

**AGREEMENT FOR PURCHASE OF WATER FROM THE NORTH SAN JOAQUIN
WATER CONSERVATION DISTRICT BY THE CITY OF LODI**

This Agreement is made and entered into between North San Joaquin Water Conservation District and the City of Lodi, a municipal corporation, entities located within the County of San Joaquin, State of California, this ___ day of _____ 2014.

Background Recitals

- a. The City of Lodi (City) obtains its municipal water supply largely from wells located within the City, extracting the water from the underground aquifer, which is replenished in part by flows of the Mokelumne River. Lodi desires to acquire a supplemental surface water supply to reduce its dependence upon the wells and the possible impacts of eventual overdraft of the groundwater supply.
- b. North San Joaquin Water Conservation District (District) is a water conservation district that is organized and exists under the Water Conservation Law of 1931. The District's jurisdiction covers the eastern half of the City of Lodi.
- c. The District has an appropriative right to divert water from the Mokelumne River under Permit 10477, as amended on December 11, 1992. Permit 10477 allows the District to directly divert water up to 80 cubic feet per second (cfs) from December 1 to July 1 of the succeeding year, and store up to 20,000 acre-feet of water per year to be collected from December 1 to July 1 of the succeeding year. The permit restricts direct diversion to no more than 40 cfs at any one pumping facility. The District's water is stored in Camanche Reservoir pursuant to an agreement between the District and East Bay Municipal Utility District (EBMUD).
- d. The District can request that EBMUD release the District's water from Camanche Reservoir such that the released water would flow down river to Lodi Lake where it could be diverted by the City for delivery to the City's surface water treatment plant via the existing Woodbridge Irrigation District (WID) diversion facilities (Point of Delivery).
- e. In order to maximize the use of surface water, and reduce the use of groundwater in the City, the City and the District desire to contract for the City's purchase of Mokelumne River water from the District pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT AND
THE CITY OF LODI AGREE AS FOLLOWS:

1. Water to be Made Available to the City. Beginning October 15, 2015, and continuing through the term of this Agreement, the District shall sell to the City up to 1,000 acre-feet of water per Transfer Period under the terms and conditions herein set forth. For

purposes of this Agreement, the term "Transfer Period" means the time period between October 15th and March 30th of each calendar year. The District's obligation to sell up to 1,000 acre-feet of water per Transfer Period to the City is conditioned on the following:

- a. There are 20,000 acre-feet of water available to the District pursuant to Permit 10477 as determined by May 1st preceding the beginning of the Transfer Period. For example, water availability for the Transfer Period beginning October 15, 2015 shall be determined as of May 1, 2015.
 - b. EBMUD has agreed to facilitate the delivery of water from Permit 10477 to City during the Transfer Period on the schedule requested by the City. City acknowledges that (1) District's Permit 10477 provides for direct diversion and diversion to storage only between December 1 and July 1 and (2) diversion from storage between November 5th and March 30th will require the agreement of EBMUD.
 - c. The City and WID have an agreement to allow WID to deliver the purchased water from the Point of Delivery to the City.
 - d. City has paid District for the water pursuant to Paragraph 2.
 - e. The State Water Resources Control Board has approved the use of the WID diversion facility as an authorized point of diversion for Permit 10477.
2. Payment. City will pay District ONE HUNDRED DOLLARS (\$100) per acre-foot of water made available pursuant to this Agreement, less any charges levied on City by WID to convey said water from the Point of Delivery to City. Payments for water estimated to be needed under Paragraph 3.a. are due and payable in advance on each September 15th preceding the requested release period. If District is unable to cause water to be released from Camanche Reservoir for City pursuant to this Agreement after City has made payment, City's payment shall remain as a credit toward future purchases pursuant to this Agreement.
3. Scheduling, Release, Diversion and Use.
- a. Availability Determination. The District shall notify the City of water availability under Permit 10477 on or about May 1st of each calendar year during the term of this Agreement.
 - b. Scheduling Request. The City shall notify the District, no later than July 1st of each calendar year during the term of this Agreement, of the amount of water requested to be purchased by City during the upcoming October 15th to March 30th Transfer Period along with a schedule of requested releases. The schedule

shall be subject to District approval. The City shall schedule water such that requested flow rates are constant for each month of requested release.

