

Revised Agenda Packet



REGULAR BOARD MEETING AGENDA
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
Tuesday, May 16, 2023, at 6:00PM

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a District Board Meeting, please contact the District Office at 559-485-7353 at least 48 hours prior to the meeting, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

- ❖ Please submit all written correspondence for the Board of Directors by 12:00 pm the Friday prior to the meeting. Please deliver or mail to the District Clerk.
- ❖ Public comments are limited to three (3) minutes or less per individual per item, with a fifteen (15) minute maximum per group per item and will be heard during the communication portion of the agenda.

1. Call to Order:

2. **Roll Call:** President Charles Garabedian, Jr.; Vice President Salvador Cerrillo; Director Irma Castaneda; Director Frank Cerrillo, Jr.; Director Carlos Tovar, Jr.

3. **Certification:** Certification was made that the Board Meeting Agenda was posted 72 hours in advance of the meeting.

4. **Consent Agenda.** The items listed below in the Consent Agenda are routine in nature and are usually approved by a single vote. Prior to any action by the Board of Directors, any Board member may remove an item from the consent agenda for further discussion. Items removed from the Consent Agenda may be heard immediately following approval of the Consent Agenda or set aside for discussion and action after Regular Business.

- a. Minutes of the Regular Board Meeting of April 25, 2023.

Recommended action: To approve the Consent Agenda as presented or amended.

Motion by: _____; **Second by:** _____

5. Old Business:

- a. **Public Hearing.** Continued from April 25, 2023, to consider an ordinance adding Chapter 5.02 to Title V of the Malaga County Water District Code ("Malaga Code") pertaining to sanitation and recycling services to comply with the requirements of SB 1383. The proposed Amendment will allow the District to better regulate sanitation and recycling service within the District and comply with the diversion requirements of SB 1383.

Recommended action: To hold a public hearing to adopt the proposed ordinance 2023- 1.

Motion by: _____; **Second by:** _____

- b. Resolution 4-25-2023.** A resolution approving a third amendment to the solid waste and recycling franchise agreement between the Malaga County Water District and Industrial Waste and Salvage for solid waste collection, green waste collection, recycling services.

Recommended action: to approve resolution 4-25-2023 as presented or amended.

Motion by: _____; **Second by:** _____

- c. MCWD Parking Lot Project.** To review quotes and direct General Manager.

Recommended action: To Award Project.

Motion by: _____; **Second by:** _____

- d. Resolution 5-16-2023.** A Resolution approving an agreement between the Malaga County Water District and Fresno Irrigation District for a supply of surface water and finding the project exempt from CEQA.

Recommended action: Approve Resolution 5-16-2023.

Motion by: _____; **Second by:** _____

6. New Business:

- a. None

7. Incorporation Reports:

8. Recreation Reports:

9. Engineer Reports:

- a. District Engineer Report. None.
- b. CDBG Engineer Report: None.

10. General Manager's Report:

- a. None

11. President's Report:

12. Vice President's Report:

13. Director's Reports:

14. Legal Counsel Report:

15. Communications:

*a. Public Comment: The Public may address the Malaga County Water District Board on item(s) of interest within the jurisdiction of the Board, not appearing on the agenda. The Board will listen to comments presented; however, in compliance with the Brown Act, the Board cannot take action on items that are not on the agenda. The public should address the Board on agenda items at the time they are addressed by the Board. All speakers are requested to wait until recognized by the Board President. All Comments will be limited to three **(3)** minutes or less per individual/group per item per meeting, with a fifteen **(15)** minutes maximum.*

16. Closed Session:

- a. Malaga v. FUSD case No. 20CECG02666 (Govt Code 54956.9.)
- b. Potential Litigation (Gov't Code 54956.9(d)(2).) One case.

17. Adjournment:

Motion by: _____, Second by: _____

Certification of Posting

I, Norma Melendez, District Clerk of the Malaga County Water District, do hereby certify that the foregoing agenda for the Regular Meeting of the Board of Directors of May 16, 2023, was posted for public view on the front window of the MCWD office at 3580 S. Frank Street, Fresno Ca 93725, at 5:00P.M. On 5/12/2023.

Moises Ortiz
MCWD General Manager



REGULAR BOARD MEETING MINUTES
BOARD OF DIRECTORS MEETING
MALAGA COUNTY WATER DISTRICT
3580 SOUTH FRANK STREET
FRESNO, CALIFORNIA 93725
Tuesday, April 25, 2023, at 6:00PM

item 4.a.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a District Board Meeting, please contact the District Office at 559-485-7353 at least 48 hours prior to the meeting, to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

- ❖ Please submit all written correspondence for the Board of Directors by 12:00 pm the Friday prior to the meeting. Please deliver or mail to the District Clerk.
- ❖ Public comments are limited to three (3) minutes or less per individual per item, with a fifteen (15) minute maximum per group per item and will be heard during the communication portion of the agenda.

1. Call to Order: 6:01pm

2. Roll Call: President Charles Garabedian, Jr.; Vice President Salvador Cerrillo; Director Irma Castaneda; Director Frank Cerrillo, Jr.; Director Carlos Tovar, Jr.

3. Certification: Certification was made that the Board Meeting Agenda was posted 72 hours in advance of the meeting.

4. Consent Agenda. The items listed below in the Consent Agenda are routine in nature and are usually approved by a single vote. Prior to any action by the Board of Directors, any Board member may remove an item from the consent agenda for further discussion. Items removed from the Consent Agenda may be heard immediately following approval of the Consent Agenda or set aside for discussion and action after Regular Business.

a. Minutes of the Regular Board Meeting of April 13, 2023.

Recommended action: To approve the Consent Agenda as presented or amended.

Motion by Vice President Cerrillo; Second by Director Cerrillo, Jr. and by a 5-0 vote to approve the consent agenda as presented.

5. Old Business: none for this meeting.

6. New Business:

- a. **Public Hearing.** To consider an ordinance adding Chapter 5.02 to Title V of the Malaga County Water District Code ("Malaga Code") pertaining to sanitation and recycling services to comply with the requirements of SB 1383. The proposed Amendment will allow the District to better regulate sanitation and recycling service within the District and comply with the diversion requirements of SB 1383.

Recommended action: To hold a public hearing to adopt the proposed ordinance 2023-1.

**Public Hearing opened at 6:06pm for public comment. No public comment received.
Public Hearing closed at 6:07pm.**

Item tabled to the next board meeting for continued discussion.

- b. **Resolution 4-25-2023.** A resolution approving a third amendment to the solid waste and recycling franchise agreement between the Malaga County Water District and Industrial Waste and Salvage for solid waste collection, green waste collection, recycling services.

Recommended action: to approve resolution 4-25-2023 as presented or amended.

Item tabled to the next board meeting for continued discussion.

7. Incorporation Reports: none for this meeting.

8. Recreation Reports:

Director Castaneda informed the board that the next recreation bingo is scheduled for May 3.

