

## **MEMORANDUM OF UNDERSTANDING FOR PROVISION OF POTABLE WATER SERVICES**

This Memorandum of Understanding (“MOU”) to provide potable water service to an unincorporated area of San Bernardino County by and between San Bernardino County, a political subdivision of the State of California (“County”) and the City of Colton, a California general law city and municipal corporation (“City”). The County and City may collectively be referred to as the “Parties” or individually as a “Party.”

### **RECITALS**

- A. San Bernardino County is a legal subdivision and body corporate and politic of the State of California, duly organized and existing under and by virtue of the Constitution and laws of the State of California.
- B. The City of Colton is a California general law city and municipal corporation that operates a Water and Wastewater Department for the purpose of providing potable water within portions of the County.
- C. Terrace Water Company (“Terrace”) is a mutual water company that currently serves approximately 2,000 people. Its certificated Service Area is partially within unincorporated San Bernardino County and partially within the City, identified in Exhibit A (“Service Area”) and entirely within the City’s sphere of influence.
- D. In 2013, Terrace and the City entered into an emergency water agreement for Terrace to obtain potable water from the City through an intertie with the City’s water system. The City and Terrace amended the emergency water agreement in 2019, which allows Terrace to (1) purchase non-emergency water from the City as available, and (2) continue to maintain its distribution system, provide customer service, and bill its customers within the Service Area.
- E. In April 2020, the State Water Resources Control Board (“Water Board”) issued a compliance order to Terrace, finding that Terrace was unable to comply with maximum daily demand (“MDD”) regulatory requirements of the Safe Drinking Water Act. The Water Board imposed a service connection moratorium on Terrace and directed Terrace to complete a feasibility study to recommend options for meeting the MDD requirements. The feasibility study recommended that Terrace consolidate its water system with the City’s water system.
- F. Terrace has disconnected its wells and storage tanks. Since October 2021, Terrace has relied on the intertie with the City for its entire water supply to the Service Area.
- G. The County has the jurisdictional authority to provide potable water to the unincorporated portion of the Service Area. However, the County does not have potable water facilities, and it would not be economical for the County to provide potable water service to the Service Area.

- H. The City intends to file an exemption request pursuant to California Government Code Section 56133(e)(1) with the Local Agency Formation Commission for San Bernardino County ("LAFCO"), stating that it will continue to provide potable water services to the unincorporated portion of the Service Area. The City will provide this public service as an alternative to or substitute for potable water services by the County to the unincorporated portion of the Service Area. The level of service provided by the City is consistent with the level of service contemplated by the County.
- I. The County wishes for the City to continue to provide potable water services to the unincorporated portion of the Service Area. The City has agreed to provide such services for compensation pursuant to the terms set forth herein.

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

#### AGREEMENT

1. Purpose. The sole purpose of this MOU is for the City to continue providing potable water to the Service Area to the same extent that such services are currently being provided for the Terrace customers under the 2013 and amended 2019 emergency agreements. The City intends to enter into a consolidation agreement with Terrace. After consolidation, the City will own, operate, and maintain Terrace's water distribution system, and will deliver water directly to customers located within the Service Area. The City will provide potable water services to the Service Area including the unincorporated portion of the Service Area as an alternative to or substitute for the County providing potable water services to the said portion of the Service Area.
2. Compensation. The City will be compensated for the potable water services by Terrace in compliance with the City's rate schedule and any applicable connection fees. Once the City consolidates with Terrace, the City will be responsible to maintain the distribution system including maintenance and infrastructure, provide customer service, and bill the customers within the Service Area, and will be the lead agency for all rate changes in the Service Area. The City will comply with all legal requirements regarding imposing and changing rates including but not limited to Proposition 218.
3. Payment. The County has no obligation to the City for payment of water service in connection with this MOU.
4. Term. The term of this MOU shall commence upon the effective date of LAFCo's approval of City's exemption request under Government Code Section 56133(e)(1) and shall remain in effect as long as water services are required to the Service Area, unless the Parties agree in writing to an amendment, which is contingent on approval by the San Bernardino County Board of Supervisors and the City Council. Any change in service provider would require full disclosure to affected customers and property owners.