- c. Release and Diversion. Upon receipt of the schedule from the City, the District will request that EBMUD release from Camanche Reservoir the water requested by the City pursuant to the submitted schedule. The water is expected to flow down river to Lodi Lake where it can be diverted by the City at the Point of Delivery pursuant to an agreement between the City and WID for use of WID's facilities. The District shall have no obligations with respect to the facilities used for the diversion of water from the river by WID or the City.
 - d. Additional Water. If it is possible for the District to sell additional water to the City during the April 1st through October 15th period following the Transfer Period, or to release water in excess of 1,000 acre feet during the October 15th through March 30th Transfer Period, then by mutual written agreement of the parties, the District may sell additional water to the City. The City shall pay the District \$100 per acre-foot of any such additional water released for the City less any charges levied on City by WID to convey said water from the Point of Delivery to City. The determination of whether any such water is available for release shall be made solely by District.
 - e. Use. The water furnished by the District under this Agreement shall be used by the City only for municipal, industrial, and irrigation uses within the place of use of Permit 10477.
4. Term of Agreement.
- a. This Agreement shall be effective from the date of execution hereof, and shall remain in effect for a term of five (5) years from said date.
 - b. Upon receipt by the District of written notice and request for renewal from the City one year in advance of the termination of this Agreement, the District agrees to renew this Agreement for an additional five (5) year term, on terms and conditions that are reasonable and equitable, and which are mutually satisfactory to the District and the City. This Agreement is subject to up to seven (7) such renewals, for a total term not to exceed forty years.
 - c. If the parties agree to renew this Agreement pursuant to Paragraph 3.b., the amounts payable to the District under Paragraph 2, shall be increased by two percent per year above the amounts payable during the preceding calendar year. In the event the annual change in the Consumer Price Index (CPI-W, unadjusted U.S. average) published in December of each year by the United States Bureau of Labor Statistics, commencing in December in the year preceding such fifth year, has increased more

than two (2) percent above the December Index of the prior year, the increases in the amounts payable in the next calendar year shall be in the percentage of that increase, provided that any such annual increase shall not exceed five percent (5%).

5. City Payments to be Made from City's Water System Revenues. The City shall make payments under this Agreement solely from the Revenues (as defined below) of, and as an operating expense of, the Lodi Municipal Water System (as defined below). The City hereby pledges the Revenues to the payments required hereunder. Nothing herein shall be construed as prohibiting the City from using any other funds and revenues for purposes of satisfying any provisions of this Agreement. So long as the City is in compliance with all its obligations hereunder, such pledge shall not prevent its application of Revenues to other operating expenses of the Lodi Municipal Water System or, subject to the payment of such operating expenses, to other lawful purposes, or impair the rights of any recipient of Revenues lawfully so applied.

“Revenues” means “all gross income and revenue received or receivable by the City from the ownership and operation of the Lodi Municipal Water System, the gross income and revenue of which shall be calculated in accordance with generally accepted accounting principles, including all rates, fees, and charges received by the City for water service and connection and hook-up fees and all other income and revenue howsoever derived by the City from the ownership and operation of or arising from the Lodi Municipal Water System, but excluding in all cases any proceeds or taxes and any refundable deposits made to establish credit, federal or state grants, or advances or contribution in aid of construction.”

“Lodi Municipal Water System” means “the municipal water system of the City existing on the effective date of this Agreement and all additions, betterments, extensions, and improvements thereto hereafter acquired or constructed.”

