

WATER PURCHASE AGREEMENT

THIS WATER PURCHASE AGREEMENT (Agreement) is made and entered into this ____ day of December, 2016, by and between the City of Fresno, a municipal corporation (City) and Wheeler Ridge - Maricopa Water Storage District, a California water storage district (District).

RECITALS

WHEREAS, the District, a Member Unit of the Kern County Water Agency, would like to purchase up to 5,629 acre-feet of the City's 2016 allocation of Class 1 Central Valley Project (CVP) water from Millerton Lake (Project Water), in accordance with the City's contract 14-06-200-8901D (9D Contract) with the U.S. Bureau of Reclamation (Bureau), for use within the boundaries of the District; and

WHEREAS, the City desires to sell up to 5,629 acre-feet of Project Water to District; and

WHEREAS, Section 10 of the City's 9D Contract provides that the City and the District may arrange for delivery of such water to the District, and provide notice of such arrangement to the Bureau so that it may deliver such water to the District.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Term. This Agreement pertains only to the City's 2016 entitlement to Project Water. This Agreement shall terminate upon completion of the transfer of the City's Project Water and the payment of all funds owed, as provided for herein.
2. Water Transfer. The City shall make available to the District 371 acre-feet of the City's allocated 2016 Project Water. The Point of Delivery (POD) shall be at San Luis Reservoir. Upon execution of this Agreement, the City and District shall notice the Bureau to immediately transfer the water at the POD to the Department of Water Resources (DWR) on behalf of the Kern County Water Agency and the District. The District may then schedule delivery of the water with the DWR anytime during 2017. The City and the District shall undertake all reasonable efforts necessary to effectuate the transfer of the City's Project Water as provided in this Agreement. The District shall take all reasonable steps to take delivery of and make reasonable and beneficial use of the full quantity of Project Water transferred from the City. The City shall pay Bureau all fees and charges associated with delivery of this water to the POD.
3. Compensation. The District shall remit to the City \$800 per acre-foot for 371 acre-feet of the City's 2016 Project Water, totaling \$4,503,200, within thirty (30) days of the later date of execution of this Agreement, approvals obtained, and environmental compliance completed.
4. Counterparts. This Agreement may be executed in counterparts by the parties. Facsimile signatures shall be binding.

5. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior agreements with respect to that subject matter, whether verbal or written, are hereby superseded in their entirety by this Agreement and are of no further force or effect. Amendments to this Agreement shall be effective only if in writing, and then only when signed by the authorized representatives of the respective parties.
6. Specific Performance. The parties acknowledge that the water to be transferred and exchanged under this Agreement is unique, and that the failure of the City or the District to perform under this Agreement may not be readily compensable in monetary damages. Therefore, in addition to any other remedies available at law or in equity, in the event of a breach or threatened breach of this Agreement, the City and the District shall each be entitled to specific performance of this Agreement.
7. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, and that provision cannot be reformed to be enforceable consistent with the overall intent of this Agreement, the entire Agreement shall be void and unenforceable.
8. Ambiguities. This Agreement shall be interpreted as if it had been jointly drafted by both parties. Therefore, the normal rule of construction that ambiguities are construed against the drafter is hereby waived.
9. Notices. All notices under this Agreement shall be effective (i) when personally delivered, (ii) when sent by facsimile on a business day between the hours of 8 a.m. and 5 p.m. (with written confirmation of transmission), at the numbers set forth below, provided that a copy is mailed as indicated below, or (iii) three business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective parties as follows:

To City:

Thomas Esqueda, Director of Public Utilities
City of Fresno
Department of Public Utilities
2600 Fresno Street, Room 4019
Fresno, CA 93721
Facsimile No.: (559) 488-1024
Telephone No.: (559) 621-8600

To Wheeler Ridge – Maricopa Water Storage District:

Robert J. Kunde, Engineer-Manager
12109 Highway 166
Bakersfield, CA 93313-9630
Facsimile No.: 661-858-2643
Telephone No.: 661-858-2281 x6070
rkunde@wrmwsd.com

or such other address or facsimile number as the parties may from time to time designate in writing. As a matter of convenience, however, communications between the City and the District shall, to the extent feasible, be conducted orally by telephone or in person, and/or through the parties' respective counsel, with such communications to be confirmed and made effective in writing as set forth above provided no such oral notice or communication shall be effective unless so confirmed in writing.

10. No Third Party Beneficiaries. This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a party to this Agreement.
11. Environmental Compliance. The obligations of the parties under this Agreement are expressly conditioned upon: (i) compliance with the California Environmental Quality Act (CEQA), the National Environmental Protection Act (NEPA) and all other applicable environmental laws with respect to the actions contemplated by this Agreement, and (ii) the receipt of all necessary governmental consents and approvals for those actions. Each party shall promptly prepare all appropriate environmental documents, if any are required, for it to undertake the actions contemplated in this Agreement. The parties shall cooperate to diligently complete all environmental review required in order to implement this Agreement, and shall use reasonable efforts to reduce any overlap in analyzing, mitigating, or studying environmental impacts associated with the actions proposed in this Agreement. Notwithstanding any other provision of this Agreement, no action shall be taken to effect the actions contemplated by this Agreement, and no other action shall be taken that commits any material resources of any party, until all required environmental review is completed and all parties have independently made all findings required by CEQA and other applicable environmental laws. If, upon completion of such environmental review, a party finds one or more significant, unmitigated environmental impacts resulting from the actions contemplated by this Agreement and cannot make a finding that the benefits of the proposed project outweigh the impact or impacts, or that the impacts can be mitigated to a level below significance, then this Agreement shall terminate without further obligation or liability of any party. Neither the execution of this Agreement, nor any preliminary steps taken to implement this Agreement, shall be taken into account in determining whether mitigating or avoiding any significant impact is feasible.
12. Attorneys' Fees. In the event of any action between the parties seeking enforcement or interpretation of any of the terms and conditions of this Agreement, the prevailing party in such action shall be awarded its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees and costs.

[Signatures follow on next page]

CITY OF FRESNO,
A California municipal corporation

By: _____
Thomas C. Esqueda, Director
Department of Public Utilities

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ Date
Amanda B. Freeman
Deputy City Attorney

DUDLEY RIDGE WATER DISTRICT, a
California water district

By: _____

Name: _____

Title: _____
Robert J. Kunde, Engineer-Manager

By: _____

Name: _____

Title: _____
James A. Smith, Assistant Treasurer