Vice President Cerrillo announced his Cruising for Jesus Community Outreach program that he will host with his car club. At this event, cars will be blessed. An outdoor yard sale will take place during the event which will be free of charge to those who want to sell. A special recreation meeting has been scheduled for April 26. The VP also stated that no district staff will be needed for this event.

9. Engineer Reports:

- a. District Engineer Report. None.
- b. CDBG Engineer Report: None.

10. General Manager's Report:

- a. Solar Project: Funded!
- b. District Development Charges: Updated.

11. President's Report:

President Garabedian, Jr. suggests increasing bereavement leave for out-of-town funeral services. He also suggested doing a quarterly newsletter instead of the current monthly.

12. Vice President's Report:

Vice President Cerrillo reiterated the recreation committee meeting of April 26 to discuss the outreach program he is hosting.

13. Director's Reports:

Director Cerrillo, Jr. informed of the Malaga mural at the carwash on Central and Chestnut was tagged. Mr. Blue, owner of the carwash, tried his best to remove the graffiti without damaging the paint.

14. Legal Counsel Report: reserved for closed session.

15. Communications:

a. Written Communications:

1. Fresno County Planning Commission public hearing on unclassified conditional use permit application No. 3748 and Initial Study No. 8274 filed by Malaga BESS, LLC Thursday, April 27 at 8:15a.m.

b. Public Comment: *The Public may address the Malaga County Water District Board on item(s) of interest within the jurisdiction of the Board, not appearing on the agenda. The Board will listen to comments presented; however, in compliance with the Brown Act, the Board cannot take action on items that are not on the agenda. The public should address the Board on agenda items at the time they are addressed by the Board. All speakers are requested to wait until recognized by the Board President. All Comments will be limited to three (3) minutes or less per individual/group per item per meeting, with a fifteen (15) minutes maximum.*

16. Closed Session: 6:38 pm

- a. Potential Litigation (Gov't Code 54956.9(d)(2).) One case.

17. Adjournment:

Motion by Vice President Cerrillo, Second by Director Cerrillo, Jr. and by a 5-0 vote to adjourn the meeting at 7:03pm.

Certification of Posting

I, Norma Melendez, District Clerk of the Malaga County Water District, do hereby certify that the foregoing minutes for the Regular Meeting of the Board of Directors of April 25, 2023 was posted for public view on the front window of the MCWD office at 3580 S. Frank Street, Fresno Ca 93725, on 05/17/2023.

Norma Melendez

Norma Melendez, District Clerk

RESOLUTION NO. 4-25-2023

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MALAGA COUNTY
WATER DISTRICT APPROVING A THIRD AMENDMENT TO THE SOLID WASTE
AND RECYCLING FRANCHISE AGREEMENT BETWEEN THE MALAGA COUNTY
WATER DISTRICT AND INDUSTRIAL WASTE AND SALVAGE FOR SOLID WASTE
COLLECTION, GREEN WASTE COLLECTION, RECYCLING SERVICES
EFFECTIVE AUGUST 1, 2016**

WHEREAS, on August 23, 2016, the Board of Directors of the Malaga County Water District approved an Agreement between the Malaga County Water District (“District”) and Orange Avenue Disposal, Inc. dba, Industrial Waste and Salvage (“IWS”) making IWS the exclusive solid waste enterprise to provide Residential and Commercial solid waste collection and disposal services within the District’s boundaries (the “Franchise Agreement”); and

WHEREAS, the District is required by law, SB 1383, to adopt regulations relating to organic and other waste deemed by the Legislature to be short-lived climate pollution sources; and

WHEREAS on April 25, 2023, following a public hearing, the District adopted an Ordinance amending the Malaga Ordinance Code as required by SB 1383; and

WHEREAS, the changes to the Malaga Ordinance Code required by SB 1383 also requires certain amendments to the District franchise agreement with IWS (the “Third Amendment”); and

WHEREAS, the District desires to and hereby does amend the Franchise Agreement as attached hereto as Attachment 1.

NOW THEREFORE, BE IT RESOLVED, by the Board of Directors of the Malaga County Water District as follows:

1. That the foregoing recitals are true and correct and are incorporated by this reference herein as though fully set forth at this point.
2. The Board of Directors of the Malaga County Water District hereby approves the Third Amendment to the Franchise Agreement, a true and correct copy of which is attached hereto and incorporated herein by this reference as Attachment 1 to this Resolution.
3. The Board of Directors hereby authorizes the President of the Board to sign the Third Amendment as attached hereto on behalf of the District.

* * * * *

Passed and adopted by the Board of Directors of the Malaga County Water District at their meeting held on this 25th day of April 2023, by the following vote:

AYES:

NOES:

ABSENT:

Charles Garabedian, Jr., President
Malaga County Water District

ATTEST:

Moises Ortiz, M.P.A., General Manager-
Secretary of the Board of Directors
Malaga County Water District

item 5.b.

THIRD AMENDMENT TO THE SOLID WASTE AND RECYCLING FRANCHISE AGREEMENT BETWEEN THE MALAGA COUNTY WATER DISTRICT AND INDUSTRIAL WASTE AND SALVAGE FOR SOLID WASTE COLLECTION, GREEN WASTE COLLECTION, AND RECYCLING SERVICES EFFECTIVE AUGUST 1, 2016.

This Third Amendment to Solid Waste Collection, Transportation, and Franchise Agreement For Disposal Services ("Third Amendment") is made and entered on _____, 2023, by and between the Malaga County Water District ("District") and Orange Avenue Disposal dba Industrial Waste and Salvage (Contractor) and collectively "Parties."

WHEREAS, the Malaga County Water District ("District") and Orange Avenue Disposal Company, a California Corporation, dba Industrial Waste and Salvage (the "Contractor") (the "Parties") entered into a Franchise Agreement for solid waste collection, green waste collection and recycling services on or about the 23rd day of August, 2016, with an effective date of August 1, 2016 (the "Agreement"); and

WHEREAS, in 2016, Governor Brown signed into law SB1383 that establishes regulatory requirements for Cities, Generators, Solid Waste facilities, and other entities to support achievement of State-wide reduction in short lived climate pollutants; and

WHEREAS, District has requested and Contractor has agreed to implement new programs and services related to SB1383 requirements.

WHEREAS, modifications to the Agreement are necessary as a result of the State's passage of SB 1383.

NOW, THEREFOR, THE PARTIES AGREE as follows:

1. That the forgoing recitals are true and correct are true and correct and incorporated herein by this reference as though fully set forth at this point.
2. The Agreement is amended to add Section 1.73 to read as follows:

"1.73. "SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which establishes methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time."

3. Section 4.10 is hereby added to read as follows:

"4.10 SB1383 COMPLIANCE PROGRAMS

To support the District in complying with regulations under SB1383, Contractor shall implement the programs identified in this Section. These programs are designed to meet the implementation

and education requirements of SB1383 and help the District achieve annual diversion requirements set by CalRecycle. The District's actual annual diversion rate depends on participation of businesses and residents, their respective adherence to program requirements and local code, the District's enforcement of applicable codes, and the District's implementation of other programs. Accordingly, District shall, as necessary, amend or update the District code to incorporate requirements necessary for the implementation of these programs. This Section is intended to supplement, not supplant, all other regulatory requirements of the Agreement.

