6540) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California.

F. "Capital Improvements" means any facility or facilities, whether newly constructed, expanded, rehabilitated, or otherwise acquired, including but not limited to purchase of land or water rights, which are for the purposes of carrying out the purposes of the Project.

G. "Capital Costs" mean the project-related costs of construction, financing, acquiring, planning, designing, environmental documentation and permitting (including any mitigation costs or filing fees related to permitting) and the funding of a reasonable capital reserve. Capital Costs include the initial Project construction and subsequent Capital Costs of Project repair, replacement, modification, and improvement.

H. "Fixed Operating Costs" mean those Project-related operating maintenance and management costs that are incurred irrespective of the amount of water conveyed through the Project, including, but not limited to, consultant costs, employee salaries and expenses, debt service costs on any bonds or other indebtedness issued to finance the Capital Costs, bond reserve funds, and the cost of bond or financing agreements.

I. "Variable Operating Costs" mean those Project-related operating and maintenance costs and other costs that are dependent on, and vary based on, the volume of water actually conveyed through the Project (including, but not limited to, the costs of water (e.g., supplied under a water supply contract) and power), length or size of the Transmission Piping, or such other method as may be established by the unanimous Governing Board approval.

J. "Construction" means the Project-related procurement of materials, parts and

equipment, construction, construction management, and related field services including project management activities, contractor management, design assistance during construction, as-built-drawings, and start-up testing.

K. "Directors" mean the representatives of the Participants appointed to the governing body pursuant to Article V.

L. "Finance Director" shall mean the person designated by Article XVI of this Agreement.

M. "Governing Board" means the governing board established pursuant to Article V, Paragraph A.

N. "Fiscal Year" means the period from July 1 to and including the following June 30.

O. "Participants and Participant" means all of the original parties to this Agreement.

P. "Project" means the acquisition of a safe, reliable, economical long-term municipal and industrial water supply system or systems, including without limitation, scoping and data collection, program planning, facilities planning, design and construction, program start up and contracting for, and acquisition of water rights and /or water delivery.

Q. "General Manager" means the person selected by the Governing Board to manage the day-to-day operations of the Project, in an at-will employment relationship to the Board, which shall have overall Project management responsibility.

R. "Public Agency" means any public agency authorized by the Act to enter into a joint exercise of powers agreement with the Participants.

S. "Secretary" means the Secretary of Authority.

T. "State" means the State of California.

U. "Ex-officio" means non-voting Director of the Governing Board serving in an advisory capacity.

V. "Project Facility" or "Project Facilities" means each facility or facilities as identified as a Project Facility in Exhibit B, attached hereto and incorporated herein.

W. "Dedicated Capacity" means the water capacity of the Project Facilities dedicated to each Participant as set forth in "Exhibit A".

ARTICLE II. PURPOSE:

A. The purpose of this Agreement is to establish a Joint Powers Authority responsible for representing the Participants in decisions and matters relating to the Project.

B. Objectives: The Authority created by this Agreement has the following objectives to accomplish its purpose:

1. Plan and develop the implementation of surface water supplies;
2. Function as the community focal point for all grant/aid applications related to the project;
3. Develop a support staff;
4. Develop the procedures for establishing and conducting this Authority's coordination functions;
5. Design, construct, finance, own, and operate the Project Facilities;
and
6. Provide treated water At Cost and on the same terms and on an equitable basis to the Participants.
7. The method by which the purposes of this Agreement shall be financed is through the sale of Certificates of Participation, the issuance of Bonds, or such other method as agreed upon by the Participants.

ARTICLE III. FORMATION:

Upon the effective date of this Agreement, there is hereby established the Stanislaus Regional Water Authority pursuant to the provisions of Article I, Chapter 5, Division 7 of Title 1 of the California Government Code, commencing with Section 6500, hereinafter "Act. As provided in Section 6507 of the Act, the Authority shall be a public entity separate from each of the Participants.

ARTICLE IV. TERM:

This Agreement will become effective upon the date of its execution by all of the original Participants and shall continue in full force and effect until terminated. This Agreement may be terminated at any time by mutual agreement of all Participants thereof.

