

**Memorandum of Understanding
between Merced Irrigation District
and the City of Merced**

This Memorandum of Understanding memorializes the agreement between Merced Irrigation District and the City of Merced to cooperate in the development and execution of a water purchase and sale agreement. This Memorandum summarizes the parties' agreement with regard to certain purchase and sale terms, environmental review, and other preliminary actions necessary before the parties determine whether to execute a more detailed and comprehensive, long-term agreement.

1. Seller Agency. Merced Irrigation District is referred to herein as the "Seller," or "MID."
2. Buyer Agency. City of Merced is referred to herein as the "Buyer," or "City."
3. Recitals and Background.
 - a. Seller owns and enjoys a number of rights to surface water from the Merced River and local surface water resources. Seller conjunctively manages its surface water supplies together with groundwater resources for the benefit of its customers.
 - b. Seller has a desire to, among other things, 1) develop its water resources for the benefit of its customers; 2) protect its water resources from a variety of current and future regulatory challenges; and 3) support budgets through the temporary sale of water.
 - c. The California Sustainable Groundwater Management Act (SGMA) has been enacted. SGMA generally requires the long-term management of groundwater resources in a sustainable way and without causing undesirable results. Although groundwater management plans are still in development as of the time of execution of this Memorandum, the parties expect the future availability of groundwater resources will be restricted locally more than it is currently.
 - d. The Buyer currently relies solely on groundwater resources for its municipal water supply. While Buyer owns and enjoys certain water rights, Buyer desires to diversify its water portfolio by securing an additional source/supply of water that is reliable, to meet the needs of its 2030 General Plan.

- e. Buyer is cognizant of the local, state and federal regulatory challenges Seller is managing with respect to its rights to surface water from the Merced River, as well as to groundwater. The same or similar regulatory challenges could potentially threaten the Buyer's water supply or access to other water supply(ies), and therefore the Buyer and Seller desire to work together to address these challenges while integrating regional water management.
 - f. Seller and Buyer have enjoyed a long-standing relationship in the development and management of groundwater locally through the Merced Streams Group, Merced Integrated Regional Water Management Agency (MIRWMA) and more recently the Merced Irrigated-Urban Groundwater Sustainability Agency (MIUGSA), and desire to continue to work cooperatively on water related issues.
 - g. The Seller and Buyer are committed to the overall welfare of the greater community of Merced and therefore are interested in developing a mutually beneficial relationship regarding the temporary purchase and sale of water, including the potential purchase of surface water and/or groundwater, groundwater credits that may be developed as part of groundwater sustainability management planning efforts, or groundwater recharged from Seller facilities that support the future of the region in sustainable manner.
4. Purchase and Sale of Temporary Transfer Water. Buyer will purchase and Seller will make available and sell Transfer Water in the amount of (TBD) acre-feet annually for 20 years for a total maximum transfer amount of up to (TBD) acre-feet. The primary and preferred source of the Transfer Water will be surface water from Seller's water rights on the Merced River and Lake McClure.
- a. Seller is not selling a water right but rather a temporary right to use the water of Seller, and Buyer shall not obtain any additional rights with respect to said transfer water other than that conveyed in the purchase and sale agreement to be negotiated and executed between the parties.
 - b. Buyer is not relinquishing any of its water rights but rather is obtaining a temporary right to use the transfer water of Seller as set forth in a purchase and sale agreement to be negotiated and executed between the parties.
5. Purchase Price and Terms of Payment. Buyer will pay Seller a purchase price of \$(TBD) per acre foot. The Buyer shall pay Seller an initial payment of

\$(TBD) on or before (TBD). The balance of the purchase price shall be paid in annual installments of \$(TBD) (\$(TBD) per acre-foot times (TBD) acre-feet) beginning on (TBD) and ending on (TBD). Beginning in year (TBD), the annual installment payment of \$(TBD) per acre foot shall be adjusted each year [at a set rate of (TBD)% per year, or according to the Consumer Price Index, whichever is greater].

