

WATER TRANSFER AGREEMENT
BY AND BETWEEN
MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT
AND
SOUTH SAN JOAQUIN IRRIGATION DISTRICT

This Agreement is entered into this 30th day of JUNE, 2015, between and among the South San Joaquin Irrigation District ("SSJID") and the Mountain House Community Services District ("Purchaser").

RECITALS

WHEREAS, SSJID is a California irrigation district operating under and by virtue of Division 11 of the California Water Code; and

WHEREAS, Purchaser is a California community services district governed by Division 3 of Title 6 of the California Government Code; and

WHEREAS, Purchaser provides potable water to customers within its boundaries which are wholly within San Joaquin County; and

WHEREAS, SSJID supplies water for irrigation and drinking from the Stanislaus River to customers within its boundaries and outside its boundaries within San Joaquin County, and as part of its irrigation service, operates groundwater pumps both to augment surface water supply and to reduce groundwater in areas within SSJID that have a high groundwater table and would not otherwise be conducive to growing of deep-rooted crops; and

WHEREAS, Purchaser desires to purchase water from SSJID as the result of the curtailment of its surface supply normally supplied by Byron-Bethany Irrigation District; and

WHEREAS, due to changes in land use patterns, ongoing conservation measures, facility improvements and other measures, the water to be supplied by SSJID to Purchaser from its groundwater wells as described hereafter is surplus to the needs of its landowners and water users in accordance with California Water Code Section 22259.

NOW, THEREFORE, SSJID and Purchaser, on the terms and conditions herein set forth, agree as follows:

AGREEMENT

1. **DEFINITIONS:** The following definitions shall govern this agreement:

a. "Agreement-Water" means the groundwater to be supplied by SSJID from certain groundwater wells owned and operated by SSJID, as determined by SSJID, which is surplus to the current needs of the landowners and water users of SSJID in accordance with California Water Code Section 22259, and which is to be transferred to the Purchasers by this Agreement. Agreement-Water may be made available to Purchaser by SSJID at the flow rates described below through SSJID's Drain 11, an unlined open channel, at the Point of Delivery for Drain 11 as described in Paragraph 1c; through SSJID's French Camp Outlet Canal ("FCOC"), an unlined open channel, at the Point of Delivery for the FCOC as described in Paragraph 1d; or through both as SSJID shall determine as described below.

b. "Delivery" means SSJID making Agreement-Water available to Purchaser pursuant to the terms and provisions of this Agreement. This definition is intended to include the grammatical variations of the term "delivery" including "deliver" and "delivered", where such term references water.

c. "Point of Delivery for Drain 11" means for Agreement-Water made available to Purchaser from SSJID's Drain 11, the point at which Drain 11 terminates, said Drain 11 running up to and including a culvert within an existing levee, at a slough connected to the San Joaquin River system.

d. "Point of Delivery for the FCOC" means for Agreement-Water made available to Purchaser from SSJID's French Camp Outlet Canal, the point at which the FCOC terminates, said FCOC running up to and including a culvert beneath the Union Pacific Railroad tracks, at the French Camp Slough which is connected to the San Joaquin River system.

2. **TERM:** This Agreement shall expire on December 31, 2015, unless extended by written agreement of the parties. A party can terminate this Agreement before that date effective on the last day of any month beginning with September 30, 2015, by providing written notice of termination to the other party at least 30 days before the date that this Agreement is to terminate.

3. **AGREEMENT TO TRANSFER:** SSJID agrees to sell and deliver, and Purchaser agrees to purchase Agreement-Water during the term of this Agreement for reasonable and beneficial use within Purchaser's boundaries, in the quantities described and subject to the terms and conditions of this Agreement.

4. **QUANTITY AND RATE:** SSJID agrees to sell and deliver to Purchaser 1,800 acre-feet of Agreement-Water at a weekly average rate of 5 cubic feet per second, or at a weekly average rate mutually agreed upon by the Parties not to exceed 10 cubic feet per second. Upon execution of this Agreement, and thereafter on the first day of each month in which this Agreement is in effect, the Parties shall meet and confer to decide whether to mutually agree to adjust the rate at which Agreement-Water will be delivered during the ensuing month. Purchaser understands that deliveries of Agreement-Water will vary during each day and from day to day. On some days no water will be delivered, because when Magnacide is present in SSJID's irrigation system for treatment of aquatic weeds, water is not released from the irrigation system to SSJID's drains, including Drain 11 and the FCOC. SSJID may choose between using Drain 11 or the FCOC at

any time when making Agreement-Water available to Purchaser, or may use both at the same time, as SSJID shall determine in its discretion.

5. **PURCHASE PRICE:** Purchaser agrees to purchase and pay for the Agreement-Water at the rate of \$250 per acre-foot for Agreement-Water delivered to Purchaser in accordance with this agreement.

6. **PAYMENT:**

a. SSJID shall bill Purchaser monthly for the water delivered. Purchaser shall pay SSJID's invoice within thirty days of receipt of the invoice.

b. Purchaser shall also pay SSJID the sum of \$35,000 upon execution and delivery hereof as a condition to SSJID's obligations in this agreement. Such payment will be credited to the purchase price for water delivered in accordance with this agreement.