5. Water Quality. The City shall be responsible for ensuring that for the term of the MOU, the quality of the water is the same quality of water that it delivers to its current customers and complies with all regulations including the California Safe Drinking Water Act codified in the California Health & Safety Code section 116270 et seq. and the implementing regulations in Cal. Code Regs. Title 22. The City shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The City shall maintain these licenses, permits and/or certifications in effect for the duration of this MOU. The City will notify County immediately of loss or suspension of any such licenses, permits and/or certifications.
6. Good Faith Performance. The Parties diligently proceed in good faith to perform their respective obligations under this MOU. If at any time during the duration of this MOU, the City fails to provide potable water service to the unincorporated portion of the Service Area as required herein, the City shall ensure that potable water is made available to the said portion of the Service Area, which may include supplemental water delivery, to continue until agreement can be made for long term water service delivery to the said portion of the Service Area.
7. Disputes. If a dispute arises regarding the interpretation, application, claim, question, disagreement or enforcement arising from or relating to this MOU or breach thereof, the Parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties.
8. Attorney's Fees and Costs. If any legal action is instituted to enforce any Party's rights hereunder, each Party shall bear its own costs and attorney's fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney's fees directly arising from a third-party legal action against a party hereto and payable under the Liability section of this agreement.
9. Choice of Law. This MOU shall be governed by and construed according to the laws of the State of California.
10. Venue. The Parties acknowledge and agree that this MOU was entered into and intended to be performed in San Bernardino County, California. The Parties agree that the venue of any action or claim brought by any party to this MOU will be the Superior Court of California, San Bernardino County, San Bernardino District. Each Party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this MOU is brought by any third party and filed in another venue, the Parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.
11. Duration of Terms. This MOU, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties, provided no such assignment is in violation of the provisions of this Contract.

12. Assignment. Without the prior written consent of the other Party, the MOU is not assignable by either Party.
13. Legality and Severability. The Parties' actions under this MOU shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this MOU are specifically made severable. If a provision of the MOU is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.
14. Release of Information. No news releases, advertisements, public announcements or photographs arising out of the MOU may be made or used without prior written approval of the County and the City, with the exception for communications made in the regular course of business and operations necessary for the City to provide potable water to the unincorporated portion of the Service Area.
15. Liability. The County agrees to indemnify, defend (with counsel reasonably approved by City), and hold harmless the City and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by City on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The County indemnification obligation applies to City's "active" as well as "passive" negligence but does not apply to City's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

The City agrees to indemnify, defend (with counsel reasonably approved by County), and hold harmless County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this MOU from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees, City's indemnification obligation applies to County's "active" as well as "passive" negligence but does not apply to County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

In the event both parties are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the MOU, the parties shall indemnify the other to the extent of its comparative fault.

16. Insurance. County and City are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions, or obligations of this MOU.

17. Subpoena. In the event that a subpoena or other legal process commenced by a third party in any way concerning the services provided under this MOU is served upon the City or County, such Party agrees to notify the other Party in the most expeditious fashion possible following receipt of such subpoena or other legal process. The City and County further agree to cooperate with the other Party in any lawful effort by such other Party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations herein.

18. Notices. All written notices provided for in this MOU or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County  
County Administrative Office  
385 N. Arrowhead Ave., 5<sup>th</sup> Floor  
San Bernardino, CA 92415

City of Colton  
Water Utilities Department  
160 S. 10<sup>th</sup> Street  
Colton, CA 92324

Notice shall be deemed communicated three (3) County working days from the time of mailing if mailed as provided in this paragraph.

19. Amendments. This MOU may only be amended by mutual consent of the Parties in writing and approved by the San Bernardino County Board of Supervisors and the City Council.

20. Entire Agreement. This MOU, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this MOU not expressly set forth herein are of no force or effect. This MOU is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this MOU and signs the same of its own free will.

21. Electronic Signatures. This MOU may be executed in any number of counterparts, each of which so executed MOU shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

**IN WITNESS WHEREOF**, the San Bernardino County and the City of Colton have each caused this MOU to be subscribed by its respective duly authorized officers, on its behalf

SAN BERNARDINO COUNTY



\_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

Dated: \_\_\_\_\_

\_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF  
THIS

DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Lynna Monell

Clerk of the Board of Supervisors

of the San Bernardino County

By \_\_\_\_\_

Deputy

City of Colton

\_\_\_\_\_  
(Print or type name of corporation, company, contractor, etc.)



By \_\_\_\_\_

(Authorized signature - sign in blue ink)

Name Frank J. Navarro

\_\_\_\_\_  
(Print or type name of person signing contract)

Title Mayor

\_\_\_\_\_  
(Print or Type)

Dated: \_\_\_\_\_

Address 650 N. Cadena Dr.

\_\_\_\_\_  
Colton, CA 92324