ARTICLE V. GOVERNING BOARD:

A. Governing Board: The Authority shall be administered by a Governing Board which shall be comprised of the following: One member from each City Council of each City which is an original Participant. Within 60 days after the execution of this Agreement by the Participants, each Participant shall designate its Governing Board member (Director) and an alternate. Each Director of the Governing Board shall have one vote which shall be equal in weight to the vote of each other Director. In the event of a tie-vote, and only in that event, the General Manager shall have a vote equal in weight to that of a Director. The Mayor of each Participant may be a Director in lieu of

a City Council person and termination of a Director's status as a Councilmember or Mayor shall constitute automatic termination of that person's Directorship on the Authority's Governing Board. The appointing City may appoint a new Director or alternate Director immediately upon the occurrence of any vacancy in that party's representation, or the alternate Director appointed pursuant to this Article V may serve until a new Director is appointed. Each City shall appoint one alternate Director to serve the Authority during the absence of any regular Director from any meeting of the Authority, and that Director's alternate shall be entitled to participate in all respects as a regular Director of the Authority. The Governing Board shall have Ex-officio Directors as the Governing Board shall from time-to-time designate. Each Ex-officio Director shall serve in a non-voting, advisory capacity.

B. Automatic termination from the Governing Board and the Authority: Prior to commencement of the construction of the Project Facilities an agreement or agreements detailing ownership and operation will have to be consummated. Failure of any Participant or Participants to approve and endorse such agreement or agreements shall automatically terminate the entity from participation in the project and terminate their membership in the Authority.

C. Meeting: The Governing Board shall hold at least one regular meeting each calendar quarter. All meetings shall be scheduled and conducted pursuant to the provisions of the Ralph M. Brown Act (Government Code Section 54950, et seq.). A minimum of three (3) Directors shall constitute a quorum for the transaction of business and the affirmative vote of at least three (3) Directors shall be required for the approval of any action taken by the Governing Board, unless otherwise stated herein.

The Secretary shall keep minutes of all meetings of the Governing Board and shall, as soon as possible after each meeting, forward a copy of the minutes to each Director of the Governing Board.

D. Officers: The Governing Board shall select a Chair and a Vice Chair. It shall then appoint a General Manager, a Secretary and any other officers as determined necessary by the Governing Board. The Chair shall preside at all Authority meetings. The Vice Chair shall act in place of the Chair at meetings should the Chairman be absent. All officers shall serve at the pleasure of the Board.

E. Bylaws: The Governing Board may, from time to time, adopt such bylaws and regulations for the conduct of its meetings as are necessary for the purposes herein.

The duties of certain officers are as follows:

1. The Chair of the Governing Board shall be elected by the Governing Board on a rotating basis and the Chair shall coordinate the work of officers and committees of the Authority in order that the Authority's purposes may be promoted; preside at all meetings of the Authority; appoint such ad hoc committees as may be desirable, subject to the approval of the Governing Board; perform such other duties as assigned to him or her by the Governing Board; and be the approved

signatory on legal or formal documents of the Authority.

2. The Vice Chair shall assist the Chair in the performance of his or her duties; perform the duties of the Chair in the absence or inability of that officer to act; and perform such duties as may be assigned to him or her by the Governing Board.

3. The General Manager shall be in charge of the day-to-day operations of the project, including but not limited to, operations, maintenance, budget and capital projects. The General Manager shall serve at the pleasure of the Governing Board, and shall have the power to hire and discipline employees in accordance with the personnel rules of the Authority.

4. General Counsel. The General Counsel shall provide legal advice and services to the Authority. The General Counsel shall be appointed by and shall serve at the pleasure of the Governing Board.

5. The Secretary shall keep, or cause to be kept, accurate records of the proceedings of all meetings of the Authority; be responsible to prepare, or cause to be prepared, meeting schedules, notices, resolutions and agendas; make such records of the proceedings available to the Governing Board Directors for their approval at each meeting; keep Directors and agencies informed of meeting proceedings and activities of the Authority; conduct all necessary correspondence of the Authority; be responsible for preparing, or causing to be prepared, any annual reports required by law; prepare such notices and reports as may be requested by the Governing Board; prepare, or cause to be prepared, periodic reports on the financial status of the Authority; and be responsible for coordinating the annual audit of the Authority, as required by this Agreement.