7. **INTEREST:** Purchaser shall pay SSJID interest at the annual interest rate of 10% on any invoices that remain unpaid thirty (30) days beyond the due date. The period of interest accrual begins on the invoice date and ends on the date payment is received by SSJID.

8. **WATER QUALITY:** SSJID makes no warranty or representations as to the quality or fitness for use of the Agreement-Water sold and delivered to Purchaser.

9. **WATER MEASUREMENT:** The amount of Agreement-Water delivered to Purchaser will be measured by SSJID by its flow sensor within Drain 11 and within SSJID's FCOC, depending upon the facility or facilities being used to make Agreement-Water available to Purchaser. The flow sensor in Drain 11 is located approximately ½ mile upstream from where Drain 11 terminates at the San Joaquin River system. The flow sensor for the FCOC is at located just upstream from where the FCOC terminates at the French Camp Slough.

10. **AGREEMENT-WATER DELIVERY:** SSJID will deliver Agreement-Water to Purchaser at the flow rates and in the amounts listed in Paragraph 4. Purchaser will assume responsibility for the Agreement-Water at the Point of Delivery of the SSJID facility being used, whether SSJID's Drain 11, SSJID's FCOC or both. Delivery shall be subject to the limitations described in this Agreement, including Paragraphs 11, 12, and 18. Delivery is subject to available capacity in the San Joaquin River.

11. **LIMITING CONDITIONS:** SSJID's obligation to deliver the quantity of water specified in Paragraph 4 of this Agreement will, at all times, be subject and subordinate to the following conditions: (1) capability of SSJID's well pumps described in Paragraph 1a to provide the necessary flow of water, (2) applicable federal and state laws now in existence and as modified from time to time, affecting SSJID's rights or obligations.

12. **WATER SUPPLY REDUCTIONS:** Water to be delivered to Purchaser under this Agreement may be reduced by SSJID for any of the following reasons: the provisions of Paragraph 11; failure of its wells described in Paragraph 1a or its other facilities necessary to

convey the water to the point of delivery described in Paragraph 1b; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of water otherwise available to SSJID; and any action, legislation, ruling or determination adverse to SSJID affecting this Agreement and beyond the reasonable control of SSJID. Purchaser shall have no obligation to pay for Agreement-Water that is not delivered because of a reduction of supply caused by factors listed in this Paragraph. SSJID shall notify Purchaser in writing, or in any other manner mutually agreed upon by the Parties, as early as reasonably possible when Agreement-Water will not be available for delivery.

13. **DIVERSION COSTS**: All permitting, construction, reconstruction, and maintenance costs for facilities necessary or used to divert Agreement-Water once it is delivered by SSJID to Purchaser at the Point of Delivery, shall be borne solely by Purchaser. Purchaser is solely responsible for all costs associated with losses, diversion headworks, pumping facilities, wheeling costs or other actions or approvals necessary to divert, convey, transport, treat, and deliver Agreement-Water to the Purchaser's customers.

14. **WATER RIGHTS**: SSJID intends that the Agreement-Water shall be from groundwater. As such, SSJID does not intend to seek the approval of this transfer from the California State Water Resources Control Board.

15. **ENVIRONMENTAL REVIEW**: Purchaser and SSJID anticipate that this transaction is exempt from California Environmental Quality Act (CEQA) based on the ongoing operation exemption (14 Cal. Code Regs. 15261); projects necessary to prevent or mitigate an emergency (14 Cal. Code Regs. 15269); projects designed to protect the environment (14 Cal. Code Regs. 15307); and on the basis that there is no possibility that release of the subject water into the San Joaquin River for re-diversion in the southern delta in this water year will cause any significant adverse impacts on the environment. If either party determines that further CEQA review is required, SSJID will not be obligated to make Agreement-Water available to Purchaser until completion of additional CEQA review and the time to challenge the CEQA determination has expired. In such event, SSJID will be lead agency and costs will be shared as provided in Paragraph 17.

16. **TERMINATION**: In addition to the termination provisions of paragraph 2, the Parties to this Agreement shall have the right of termination as set forth in this paragraph.

a. **SSJID**:

- (1) If any legal action is instituted that challenges this Agreement on any basis, including noncompliance with CEQA, SSJID may, by written notice to the Purchaser, request to modify or cancel this Agreement.
- (2) Should the State Water Resources Control Board or any other state or federal agency or any state or federal court, seek to exercise jurisdiction over this Agreement and/or SSJID's operations or its water rights, impose any requirements, limitations, operational restrictions, fees, charges, costs,

water rights restrictions or operating criteria upon SSJID in whole or in part as a result of the transfer of Agreement-Water under this Agreement, including refill restrictions or carriage water requirements, then SSJID may, in its sole and unlimited discretion, determine that compliance with such regulatory action is not in its interest, and terminate this Agreement. Written notice shall be provided to the Purchaser.