A. Collection Requirements and Container Labeling

Contractor shall provide a 3-container collection program for Solid Waste, Recyclable Materials, and Organic Waste. Collection containers shall be Grey (Solid Waste), Blue (Recyclable Materials), and Green (Organic Waste). Hardware such as hinges and wheels may be different colors.

New containers or lids placed by Contractor shall meet the requirements of 14 CCR Section 18984.8 and include language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each container.

B. Education and Outreach

To promote public education about recycling requirements, Contractor shall create public education materials and conduct education programs and activities described in this Section.

Annual Notice: Contractor shall prepare and distribute to each Generator in the District a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Contractor to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units for the accounts it services. Contractor shall also make this notice available in an electronic format through the Contractor's website.

Instructional Service Guide: Contractor shall prepare a service guide that describes available services, including how to place Containers for Collection, which materials should be placed in each Container and prohibited materials, and provides Collection holidays.

Property Owners and Businesses: Contractor shall annually provide Property Owners and Commercial Business owners with public education materials in electronic format for their distribution to all employees, Contractors, tenants, and Customers of the properties and businesses that Contractor services. The Contractor's public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. A Commercial Business or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR Section 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case,

the Commercial Business or Multi-Family Property Owner may request delivery of materials by contacting the Contractor's customer service department not later than two (2) weeks in advance of the date that the materials are needed.

Technical Assistance Program: Contractor shall provide ongoing technical assistance for Commercial and Multi-family generators in its service area that are required to participate in source separated recycling under applicable laws including AB 341, AB 1826, and SB 1383 and corresponding regulations. Technical assistance may include on-site training, instructional guides, printed or electronic materials and other resources that satisfy regulation requirements.

C. Waste Evaluations

Contamination Monitoring: Contractor shall perform contamination inspections by utilizing on-board monitoring systems or physical container inspections. For physical container inspections, Contractor's personnel shall lift the Container lid and observe the contents. For Collection vehicles equipped with a video camera and monitoring system, Contractor's personnel shall observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures set forth below.

Waste Characterizations: Contractor shall, at its sole expense, conduct waste evaluations that meet the requirements of 14 CCR Section 18984.5(c). The Contractor shall conduct waste evaluations for contaminants at least twice per year and the studies shall occur in two distinct seasons of the year. Contractor shall provide adequate notice to District of when waste evaluations will occur, and District reserves the right to observe waste evaluations.

Contamination Notifications: If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Contractor shall notify District within fifteen (15) working days. Contractor may perform targeted waste audits to determine the source of contaminants and provide technical assistance to those generators or notify all generators of their obligation to properly source separate materials. The Contractor may provide this information by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, e-mail, or electronic message to the applicable Generators.

Contractor will coordinate with District to develop procedures regarding alleged violations of these recycling programs.

D. Waivers

The District shall be responsible for granting waivers to commercial or multi-family generators that meet the de minimis requirements subject to the requirements under

SB1383, pursuant to 14 CCR Section 1898411, or other requirements that may be specified by District. This includes physical space waivers where services may be impacted.

Contractor shall provide District with required generator information on services and activity that is needed as part of the waiver application. Contractor may also assist generators with waiver applications or submit on their behalf.

E. Edible Food Recovery

Contractor shall provide District with necessary data and reporting to determine Tier 1 and Tier 2 commercial edible food generators within the District.

At least annually, the Contractor shall ensure Commercial Edible Food Generators receive the following information:

- Information about the District's Edible Food Recovery program;
- ☐ Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
- ☐ Information about Food Recovery Organizations and Food Recovery Services operating within the District, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
- ☐ Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

F. Reporting

Contractor will provide the data or prepare reports required to meet quarterly and annual SB1383 requirements which includes:

- i. The number of generators that receive organic waste collection service.
- ii. The number of route reviews conducted for prohibited container contaminants.
- iii. The number of times notices, violations, or targeted education materials were issued to generators for prohibited container contaminants.
- iv. The results of waste evaluations performed to meet the container contamination minimization requirements and the number of resulting targeted route reviews.
- v. The number of commercial edible food generators located within the jurisdiction.

G. Terms and Definitions

Definitions of terms and phrases set forth in this section shall have the same meaning as those set forth in the Agreement, Chapter 5.02 of the Malaga Ordinance Code or applicable state or federal statute as currently defined or as may be changed or amended in the future.

H. Jurisdiction

The Parties hereto agree and understand that performance of this Agreement is limited to those areas where Malaga has jurisdiction which currently includes residential service and roll-off service as defined in Section 1.69 of this Agreement. Any areas or services within the boundaries of the District where the District does not exercise jurisdiction, implementation of the requirements of SB1383 shall be under the jurisdiction of the County of Fresno, City of Fresno, or any other agency having such jurisdiction.”

4. Except as amended by this Third Amendment, all terms and conditions of the Agreement continue in full force and effect.
5. This Amendment shall be effective on the date of its adoption by the Malaga County Water District Board of Directors.
6. Authority to execute. The signatories to this Third Amendment represent that they have the proper authority to execute this Agreement on behalf of the party they represent.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment to the Solid Waste and Recycling Franchise Agreement between the Malaga County Water District and Orange Avenue Disposal dba Industrial Waste and Salvage for solid waste collection, green waste collection, and recycling services.

Date:

Charles Garabedian, President of the
Malaga County Water District

Date:

Orange Avenue Disposal dba Industrial
Waste and Salvage

ORDINANCE NO. 2023-1

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MALAGA COUNTY
WATER DISTRICT ADDING CHAPTER 5.02 TO THE MALAGA ORDINANCE
CODE TO SATISFY THE SHORT-LIVED CLIMATE POLLUTION REDUCTION
ACT OF 2016, KNOWN AS THE ORGANIC WASTE ORDINANCE**

WHEREAS, the District is required by law, SB 1383, to adopt regulations relating to organic and other waste deemed by the Legislature to be short-lived climate pollution sources.

NOW, THEREFORE, the Board of Directors of the Malaga County Water District does hereby ordain as follows:

Section 1. Chapter 5.02 of Title 6 of the Parlier Municipal Code is hereby added to read as follows:

Chapter 5.02, Title 6

ORGANIC WASTE

Sections:

- 5.02.010 Purpose and Findings.
- 5.02.020 Definitions.
- 5.02.030 Requirements for Single Family Generators
- 5.02.040 Requirements for Commercial Businesses
- 5.02.050 Waivers for Generators
- 5.02.060 Requirements for Commercial Edible Food Generators
- 5.02.070 Self-Hauler Requirements
- 5.02.080 Inspections by Jurisdiction
- 5.02.090 Enforcement
- 5.02.100 Compliance with CALGreen Requirements
- 5.02.110 Model Water Efficient Landscaping Ordinance

5.02.010 Purpose and Findings.

SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations.

5.02.020 Definitions.

For purposes of this Chapter, the following definitions shall apply:

- (a) “Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials.