6. No Permanent Water Right, and Water Availability. The parties agree that no permanent right to the water supplied by the District shall accrue to the City except pursuant to and as limited by the terms of this Agreement. The City shall have no claim for damages or breach arising from the unavailability of water from the District for any cause or condition.
7. Banking. The City may “bank” any water that it has paid for that either: a) The City has not been able to take delivery of for any reason; or b) the District has not been able to deliver. The City shall have the right to take delivery of any banked water in any Transfer Period that it is available during the term of this Agreement or any extension thereof and continuing through the tenth year after the expiration of this Agreement or any extension thereof, provided that:

- a. Delivery of banked water occurs in years in which the District has water available under Permit 10477 (City understands that District does not have a carry-over storage right in Camanche Reservoir that enables it to store water from year to year);
- b. Delivery of banked water is on a constant release schedule acceptable to EBMUD and WID for operational purposes;
- c. The City may not take delivery of banked water such that total deliveries to the City would exceed 1,000 acre-feet of water under Permit 10477 between December 1st and November 30th of a given calendar year, unless the District determines that it does not have other demands for the water available from Permit 10477.

7. Water Quality, Temporary Interruptions, and Responsibility for the Water Beyond Point of Release.

- a. The water being supplied to the City is raw water released from the Mokelumne River, and the character or quality of the water furnished hereunder may vary from time to time. The District does not guarantee in any respect the character or quality of the water furnished pursuant to this Agreement.
- b. It is agreed there may be, in addition to shortages of water, temporary discontinuance or reduction of water to be furnished for the City as herein provided, for purposes of investigation, inspection, maintenance, repair, or replacement as may be necessary of any of the facilities used by the District for furnishing water to the City. The District agrees to provide the City notice of such temporary discontinuance of reduction of water as soon as such information is available to the District.
- c. The City shall hold the District harmless from and defend the District from all claims or expenses on account of damages or claim of damage of any nature whatsoever that arise from or relate to the City's actions in performing this Agreement, including property damage, personal injury, or death, arising out of or connected with the release, delivery, control, carriage, handling, use, disposal, or distribution of water furnished hereunder at or after the Point of Delivery. The District shall hold the City harmless from and defend the City from all claims or expenses on account of damages or claim of damage of any nature whatsoever that arise from or relate to the District's actions in performing this Agreement, including property damage, personal injury, or death, arising out of or connected with the release, delivery, control, carriage, handling, use, disposal, or distribution of water furnished hereunder to the Point of Delivery.

8. Arrearage in Payments. No water shall be furnished to the City during any period in which the City may be in arrears in payment of charges accruing hereunder after the determination on the amount thereof as above provided. Interest on arrearage in payment shall be charged at a rate of one and a half (1.5) percent per month and compounded monthly, commencing 45 days after the due date of the payment.
9. Assignment. The provisions of this Agreement shall apply to and bind the successors and assigns of the respective parties hereto; but no assignments or transfer of this Agreement or any part thereof or interest therein by the City shall be valid unless and until approved in writing by the District; and no assignment of the obligation to provide or deliver the water shall be assignable by the District without the written consent of the City.
10. California Environmental Quality Act and Other Applicable Laws and Regulations. The parties understand and agree that this Agreement is subject to compliance with the California Environmental Quality Act (CEQA) and all other applicable laws and regulations. The parties further agree the District prepared and certified an Initial Study and Mitigated Negative Declaration on March 10, 2014 which covers this Agreement.
11. Entire Agreement. This Agreement contains the full and entire Agreement of the parties and there are no other conditions, either explicit or implicit, nor any warranties or promises other than those contained within the written terms of this Agreement.
12. Time of the Essence. Time is of the essence in the performance of this Agreement.
13. Nonwaiver. The failure of either party to enforce or abide by a term or condition of this Agreement shall not constitute a waiver of that term or condition unless a written Agreement is prepared specifically providing for the waiver or forgiveness of that term and such Agreement is executed by each party hereto.

[agreement continued on next page]

14. Date of Execution. The date of execution of this Agreement is the date of execution by the party last signing the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____ 2014.

NORTH SAN JOAQUIN WATER
CONSERVATION DISTRICT

Dated: _____, 2014

By _____

Joe Valente, Board President

Attest:

APPROVED AS TO FORM:

Thomas Flinn, Board Secretary

Roger Masuda, General Counsel

CITY OF LODI, a municipal corporation

Dated: _____, 2014

By _____

Stephen Schwabauer, City Manager

Attest:

APPROVED AS TO FORM:

Janice D. Magdich, City Attorney