6. Point and Schedule of Delivery. The point of delivery of the Transfer Water will be (TBD). Seller will bear all costs and losses of conveying the Transfer Water to the delivery point. Buyer will bear all costs and losses of conveying the Transfer Water beyond the delivery point. The Transfer Water will be made available to Buyer upon a mutually agreed schedule that will be incorporated into the final purchase and sale agreement.
7. Water Quality. Seller makes no warranty as to fitness of the Transfer Water for any particular use, and the Buyer purchases the water in 'as-is' condition.
8. Environmental Review and Mitigation. The parties expect that after environmental review and mitigation, the proposed transfer will not significantly affect the quality of the human environment. However, the parties agree to coordinate and cooperate with each other to develop appropriate environmental review documentation. Buyer and/or Seller will file and cause to be posted a notice of determination stating that the requirements of the California Environmental Quality Act are satisfied at the appropriate time. The parties agree that the environmental review of for the transfer water will be shared equally. The parties understand and agree that given the uncertainty regarding the scope of the environmental review and potential mitigation measures that the cost allocation set forth herein may be subject to further negotiation as additional information becomes available.

Buyer will pay for any additional environmental studies or assessments, if required, in the Buyer's service area, that solely benefit buyer, as well as any mitigation measures required by CEQA. Either Seller or Buyer may elect to terminate this MOU if it determines, in its sole and unfettered discretion, that the cost of the environmental review and/or mitigation measures are financially infeasible.

9. Regulatory Approvals. Upon execution of a purchase and sale agreement, Seller and Buyer expect to jointly commence coordination with any local, state, and federal agencies, if any, having regulatory jurisdiction or operational responsibility over water or water conveyance facilities to make water available. Buyer and Seller shall share equally in any permitting costs, if any, that are required to implement the water transfer, provided however,

any permitting costs and mitigation measures applicable directly to the City within its municipal boundaries or sphere of influence, whichever is greater, shall be borne exclusively by the City.

10. Conditions Precedent. The Seller's obligation to make Transfer Water available to Buyer at the delivery point is subject to issuance of any required Regulatory Approvals, including compliance with the California Environmental Quality Act.
11. Effective Date and Term of Memorandum. This Memorandum is effective upon execution by both parties, and shall remain in effect for a period of approximately 2 years, or until December 31, 2021, unless terminated earlier by City as set forth in paragraph 8. If, at the end of the Term of this Memorandum, the parties have not agreed upon the substantive terms of a purchase and sale agreement, this Memorandum may be extended for an additional 12 months through a writing signed by both parties. If by that time the parties have still not executed a purchase and sale agreement, this Memorandum shall expire unless the parties agree in writing to further extend its terms.
12. Counterparts; Facsimile Execution. This Memorandum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except for having an additional signature page executed by any other part.

Each party agrees that each other Party may rely upon the electronic signature of any party on this Memorandum as constituting a duly authorized, irrevocable, actual, current delivery of this Memorandum as full as if this Memorandum contained the original ink signature of the Party supplying an electronic signature.
13. Notices. All notices, approval, acceptances, demands and other communications required or permitted under this Memorandum, to be effective shall be in writing and shall be delivered (a) by electronic mail or (b) by personal delivery or (c) by U.S. mail (first class postage prepaid), or by commercial overnight delivery to the party to whom the notice is directed at the address of such party as follows:

Merced Irrigation District

To:

Name:

Address:
Phone:
Fax:
Email:

With copy to:

Name:
Address:
Phone:
Fax:
Email:

City of Merced

To:

Name: Steven S. Carrigan, City Manager
Address: 876 W. 18th Street, Merced, CA
Phone: (209) 385-6996
Email: carrigans@cityofmerced.org

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With copy to:

Name: Phaedra Norton, City Attorney
Address: 867 W. 18th Street, Merced, CA
Phone: (209) 385-6981
Email: nortonp@cityofmerced.org

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14. Authorizations. All individuals executing this and other documents on behalf of the respective parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the entity so indicated. Each signatory shall also indemnify the other parties to this Memorandum, and hold them harmless, from any and all damages, costs, attorneys' fees and other expenses, if the signatory is not so authorized.

15. Entire Agreement. This Memorandum sets forth the entire agreement of the parties as to the transaction described herein as of the date of the last party to execute this Memorandum and supersedes all prior agreements, representations or understandings, written or oral. The parties expect that this Memorandum will be succeeded by an agreement entered into between the parties, however, until such time, this Memorandum shall not be modified except in writing executed by both parties.

Merced Irrigation District

By: _____

Date: _____

City of Merced

By: _____

Date: _____

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