- (b) “CalRecycle” means California's Department of Resources Recycling and Recovery.
- (c) “California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this ordinance are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).
- (d) “District” means the Malaga County Water District. The word “District” shall include the entity or person holding a franchise agreement with the District for collecting and disposal of solid waste and recycling services.
- (e) “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.
- (f) “Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in Sections 3(ss) and 3(tt) of this ordinance or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).
- (g) “Container Contamination” or “Contaminated Container” means a container, regardless of color, that contains Prohibited Container Contaminants.
- (h) “C&D” means construction and demolition debris.
- (i) “Designee” means an entity that a Jurisdiction contracts with or otherwise arranges to carry out any of the Jurisdiction’s responsibilities of this ordinance as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a hauler, a private entity, or a combination of those entities.
- (j) “Edible Food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this ordinance or as otherwise defined in 14 CCR Section 18982(a)(18), “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in this ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.
- (k) “Enforcement Action” means an action of the Jurisdiction to address non-compliance with this ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- (l) “Excluded Waste” means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the Jurisdiction and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in

Class III landfills or accepted at the facility by permit conditions, waste that in Jurisdictions, or its Designee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Jurisdiction, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

(m) "Food Recovery" means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

(n) "Food Recovery Organization" means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:

(1) A food bank as defined in Section 113783 of the Health and Safety Code;

(2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

(3) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this ordinance.

(o) "Food Recovery Service" means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

(p) "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

(q) "Food Service Provider" means an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

(r) "Food-Soiled Paper" is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, and pizza boxes.

(s) "Food Waste" means Food Scraps and Food-Soiled Paper.

"Green waste" means leaves, grass clippings, brush, branches and other forms of organic matter generated from landscapes and gardens, separated from other forms of solid waste.

(t) "Gray Container" has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste.

(u) "Gray Container Waste" means Solid Waste that is collected in a Gray Container that is not acceptable for placement in a Blue or Green Container as part of a three-container collection service.

(v) "Green Container" has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste.

(w) "Grocery Store" means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

(x) "Inspection" means a site visit where a Jurisdiction reviews records, containers, and an entity's collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).

(y) "Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this ordinance.

(z) "Large Venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this ordinance.

(aa) “Local Education Agency” means a school district, charter school, or county office of education that is not subject to the control of District or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

(bb) “Multi-Family Residential Dwelling” or “Multi-Family” means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

(cc) “Non-Compostable Paper” includes but is not limited to paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

(dd) “Notice of Violation (NOV)” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

(ee) “Organic Waste” includes Greenwaste and Food Waste.

(ff) “Organic Waste Generator” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(gg) “Prohibited Container Contaminants” means the following: (i) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the Jurisdiction’s Blue Container; (ii) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the Jurisdiction’s Green Container; (iii) discarded materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Wastes to be placed in Jurisdiction’s Green Container and/or Blue Container; and, (iv) Excluded Waste placed in any container.

(hh) “Recovery” means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).

(ii) "Recyclables" means those materials that by way of collecting, sorting, cleansing, treating, and reconstituting materials would otherwise become solid waste, and by processing can be returned to the economic mainstream in the form of raw materials for new, reused, or reconstituted products. Recyclables include, but are not limited to, newsprint, mixed paper, aluminum, plastics, glass, metal, cardboard, chip board, junk mail, magazines, newspaper, books, computer paper, and the like.

(jj) “Remote Monitoring” means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Gray Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

(kk) “Restaurant” means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).

(ll) “Route Review” means a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(mm) “SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

(nn) “SB 1383 Regulations” or “SB 1383 Regulatory” means or refers to, for the purposes of this ordinance, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

(oo) “Self-Hauler” means a person, who hauls Solid Waste, he or she has generated using the generator’s own equipment.

(pp) “Solid Waste” has the same meaning as defined in State Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

(1) Hazardous waste, as defined in the State Public Resources Code Section 40141.

(2) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code).

(3) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

(qq) “Source Separated” means the segregation, by the generator, of materials designated for separate collection for some form of recycling, processing, recovery, or reuse.

(rr) “State” means the State of California.

(ss) “Supermarket” means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or

nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).

(tt) “Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following:

- (1) Supermarket.
- (2) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- (3) Food Service Provider.
- (4) Food Distributor.
- (5) Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this ordinance.

(uu) “Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following:

- (1) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- (2) Hotel with an on-site Food Facility and 200 or more rooms.
- (3) Health facility with an on-site Food Facility and 100 or more beds.
- (4) Large Venue.
- (5) Large Event.
- (6) A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- (7) A Local Education Agency facility with an on-site Food Facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this ordinance.

5.02.030 Requirements for Single Family Generators.

Every person owning or occupying a residence or commercial establishment shall subscribe to solid waste, organic waste, and segregated recyclable collection. District shall have the right to review the number and size of a generator’s containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Single-Family generators shall adjust its service level for its collection services as requested by the Jurisdiction.

Requirements for Source Separating Solid Waste.

A. All residential and commercial generators of Solid Waste shall be required to source separate materials into Grey, Blue, and Green containers.

B. Generators shall place Source Separated Organic Waste, including Food Waste, in the Green Container; Segregated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

C. Generators shall not place Prohibited Container Contaminants in any container. District and District's authorized recycling agent reserve the right to inspect containers to determine if Prohibited Container Contaminants are present and issue a warning or assess penalties and fines under this chapter.

5.02.040 Requirements for Commercial Businesses.

Generators that are Commercial Businesses, including Multi-Family Residential Dwellings, shall:

(a) Subscribe to District's three-container collection services. District shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collection services as requested by the Jurisdiction.

(b) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors for employees, contractors, tenants, and customers, consistent with Jurisdiction's Blue Container, Green Container, and Gray Container collection service.

(c) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:

(1) A body or lid that conforms with the container colors provided through the collection service provided by Jurisdiction, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

(2) Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

(d) Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirements pursuant to 14 CCR Section 18984.9(b).

(e) To the extent practical through education, training, Inspection, and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a

container not designated for those materials per the Jurisdiction's Blue Container, Green Container, and Gray Container collection service.

(f) Excluding Multi-Family Residential Dwellings, periodically inspect Blue Containers, Green Containers, and Gray Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

(g) Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials.

(h) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste and Source Separated Recyclable Materials separate from Gray Container Waste (when applicable) and the location of containers and the rules governing their use at each property.

(i) Provide or arrange access for Jurisdiction or its agent to their properties during all Inspections conducted in accordance with this ordinance to confirm compliance with the requirements of this ordinance.

(j) Accommodate and cooperate with Jurisdiction's Remote Monitoring program for Inspection of the contents of containers for Prohibited Container Contaminants, which may be implemented at a later date, to evaluate generator's compliance with this ordinance.

(k) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

(l) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements in this ordinance.

5.02.050 Waivers for Generators.

(a) De Minimis Waiver: District may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described below.

Commercial Businesses requesting a de minimis waiver shall:

(1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section (a)(2) below.

(2) Provide documentation that either:

(A) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,

(B) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.

(3) Notify Jurisdiction if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.