ARTICLE VI. POWERS OF THE AUTHORITY:

The Authority shall have and shall exercise powers attributable to the City of Modesto, except as herein prohibited and otherwise prohibited by law. The Authority is hereby authorized, in its own name acting through the Governing Board, to do all acts necessary or convenient for the exercise of its powers to accomplish its objectives, including, but not limited to:

- A. Employ agents, consultants, advisors, independent contractors, and employees;
- B. Make and enter into contracts;
- C. Acquire, hold and convey real and personal property;
- D. Incur debts, obligations and liabilities;
- E. Accept contributions, grants, or loans from any public or private agency or individual or the United States or any department, instrumentality, or agency thereof for the purpose of financing its activities;
- F. Invest money that is not needed for immediate necessities, as the

Governing Board determines advisable, in the same manner and upon the same conditions as other local entities in accordance with Section 53601 of the Government Code;

G. Reimburse Directors for reasonable and necessary expenses incurred in performing the duties of their office;

H. Reimburse Participants for the direct costs incurred in the formation of the Authority and continued testing of the source waters.

I. Sue and be sued in its own name, all as provided in Section 6508 of the Act, as well as the power of eminent domain;

J. Exercise any powers, as agreed to by the parties; and

K. Do all other acts reasonable and necessary to carry out the purpose of this Agreement.

L. To acquire, construct, manage or maintain or operate any building, works or Capital improvements.

M. To levy and collect revenue and funding as authorized by law.

Such powers shall be exercised in the manner provided by the Act and except as expressly set forth herein, subject only to the restriction of exercising its powers, imposed upon the City of Modesto in the exercise of similar powers. Notwithstanding the generality of the foregoing, the Authority shall have no power to bind any of the Participants to any monetary obligation whatsoever other than expressly authorized by the mutual written consent of the Participants. The Authority shall be strictly accountable for all funds received, held, and disbursed by it.

ARTICLE VII. DUTIES AND RESPONSIBILITIES OF THE AUTHORITY:

A. The Authority shall perform various functions that are necessary to fulfill its objectives and goals and carry out the purposes of the Authority.

B. The Authority shall function as the community focal point for all grant/aid applications in regard to the Project.

C. The Authority shall develop the necessary support staff.

D. The Authority shall develop the procedures for establishing and conducting the Authority's functions.

E. The Authority shall establish a funding basis for initial and sustained operations.

F. Within 120 days after the first meeting of the Governing Board, and thereafter prior to the commencement of the fiscal year, the Governing Board shall adopt a budget.

G. The Authority shall prepare a budget for the Project at least thirty (30) days prior to the beginning of each fiscal year.

1. All Project budgets shall include fixed operating, variable operating, and Capital costs.

2. Budget principle: In preparing and reviewing budgets for the Project, the Authority shall be guided by the principle that the Project shall be operated in as economic manner as practical in accordance with generally accepted municipal and industrial water practices as evidenced by similar size municipal and industrial water systems in Northern California.

ARTICLE VIII. FUNDS DEPOSIT IN PARTICIPANTS TREASURY:

A. The Authority may accept and expend funds from public or private sources, subject to the restrictions of law, for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.

B. Subject to the provisions of this Agreement and any applicable law, the Finance Director shall receive, have custody and disburse Authority funds pursuant to the procedures established by the Authority.

ARTICLE IX. EXPENDITURES AND OBLIGATIONS:

A. The Directors and every other official or employee of the Authority shall be limited in the making of expenditures or incurring of liabilities to the amount of the appropriations allowed by the budget as adopted by the Governing Board or thereafter revised by the 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, expenditures made or liabilities incurred in excess of any budget appropriation are not a liability of the Authority or a liability of any party to this Agreement.

C. Pursuant to Section 6508.1 of the California Government Code, the debts, liabilities, and obligations of the Authority shall be those of the Authority and not of the

Participants in this Joint Powers Agreement.

ARTICLE X. PURCHASES:

The Governing Board of the Authority shall designate a Purchasing Agent for the Authority.

ARTICLE XI. RECORDS AND ACCOUNTS:

A. The Authority shall be strictly accountable for all funds.

B. The Governing Board of the Authority shall cause to be kept proper books of records and accounts in which a complete and detailed entry shall be made of all of the transactions of the Project including all receipts and disbursements. The books and records shall be kept in accordance with Section 6505 of the Act and rules and regulations of the State Controller. The books shall be subject to inspection at any reasonable time by the duly authorized representative of each of the Participants in this Agreement.

C. The Governing Board of the Authority shall cause to be prepared an annual financial and operational report pursuant to Section 6505 of the Act, including a report of all receipts and disbursements of funds which shall be available at the office of the Secretary and a copy thereof shall be delivered to each party to this Agreement. The report shall be filed within 180 days of the close of each fiscal year.