- (3) If, in SSJID's reasonable judgment, the cost of litigation, the restrictions imposed in the approvals of any regulatory agency, the mitigation measures imposed by any agency pursuant to CEQA, or any relief afforded to plaintiffs in an action brought in state or federal court involving this Agreement are too burdensome in relation to the benefits to be received under this Agreement, then SSJID may terminate this Agreement. Written notice shall be provided to the Purchaser.

b. Purchaser:

- (1) If any legal action is instituted that challenges this agreement on any basis, including noncompliance with CEQA, Purchaser may, by written notice to SSJID, request to modify or cancel this Agreement.
- (2) Should the State Water Resources Control Board or any other state or federal agency or any state or federal court, seek to exercise jurisdiction over this Agreement and/or Purchaser's operations or its water supply, impose any requirements, limitations, operational restrictions, fees, charges, costs, water rights restrictions or operating criteria upon the Purchaser in whole or in part as a result of the transfer of Agreement-Water under this Agreement, then Purchaser may, in its sole and unlimited discretion, determine that compliance with such regulatory action is not in its interest, and terminate this Agreement. Written notice shall be provided to SSJID.
- (3) If, in Purchaser's reasonable judgment, the costs of litigation, the restrictions imposed in the approvals of any regulatory agency, the mitigation measures imposed by any agency pursuant to CEQA, or any relief afforded to plaintiffs in an action brought in state or federal court involving this Agreement are too burdensome in relation to the benefits to be received under this Agreement, then Purchaser may terminate this Agreement. Written notice shall be provided to SSJID.

- c. Notice. A Party shall give 10 days' advance written notice to the other party prior to terminating this Agreement pursuant to this paragraph. Prior to giving such notice, the Party electing to terminate pursuant this paragraph shall meet and confer with representatives of the other Party to discuss and attempt to reasonably resolve the concerns.

In the event of termination under this paragraph, the Parties shall thereafter be under no further obligation or responsibility hereunder, and will release each other party from further obligations under this Agreement, except for Purchaser's obligation to pay for water delivered by SSJID according to this Agreement prior to the effective date of termination.

17. **EXPENSES**: Purchaser shall reimburse SSJID for 50% of its reasonable, out-of-pocket expenses, including, but not limited to, legal and environmental consultant's fees to comply with CEQA associated with this Agreement, not to exceed a total of \$20,000.

18. **COOPERATION**: To the extent reasonably required, the Parties to this Agreement shall, in good faith, assist the other in obtaining any necessary approvals and in preparing environmental documents. The Parties agree to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of this Agreement.

19. **WAIVER OR RIGHTS**: Any waiver, at any time, by any Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

20. **ASSIGNMENT**: This Agreement is entered into in reliance on water supplies available to SSJID, the credit of Purchaser, and the need of Purchaser for water, and therefore any attempted assignment of this Agreement in whole or in part without the prior written consent of the Parties hereto is void.

21. **NOTICES**: All notices that are required, either expressly or by implication, to be given by a Party to the other under this Agreement shall be signed by such Party's officers, employees or agents as the Party may, from time, authorize in writing to so act.

Any notices to Parties required by this Agreement shall be delivered in person, by facsimile, or by mail, United States first-class postage prepaid, or any form of one-day express delivery at the addressed as follows:

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

General Manager/Secretary
South San Joaquin Irrigation District
11011 East Highway 120
Manteca, CA 95336

MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT

Ed Pattison, General Manager
Mountain House Community Services District
230 S. Sterling Dr., Suite 100
Mountain House, CA 95391

Phone: (209) 831-2300
Fax: (209) 831-5610
epattison@sjgov.org

With copy to:

Neumiller & Beardslee
c/o Daniel J. Schroeder
P.O. Box 20
Stockton, CA 95201-3020
Phone: (209) 948-8200
Fax: (209) 948-4910
dschroeder@neumiller.com

Notice shall be deemed given (a) two calendar days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile, whichever is earlier. The Parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

22. **APPROVALS:** Where the terms of this Agreement provide for action to be based upon a judgment, approval, review or determination of any Party, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

23. **OTHER AGREEMENTS:** Nothing contained herein restricts SSJID from providing water services and sales to others as authorized by law which do not unreasonably interfere with SSJID's obligation hereunder.

24. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between SSJID and Purchasers and supersedes any oral agreement, statement or promise between them relating to the subject matter of this Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by both Parties to be effective.

25. **EFFECTIVE DATE:** The effective day and date of this Agreement shall be the day and date first above written.

26. **COUNTERPARTS:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

27. **GENERAL INTERPRETATION:** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument or any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under this Agreement. No rule of strict construction will be applied against any person.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

PURCHASER:

MOUNTAIN HOUSE COMMUNITY SERVICES DISTRICT

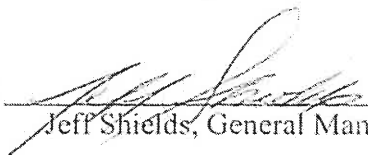
By: 
Ed Pattison, General Manager

Approved as to form:

By:  Rod Attebery for
Daniel J. Schroeder, Legal Counsel

SSJID:

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

By: 
Jeff Shields, General Manager