(4) Provide written verification of eligibility for de minimis waiver every 5 years, if Jurisdiction has approved de minimis waiver.

(b) Physical Space Waiver: District may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if the Jurisdiction has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of this ordinance.

A Commercial Business or property owner may request a physical space waiver through the following process:

(1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.

(2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.

(3) Provide written verification to Jurisdiction that it is still eligible for physical space waiver every five years, if Jurisdiction has approved application for a physical space waiver.

5.02.060 Requirements for Commercial Edible Food Generators.

(a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section 9 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

(b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

(c) Commercial Edible Food Generators shall comply with the following requirements:

(1) Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.

(2) Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food

Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

(3) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

(4) Allow Jurisdiction's designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.

(5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:

(A) A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

(B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).

(C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:

(i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

(ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.

(iii) The established frequency that food will be collected or self-hauled.

(iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

(d) Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

5.02.070 Self-Hauler Requirements.

(a) Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that Jurisdiction otherwise requires generators to separate for collection in the Jurisdiction's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2.

(b) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Solid Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to Inspection by the Jurisdiction. The records shall include the following information:

(1) Delivery receipts and weight tickets from the entity accepting the waste.

(2) The amount of material in cubic yards or tons transported by the generator to each entity.

(3) If the material is transported to an entity that does not have scales on-site or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.

(d) Self-Haulers that are Commercial Businesses (including Multi-Family Self-Haulers) shall provide information collected in Section 12(c) to Jurisdiction if requested.

(e) A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Section 12(c) and (d).

5.02.080 Inspections by District.

(a) District representatives and/or its designated entity, including Designees are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow Jurisdiction to enter the interior of a private residential property for Inspection.

(b) Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the District's employee or its designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment (optional); or (ii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties described.

(1) Any records obtained by a Jurisdiction during its Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

(2) District representatives, its designated entity, and/or Designee are authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.

(3) District shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

5.02.090 Enforcement.

(a) Violation of any provision of this ordinance shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a District Enforcement Official or representative. Enforcement Actions under this ordinance are issuance of an administrative citation and assessment of a fine. The District's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.

(b) Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. Jurisdiction may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. Jurisdiction may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of Jurisdiction staff and resources.

(c) Responsible Entity for Enforcement.

(1) Enforcement pursuant to this ordinance may be undertaken by the District Enforcement Official, which may be the District general manager, District environmental compliance inspector, or their designated entity, legal counsel, or combination thereof.

(2) Enforcement may also be undertaken by a Regional or County Agency Enforcement Official, designated by the Jurisdiction, in consultation with District Enforcement Official.

(A) District Enforcement Official(s) (and Regional or County Agency Enforcement Official, if using) will interpret ordinance; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.

(B) District Enforcement Official(s) (and Regional or County Agency Enforcement Official, if using) may issue Notices of Violation(s).

(d) Process for Enforcement.

(1) District Enforcement Officials or Regional or County Enforcement Officials and/or their Designee will monitor compliance with the ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring). Section 5.02.080 establishes Jurisdiction's right to conduct Inspections and investigations.

(2) District may issue an official notification to notify regulated entities of its obligations under the ordinance.

(3) For incidences of Prohibited Container Contaminants found in containers, District will issue a Notice of Violation to any generator found to have Prohibited Container Contaminants in a container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants or within five (5) days after determining that a violation has occurred. If the Jurisdiction observes Prohibited Container Contaminants in a generator's containers on more than three (3) consecutive occasion(s), the Jurisdiction may assess contamination processing fees or contamination penalties on the generator.

(4) With the exception of violations of generator contamination of container contents addressed under Section 5.02.090(d)(3), Jurisdiction shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

(5) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, Jurisdiction shall commence an action to impose penalties, via an administrative citation and fine, pursuant to this ordinance. Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the Jurisdiction or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collection services, depending upon available information.

(e) Penalty Amounts for Types of Violations.

The penalty levels are as follows:

(1) For a first violation, the amount of the base penalty shall be \$50 to \$100 per violation.

(2) For a second violation, the amount of the base penalty shall be \$100 to \$200 per violation.

(3) For a third or subsequent violation, the amount of the base penalty shall be \$250 to \$500 per violation.

(f) Factors Considered in Determining Penalty Amount.

The following factors shall be used to determine the amount of the penalty for each violation within the appropriate penalty amount range:

- (1) The nature, circumstances, and severity of the violation(s).
- (2) The violator's ability to pay.
- (3) The willfulness of the violator's misconduct.
- (4) Whether the violator took measures to avoid or mitigate violations of this chapter.
- (5) Evidence of any economic benefit resulting from the violation(s).
- (6) The deterrent effect of the penalty on the violator.

(7) Whether the violation(s) were due to conditions outside the control of the violator.

(g) Compliance Deadline Extension Considerations.

The District may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with Section 5.02.090 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

(1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;

(2) Delays in obtaining discretionary permits or other government agency approvals;
or,

(3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the Jurisdiction is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(h) Appeals Process.

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is requested within the time prescribed and consistent with Jurisdiction's procedures in the Jurisdiction's codes for appeals of administrative citations. Evidence may be presented at the hearing. The Jurisdiction will appoint a hearing officer who shall conduct the hearing and issue a final written order.

(i) Education Period for Non-Compliance.

Beginning January 1, 2022 and through December 31, 2023, Jurisdiction will conduct Inspections, Remote Monitoring, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if Jurisdiction determines that Organic Waste Generator, Self-Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

(j) Civil Penalties for Non-Compliance.

Beginning January 1, 2024, if the Jurisdiction determines that an Organic Waste Generator, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this ordinance, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to Section 5.02.090, as needed.

5.02.100 Compliance with CALGreen Requirements.

(a) Persons applying for a permit from the Jurisdiction for new construction and building additions and alternations shall comply with the requirements of this Section and all required components of the California Green Building Standards Code, 24 CCR, Part 11, known as CALGreen, as amended, if its project is covered by the scope of CALGreen or more stringent requirements of the Jurisdiction. If the requirements of CALGreen are more stringent then the requirements of this Section, the CALGreen requirements shall apply.

Project applicants shall refer to Jurisdiction's building and/or planning code for complete CALGreen requirements.

(b) For projects covered by CALGreen or more stringent requirements of the Jurisdiction, the applicants must, as a condition of the Jurisdiction's permit approval, comply with the following:

(1) Where five (5) or more Multi-Family dwelling units are constructed on a building site, provide readily accessible areas that serve occupants of all buildings on the site and are identified for the storage and collection of Blue Container and Green Container materials, consistent with the three-, three-plus, or two-container collection program offered by the Jurisdiction, or comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.

(2) New Commercial construction or additions resulting in more than 30% of the floor area shall provide readily accessible areas identified for the storage and collection of Blue Container and Green Container materials, consistent with the three-, three-plus, or two-container collection program offered by the Jurisdiction, or shall comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.

(3) Comply with CALGreen requirements and applicable law related to management of C&D, including diversion of Organic Waste in C&D from disposal. Comply with District's C&D ordinance and all written and published District policies and/or administrative guidelines regarding the collection, recycling, diversion, tracking, and/or reporting of C&D.