D. The Finance Director, within 100 days after the close of each Fiscal Year, shall give a complete written report of all financial activities for such fiscal year to the Participants to this Agreement.

ARTICLE XII. CLAIMS:

All claims against the Authority, including but not limited to contested claims by public entities, or public officers and employees for fees, salaries, wages, mileage or other expenses, shall be filed within the time and in the manner specified in Chapter 2 (commencing with Section 910) of Part 3, Division 3.6 of Title I of the Government Code or in accordance with claims procedures approved by the Treasurer and established by the Governing Board of the Authority pursuant to Chapter 5 (commencing with Section 930) or Chapter 6 (commencing with Section 935) of said Part 3 of the Government Code.

ARTICLE XIII. ALLOWANCE OF CLAIMS BY FINANCE DIRECTOR:

The Finance Director shall audit and allow or reject claims in lieu of, and with the same effect as, allowance or rejection by the Governing Board of the Authority in any of

the following cases: Expenditures which have been authorized by purchase orders issued by an officer of the Authority authorized by said Governing Board to make purchases. Expenditures which have been authorized by contract, resolution or order of the Governing Board acting within the scope of its authority.

ARTICLE XIV. INSURANCE/BONDS:

The Authority shall at all times maintain worker's compensation insurance and insurance against public liability and property damage to the extent reasonably necessary to protect the Authority, its officers, employees or agents and the Participants to this Agreement. Such insurance may be maintained in whole or in part in the form of self-insurance.

ARTICLE XV. FINANCING:

A. It is the intent of the Participants that the Joint Powers Authority shall become financially self-sufficient. Each of the Participants shall contribute a percentage of the budget based on its anticipated participation as set forth in Exhibit "A" attached hereto.

B. Each of the Participants agrees that its Water Enterprise Fund or such other fund as a Participant may determine, but not the Participant's General Fund, shall be responsible for paying its respective share of the budget as set forth in Exhibit "A" attached hereto.

C. Each of the Participants to this Agreement may, but is not required to, contribute additional money, office space, furnishings, equipment, supplies or services as the respective Participants, thereof may deem appropriate.

D. Funds may also be derived through State subvention funds, Federal grants, bonds or other available sources. The Authority may also apply for available State or Federal funds and shall make new and additional applications from time to time as appropriate. The Authority may also establish and collect various fees, leases or rents as may be authorized by law.

E. The initial budget shall not exceed \$100,000.00 unless specifically authorized by unanimous vote of the Governing Board.

F. The Governing Board shall determine on an annual basis, prior to the beginning of each fiscal year, a level of reasonable cash reserves to be accumulated by the Authority. This reserve shall be accumulated from revenues collected in excess of all actual costs of the Authority. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the Authority shall be considered excess revenue and, subject to any limitation in any bond or other financing

agreement, carried forward as revenue for the next fiscal year and serve to reduce each Participant's respective assessment for such subsequent fiscal year

ARTICLE XVI. FINANCE DIRECTOR DESIGNATED AS TREASURER:

The Finance Director of Modesto is hereby designated to be Treasurer of the Authority. Subject to the applicable provisions of any resolution, trust agreement or indenture authorizing the sale of certificates of Participation or issuance of any Bonds and providing for a trustee or fiscal agent, the Finance Director is designated as the depository of the Authority to have custody of all money of the Authority from whatever source in accordance with Section 6505.5 of the Law, and, as such, shall have the powers, duties and responsibilities specified in such Section 6505.5 of the Law; provided, however, that moneys of the Authority shall be kept separate and apart from, and shall not be commingled with, moneys of the City.

ARTICLE XVII. AUDITOR:

The Auditor, being of the same public agency as the Finance Director, is hereby designated as Auditor of the Authority in accordance with Section 6505.5 of the Law. Subject to the applicable provisions of any resolution, trust agreement, or indenture authorizing the sale of Certificates of Participation or issuance of any Bonds and providing for a trustee or fiscal agent, the Auditor shall have the powers, duties and responsibilities specified in such Section 6505.5 of the Law.

ARTICLE XVIII. CHARGES FOR SERVICE OF TREASURER AND AUDITOR:

City Council of the City of Modesto, being the governing body of the same public entity as the Treasurer and Auditor, shall determine the charges to be made against the Authority for such services of the Treasurer and the Auditor, as provided in Section 6505.5 of the Law. All charges assessed by City's Council shall relate to direct costs incurred by the City of Modesto for the services provided to the Authority by the Depository and the Auditor, and are subject to the approval of the Governing Board.