Section 2. California Environmental Quality Act: The Directors having considered the Staff Report and all public comments, has determined that the amendment is not a project under the California Environmental Quality Act because the amendment has no potential for resulting in a physical change in the environment. Since the amendment is not a project, no environmental documentation is required.

Section 3. Severability: If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Ordinance. The Directors hereby declare that it would have passed this Ordinance, and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases have been declared invalid or unconstitutional.

Section 4. Effective Date and Posting of Ordinance: This Ordinance shall be effective immediately upon adoption. The District's Secretary shall publish a summary of the Ordinance within fifteen (15) days after adoption with the names of the Directors voting for and against this Ordinance. Additionally, the Secretary shall post a certified copy of the full text of this Ordinance with the names of the Directors voting for and against this Ordinance in the office of the District. (Water Code Sections 31027, 31105, and 31141.)

WHEREFORE, this Ordinance was passed and adopted by the Board of Directors of the Malaga County Water District this _____ day of 2023, by the following vote:

AYES:

NOES:

ABSENT:

CERTIFICATION

I, Moises Ortiz, duly qualified, appointed, and acting Secretary of the Malaga County Water District do hereby certify that the foregoing is a true statement of the action taken by the Board of Directors of the District at a regular meeting of the Board held on _____, 2023.

MALAGA COUNTY WATER DISTRICT

Dated: _____, 2023

By: _____
Moises Ortiz, Secretary of the
Malaga County Water District



item 5.c.

PREPARED FOR

Moises Ortiz

Malaga County Water District

moisesortiz0905@gmail.com

04/17/2023

Malaga CWD / Community Center //
Parking lot Renovation

***Project Number* 1-4-23876**

***CMAS:* 4-20-78-0089C**

Contact

Jezzal Quintana
1800 E. McFadden Ave.
Santa Ana, CA

jezzal.quintana@theKYAgroup.com

Pages 6

CA LICENSE #984827 B + C15

DIR #1000003379



Proposal: 1-4-23876

To: Malaga County Water District
3580 S Frank Avenue
Fresno
California
93725

Date: April 17, 2023

Terms: Net 30

CMAS: 4-20-78-0089C

Base Contract: February 10, 2025

Contract Terms: Feb 26, 2020 - Feb 10, 2025

c/o: Malaga County Water District

RA: Jezzal Quintana

RA Phone:

RA Email: jezzal.quintana@theKYAgroup.com

Site: Malaga County Water District

Address: 3580 S Frank Avenue
93725

Site Qualifications and General Scope of Work

DIR # 1000003379

Priced by CMAS- KYA GSA- KYA Services (4-20-78-0089C)

Includes Material Sales Tax

PLEASE NOTE A DIR # & PO WILL BE REQUIRED TO MOVE FORWARD WITH THIS PROJECT.

Notes: Sales tax rate will be based upon the shipping address. Price is good for 30 days from date of quote.

Initials _____

*This is a legal agreement - please read carefully
Complete and Initial all pages*

Proposal Number 1-4-23876



SCOPE OF WORK - PRICING

Malaga CWD / Community Center // Parking lot Renovation	Quantity	U/M	Price	Value
<u>ASPHLT</u> <u>ASPHALT</u>	32,457.00	SF	\$7.63	\$247,646.91
<u>CONPUM</u> <u>CONCRETE PUMP</u>	1.00	EA	\$409.06	\$409.06
<u>RMIXCON</u> <u>READY MIX CONCRETE</u>	15.00	CY	\$217.61	\$3,264.15
<u>BAR4</u> <u>BAR #4 -</u>	85.00	EA	\$6.79	\$577.15
<u>Specialty Equipment Service</u>	1.00	EA	\$1,973.13	\$1,973.13
<u>Dumpster Service</u>	1.00	EA	\$788.17	\$788.17
<u>General Laborer Journeyman</u>	85.00	HRS	\$128.25	\$10,901.25
<u>Cement Mason Journeyman</u>	100.00	HRS	\$128.25	\$12,825.00
<u>General Laborer Material Handler Level 1</u>	75.00	HRS	\$88.79	\$6,659.25
<u>Bonding Fee</u>	1.00	EA	\$3,420.31	\$3,420.31
Total Price				\$288,464.38

Initials _____

*This is a legal agreement - please read carefully
Complete and Initial all pages*

Proposal Number 1-4-23876



CONDITIONS AND WARRANTY

1) Proposal:

The above proposal is valid for 30 days from the date first set forth above. After 30 days, we reserve the right to increase prices due to the rise in cost of raw materials, fuel or other cost increases. When applicable, KYA Services LLC reserves the right to implement a surcharge for significant increases in raw materials, including, but not limited to; fuel, and materials. Due to the duration of time between proposals, contracts and final furnishing, KYA Services LLC reserves the right to implement this surcharge when applicable.

Any job that is accepted prior to December 31st of the current year and scheduled to install after December 31st of the current year is subject to price increase

2) Purchase:

By executing this proposal, or submitting a purchase order pursuant to this proposal (which shall incorporate the terms of this agreement specifically by reference) which is accepted by KYA Services LLC. (the "Company"), the purchaser identified above ("you" or the "Purchaser") agrees to purchase the materials and the services to be provided by the "Company", as detailed in the Pricing and "General Scope of Work" sections in this agreement, above.

3) Standard Exclusions:

Unless specifically included, this agreement does not include, and Company will not provide services, labor or materials for any of the following work: (a) removal or disposal of any material containing asbestos or any hazardous materials as defined by the EPA; neither we nor our installers are responsible for the handling, removal or abatement of asbestos contained floor material or adhesive. Further, our policy is to request an Asbestos Hazard Emergency Response Act (AHERA) report prior to proceeding with any floor material or floor adhesive removal. We and our installers consider it the owners responsibility to produce this report prior to executing this contract. (b) moving Owner's property around the installation site. (c) repair or replacement of any Purchaser or Owner- supplied materials. (d) repair of concealed underground utilities not located on prints, supplied to Company by Owner during the bidding process, or physically staked out of by the Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that could occur when construction equipment and vehicles are being used in the normal course of construction.

4) Insurance Requirements:

Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's proposal.

5) Payment:

Terms of payment are defined in the "Pricing" details section and are specific to this contract. For purposes of this agreement, "Completion" is defined as being the point at which the materials have been furnished. In any event where Completion cannot be effected due to delays or postponements caused by the Purchaser or Owner, final payment (less 10% retainage) is due within 30 days of the date when the Completion was scheduled, had the delay not occurred. All payments must be made to KYA Services LLC 1800 E McFadden Ave, Santa Ana, CA 92705. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws, including but not limited to filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.

6) Lien Releases:

Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner, Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.

7) Site Plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings and Surveying:

Site plan approval, permits, permit fees, plans, engineering drawings and surveying are specifically excluded from this agreement and the Services unless specified under the "General Scope of Work". The Company does not in any way warrant or represent that a permit or site plan approval for construction will be obtained. Sealed engineered drawings that are required but not included in the "General Scope of Work" will result in additional cost to Purchaser.

8) Manufacturing and Delivery:

Manufacturing lead-time and delivery varies depending on the product purchased.

Initials _____



9) Returned Product, Deposits and/ or Cancelled Order:

From date of shipment from our facility, all returned product(s) and cancelled orders are subject to a 50% restocking fee. No returns are available following this date. All deposits are non-refundable.

10) Concealed Conditions:

"Concealed conditions" include, without limitation to, water, gas, sprinkler, electrical and sewage lines, post tension cables, and steel rebar. Observations that were able to be made either by visual inspection or by drawings and/or plans submitted by Owner at the time this agreement was approved. If additional Concealed Conditions are discovered once work has commenced which were not visible at the time this proposal was approved, Company will stop work and indicate these unforeseen Concealed Conditions to Purchaser or Owner so that Purchaser and Company can execute a change order for any additional work. In any event, any damage caused by or to unforeseen Concealed Conditions is the sole responsibility of the Purchaser and Company shall not be held liable for any such damage. Soil conditions are assumed to be soil that does not contain any water, hard rock (such as limestone, caliche, etc.), rocks bigger than 4inches in diameter or any other condition that will require additional labor, equipment and/or materials not specified by the purchaser or Owner in the bidding process.

Any condition requiring additional labor, equipment, and/or materials to complete the drilling or concrete operations will require a change order before Company will complete the process. Any variation will incur additional charges.

11) Changes in the Work:

During the course of this project, Purchaser may order changes in the work (both additions and deletions). The cost of these changes will be determined by the Company, and a change order must be completed and signed by both the Purchaser and the Company, which will detail the "General Scope of the Change Order". Should any change be essential to the completion of the project, and the Purchaser refuses to authorize such change order, then Company will be deemed to have performed its part of the project, and the project and Services will be terminated. Upon such termination, Company will submit a final billing to Purchaser for payment, less labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of the Purchaser.

12) Warranty; Limitations of Liability:

Company warrants that all Company-supplied labor and Services will be performed in a good and workmanlike manner. Purchaser shall notify the Company in writing detailing any defects in Service for which a warranty claim is being made.

COMPANY SHALL NOT IN ANY EVENT BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR LIQUIDATED DAMAGES IN ANY ACTION ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INTENDED CONDUCT OR OTHERWISE, INCLUDING WITHOUT LIMITATION, DAMAGES RELATING TO LOSS OF PROFITS, INCOME OR GOODWILL, REGARDLESS OF WHETHER COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT WILL COMPANY'S LIABILITY FOR MONETARY DAMAGES UNDER THIS AGREEMENT EXCEED THE FEES PAID OR DUE AND PAYABLE FOR THE SERVICE UNDER THIS AGREEMENT (OR RELEVANT PURCHASE ORDER).

The warranties or the materials are contained in a separate document between Company and the ultimate Owner of the materials, which will be provided to Owner at the time of completion of work.

13) Indemnification:

To the fullest extent permitted by law. Purchaser shall indemnify, defend and hold harmless the Company and its consultants, agents and employees or any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, relating to furnishing of the materials or performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury to, sickness, disease or death of a person, or injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in Section 13.

14) Delegation: Subcontractors:

The Services and furnishing of materials may be performed by subcontractors under appropriate agreements with the Company

Initials _____



15) Force Majeure: Impracticability:

The Company shall not be charged with any loss or damage for failure or delay in delivering or furnishing of materials when such failure or delay is due to any cause beyond the control of the Company, due to compliance with governmental regulations, or orders, or due to any acts of God, lockouts, slowdowns, wars or shortages in transportation, materials or labor.

16) Dispute Resolution:

Any controversy or claim arising out of or related to this agreement must be settled by binding arbitration administered in Santa Ana, CA by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgement upon the award may be entered in any court having jurisdiction thereof.

17) Entire Agreement; No Reliance:

This agreement represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this agreement are not part of this agreement. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Company or its agents which are not expressly stipulated herein, including without limitation any statements as to the materials, warranties or services provided hereunder.

18) No Third-Party Beneficiaries:

This agreements creates no third party rights or obligations between Company and any other person, including any Owner who is not also a Purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this agreement.

19) Governing Law:

This agreement will be constructed and enforced in accordance with the laws of the State of California.

20) Assignment:

Purchaser may not assign this agreement, by operation of law or otherwise, without the prior written consent of the Company. The agreements shall be binding upon and ensure to the benefit of the Company and the Purchaser, and their successors and permitted assigns.

Executed to be effective as of the
date executed by the Company:

KYA Services LLC

Accepted by:

Signature:

Signature:

Jezzel Quintana

By: (Print)

By: (Print)

Jezzel Quintana

Title:

Title:

Regional Advisor

Date:

Date:

April 17, 2023

Initials _____

*This is a legal agreement - please read carefully
Complete and Initial all pages*

Proposal Number 1-4-23876

item 5.c.



4075 Celeste Ave
Clovis, CA 93619
Don Jimenez: 559-313-7179
Office: 559-291-0711
Fax: 559-346-1227
don@asphalt-tech.com

License# 948614



PROPOSAL

Date	PROPOSAL #
3/22/2023	03222023-MCWDLOT

Name-Address

MCWD
3582 SOUTH WINERY AVE
FRESNO, CA 93725

DESCRIPTION	Amount
PROJECT LOCATION: 3582 SOUTH WINERY AVE FRESNO, CA	
SCOPE OF WORK:	
PARKING LOT PAVING APPROXIMATELY 57,000 SF	\$180,500.00
-REMOVE AND SALVAGE EXISTING WHEELSTOPS	
-GRIND EXISTING ASPHALT IN PLACE	
-GRADE AND COMPACT GRINDINGS AS NEEDED TO PROVIDE STABLE SUBGRADE AND PROPER DRAINAGE	
-HAUL OF EXCESS GRINDING MATERIALS	
-CUT CURB FOR DRAINAGE	
-PAVE WITH 2" HMA	
-COMPACT AND ROLL TO A SMOOTH SURFACE	
-LAYOUT & STRIPE PARKING AREAS AND MARKING AS PER EXISTING PLANS	
(ADDING 3 ADDITIONAL ADA PARKING STALLS (2) AT POOL AREA & (1) NEAR CABOOSE	
	\$13,650.00
CONCRETE DRIVE (SOUTH) APPROXIMATELY 500 SF	
-SAW CUT AND REMOVE EXISTING DAMAGED CONCRETE	
-GRADE AND COMPACT SUBGRADE	
-INSTALL #4 REBAR REINFORCEMENT 12" OC	
-DOWEL TO EXISTING CONCRETE	
-POUR AND FINISH CONCRETE 4,000 PSI TO EXISTING GRADES 8" DEPTH	
*Includes: Equipment, PREVAILING WAGE Labor, Materials, Trucking	
*Excludes: Permits, Inspection Fees, Testing	
*Estimate valid for 30 days from date	
TOTAL	\$194,150.00

NOTICE OF EXEMPTION

TO: County Clerk, County of Fresno
2221 Kern Street
Fresno, California 93721

FROM: Malaga County Water District
3580 South Frank Street
Fresno, California 93750

Project Title: Malaga County Water District – Water Supply Agreement

Project Applicant: Malaga County Water District

Project Location: County of Fresno

Description of Nature of Project: The “Project” is an agreement between the Malaga County Water District (“Malaga”) and Fresno Irrigation District (“District”) for a supply of surface water to be used for groundwater recharge so that Malaga can achieve a sustainable groundwater yield under the sustainable groundwater management act..