ARTICLE XIX. BONDING PERSONS HAVING ACCESS TO PROPERTY:

The Participants acting through the Governing Board shall designate the public officers or persons who have charge of, handle, or have access to any property of the Authority, and each such officer shall file an official bond with the Secretary of the Authority in the amount fixed by the Governing Board, all as required by Section 6505.1 of the Law. If and to the extent permitted by law, any such officer may satisfy this requirement by filing an official bond obtained in connection with another public office.

ARTICLE XX. PARTICIPANT EMPLOYEES:

Each Participant shall assume all liability related to its employees who provide services in connection with this Agreement and shall indemnify and hold harmless the Authority, its agents, officers, and employees from and against all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorney's fees, arising therefrom. However, the Authority may, in its sole discretion, procure a policy or policies of insurance in the types and amounts it deems appropriate. In the event such policy or policies of insurance are procured by the Authority, such insurance coverage shall be primary over any obligation of the Participant under this section.

ARTICLE XXI: FINANCIAL ACCOUNTABILITY AND REPORTING

The Authority shall provide for strict accountability of all funds and report of all receipts and disbursements, in accordance with Section 6505 of the Law, and shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any resolution of the Authority providing for the sale of Certificates of Participation or the issuance of Bonds. The Authority shall maintain during the term of the Agreement, appropriate books, records, accounts, and files relating to its revenues and expenses, all of which shall be open to inspection at all reasonable times by the Participants, the Directors, and their designated representatives.

ARTICLE XXII. CONTRACT WITH CERTIFIED PUBLIC ACCOUNTANT:

The Auditor of the Authority shall either make or contract with a certified public accountant to make an annual audit of the accounts and records of the Authority, as required by Section 6505 of the Law. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally acceptable auditing standards. When such an audit of accounts and records is made by a certified public accountant, a report thereof shall be filed with each Director and with each Participant. Such report shall be filed within six (6) months of the end of the fiscal year under examination. Any costs of the audit, including contract with, or employment of, certified public accountants in making an audit pursuant to this section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

ARTICLE XXIII. ADJUSTMENTS TO DEDICATED CAPACITY

Any two or more of the Participants may adjust their respective Dedicated Capacity shares and redistribute their respective shares among themselves, so long as the total Dedicated Capacity share percentages of the Participants in the redistribution remains the same after the redistribution. The redistribution may be temporary or permanent. The redistribution shall be in writing, approved and signed by the involved Participants who are participating in the redistribution, and filed with the Authority. If

temporary, the writing shall indicate the effective dates of the redistribution. The redistribution also may reallocate the Participants' respective payment shares under Exhibit A, in which case the writing also shall indicate the changes to the Exhibit A shares, whether temporary or permanent, and, if temporary, the effective dates of the changes.

ARTICLE XXIV. BREACH:

If default shall be made by a Participant of any covenant contained in the Agreement, such default shall not excuse the other Participants from fulfilling their obligations under the Agreement and the other Participants shall continue to be liable for obligations herein contained. The Participants hereby declare that the Agreement is entered into for the benefit of the Authority created hereby and the Participants hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each Participant hereunder. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of any one right or remedy shall not impair the right of the Authority to any or all other remedies.

ARTICLE XXV. DISPOSITION OF ASSETS ON TERMINATION OF AGREEMENT:

At the termination of this Agreement, all funds on hand shall be returned to the respective Participants as nearly as possible in the proportion to the contribution that Participant made to the funds then on hand. Any equipment, furniture, or furnishing that can be identified as having been contributed by any Participant to this Agreement shall be transferred to and become the property of the Participant contributing such equipment, furniture, or furnishings. Any other property of the Authority shall be converted to cash and distributed among the Participants to this Agreement in proportion to their contributions.

ARTICLE XXVI. NOTICES:

Notices hereunder shall be sufficient if delivered to:

Art deWerk	Greg Nyhoff	Roy Wasden
City Manager	City Manager	City Manager
City of Ceres	City of Modesto	City of Turlock
2720 Second Street	P.O. Box 642	156 South Broadway
Ceres, CA 95307	Modesto, CA 95353	Turlock, CA 95381

ARTICLE XXVII. MISCELLANEOUS:

A. The article headings herein are for convenience only and are not to be construed as modifying or governing the language of the article referred to.

B. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

C. This Agreement is made in California under the Constitution and laws of California and is to be so construed.

D. To preserve a reasonable degree of flexibility, many parts of this Agreement are stated in general terms. It is understood that there will be one or more additional agreements executed and amended from time to time which will further define the rights and obligations of the participants regarding owning, operating, maintaining and financing the Project.

E. This Agreement may be amended any time by mutual agreement of the Participants provided that before any amendments shall be operative or valid, they shall be reduced to writing and executed by all of the Participants.

ARTICLE XXVIII. PARTIAL INVALIDITY:

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XXIX. INCORPORATION OF THE ACT:

Notwithstanding any other provision of this Agreement, it is the intent of the Participants that all actions of the Authority and the Governing Board shall be in conformance with the Act or regulations adopted pursuant thereto as they exist on the effective date of this Agreement or as they may be subsequently amended.

ARTICLE XXX. LIMITATION ON FISCAL OBLIGATIONS AND PARTIES' LIABILITY:

Notwithstanding the general powers of the Authority set forth in this Agreement, the Authority shall not incur any financial or contractual obligations unless it has already obtained sufficient funds or a binding commitment for funds to pay for the full cost of said obligations. The Authority shall specify in all contracts for purchase of goods and services that responsibility for payment is that of the Authority and shall not be the debts, liabilities or obligations of the Participants to this Agreement or any of them.

ARTICLE XXXI. INDEMNIFICATION:

The Authority shall indemnify, defend, and save harmless each Participant, their

officers, agents and employees, from and against any and all claims and losses whatsoever occurring or resulting to persons, firms or corporations furnishing or supplying work, services, materials or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm or corporation, for damage, injury or death arising out of, relating to, or connected with the Authority's performance of its obligations under this Agreement.

ARTICLE XXXII. CONFLICT OF INTEREST CODE:

The Authority shall adopt a Conflict of Interest Code in accordance with the Political Reform Act (commencing with Section 81000 of the Government Code of the State.)

ARTICLE XXXIII. CERTIFICATES OF PARTICIPATION AND BONDS:

The Authority shall have power to sell or cause to be sold Certificates of Participation and to sell bonds from time to time in accordance with the provisions of the Act for the purpose of raising funds necessary to finance or refinance the Project and to carry out its powers under this Agreement.

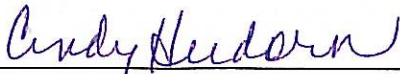


IN WITNESS WHEREOF, the Participants have caused their names to be affixed hereto by the proper officers thereof. This Agreement shall be effective as of the date and year first written above.

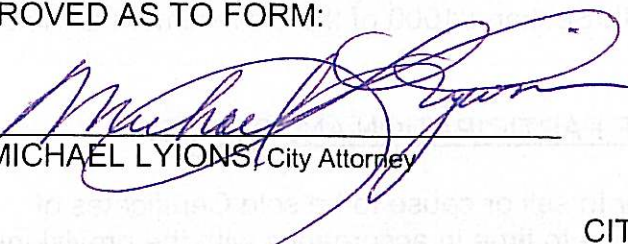
CITY OF CERES

By: 
ART deWERK, Acting City Manager

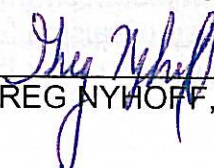
ATTEST:

By: 
CINDY HEIDORN, City Clerk


APPROVED AS TO FORM:

By: 
MICHAEL LYONS, City Attorney

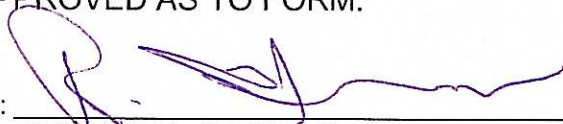
CITY OF MODESTO

By: 
GREG NYMOFF, City Manager

ATTEST:

By: 
STEPHANIE LOPEZ, City Clerk
Resolution 2011-395 September 27, 2011

APPROVED AS TO FORM:

By: 
ROLAND R. STEVENS, Assistant City Attorney

CITY OF TURLOCK

By: 
ROY WAsDEN, City Manager

ATTEST:

By: 
RHONDA GREENLEE, City Clerk

APPROVED AS TO FORM:

By: 
PHAEDRA NORTON, City Attorney

EXHIBIT "A"

JPA FINANCING PERCENTAGES*

	Phase 1	Phase 2
TURLOCK	56.0%	38.0%
CERES	22.0%	31.0%
MODESTO	22.0%	31.0%

***Based on percentage of capacity**