Name of Public Agency Approving Project:

Name of Person Carrying Out Project: Malaga County Water District

Exempt Status: [check one]

- ☒ Statutory Exemption (Sec. 15061(b)(3).)
☐ Declared Emergency (Sec. 15071(a))
☐ Emergency Project (Sec. 15071(b) and (c))
☐ Categorical Exemption.

Reasons why the project is exempt: The Project involves a supply of surface water for groundwater recharge. The project does not approve or encourage any development and any modification of existing water storage basins will be a separate project. The Board of Directors found that it can be seen with certainty that there is no possibility that the Project may have a significant effect on the environment and is, therefore, not subject to CEQA.

Moises Ortiz, General Manager, Malaga County Water District _____ Date _____

☒ Signed by Lead Agency

Date received for filing at OPR: _____

Environmental Checklist Form

1. Project title: Groundwater Recharge Agreement
2. Lead agency name and address:
 Malaga County Water District
 3580 South Frank Street
 Fresno, California 93725
3. Contact person and phone number: Jason Franklin - Telephone (559) 485-7353
4. Project location: N/A
5. Project sponsor's name and address: Same as lead agency.
6. General plan designation:
 Fresno County General Plan/ Fresno City General Plan.
7. Zoning: N/A
9. Surrounding land uses and setting: N/A
10. Other public agencies whose approval is required. None.

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- | | | |
|--|--|---|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agricultural Resources | <input type="checkbox"/> Air Quality |
| <input type="checkbox"/> Biological Resources | <input type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology/Soils |
| <input type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology/Water Quality | <input type="checkbox"/> Land Use/Planning |
| <input type="checkbox"/> Mineral Resources | <input type="checkbox"/> Noise | <input type="checkbox"/> Population/Housing |
| <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation | <input type="checkbox"/> Transportation/Traffic |
| <input type="checkbox"/> Utilities/Service Systems <input type="checkbox"/> Mandatory Findings of Significance | | |

DETERMINATION:

On the basis of this initial evaluation:

- ☒ I find that the proposed project COULD NOT have a significant effect on the environment, and a Notice of Exemption will be prepared.
- ☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ☐ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

Moises Ortiz, General Manager
Malaga County Water District

Date

Initial Evaluation

PROJECT DESCRIPTION:

An Agreement between the Fresno Irrigation District ("FID") and the Malaga County Water District ("Malaga") for a supply of surface water for the purpose of recharging the groundwater aquifer so that Malaga can achieve a sustainable yield of ground water.

PROJECT SETTING:

Unknown, the purpose of the Agreement is for Malaga to achieve a sustainable groundwater yield likely through the utilization of one or more existing stormwater basins located within or near the boundaries of Malaga however, the project does not approve the construction of any basin, use of any basin, and only is for a supply of surface water and any project associated with the utilization or development of a basin for the utilization of the surface water will be a separate project.

CURRENT FACILITIES:

While the Agreement contemplates the use of one or more existing stormwater basins, any project to utilize a stormwater basin or other recharge basin for the purpose of groundwater recharge will be a separate project in the future.

Proposed Project:

An Agreement between Malaga and FID for a supply of surface water to be used for groundwater recharge.

The Checklist portion of the Initial Study begins below, with explanations of each CEQA issue topic. Four outcomes are possible, as explained below:

1. A "no impact" response indicates that no action that would have an adverse effect on the environment would occur due to the Project;
2. A "less than significant" response indicates that while there may be potential for an environmental impact, there are standard procedures or regulations in place, or other features of the Project as proposed, which would limit the extent of this impact to a level of "less than significant;"
3. Responses that indicate that the impact of the Project would be "less than significant with mitigation" indicate that mitigation measures, identified in the subsequent discussion, will be required as a condition of Project approval in order to effectively reduce potential Project-related environmental effects to a level of "less than significant;"
4. A "potentially significant impact" response indicates that further analysis is required to determine the extent of the potential impact and identify any appropriate mitigation. If any topics are indicated with a "potentially significant impact," these topics would need to be analyzed in an Environmental Impact Report. Note that this document

does not indicate that any environmental topics would be considered to be “potentially significant” after application of mitigation measures identified in this document;

	Potentially Significant Impact	Less Than Significant with Incorporated Mitigation	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comments:

The Project involves an agreement for a supply of surface water to be utilized for groundwater recharge so that Malaga can achieve a sustainable groundwater yield as required by the sustainable groundwater management act. While it is anticipated that the project will have surface water delivered to existing storm water basins located in or around Malaga's boundary, the Project only makes water available for such purpose and does not increase Malaga's water production/delivery or result in any change to existing facilities. Increasing the groundwater supply will improve the quality and quantity of the groundwater supply and will benefit the environment as set forth in the sustainable groundwater management act and the north kings groundwater sustainability agency groundwater management plan. In the event any new facilities constructed or

improvements to existing facilities are made those would be separate projects with a separate environmental review.

These comments apply to every category.

II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

- | | | | | |
|--|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

III. AIR QUALITY -- Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:

- | | | | | |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Conflict with or obstruct implementation of the applicable air quality plan? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

releasing emissions which exceed quantitative thresholds for ozone precursors)?

d) Expose sensitive receptors to substantial pollutant concentrations?

☐☐☐☒

e) Create objectionable odors affecting a substantial number of people?

☐☐☐☒

IV. BIOLOGICAL RESOURCES -- Would the project:

a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?

☐☐☐☒

b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?

☐☐☐☒

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

☐☐☐☒

d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?

☐☐☐☒

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?

☐☐☐☒

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other

☐☐☐☒

approved local, regional, or state habitat conservation plan?

V. CULTURAL RESOURCES -- Would the project:

a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

d) Disturb any human remains, including those interred outside of formal cemeteries?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

VI. GEOLOGY AND SOILS -- Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

ii) Strong seismic ground shaking?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

iii) Seismic-related ground failure, including liquefaction?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

iv) Landslides?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

b) Result in substantial soil erosion or the loss of topsoil?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?

☐
☐
☐
☒

d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?

☐
☐
☐
☒

e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?

☐
☐
☐
☒

VII. HAZARDS AND HAZARDOUS MATERIALS -- Would the project:

a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

☐
☐
☐
☒

b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

☐
☐
☐
☒

c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?

☐
☐
☐
☒

d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?

☐
☐
☐
☒

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?

☐
☐
☐
☒

f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?

☐☐☐☒

g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?

☐☐☐☒

h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?

☐☐☐☒

VIII. HYDROLOGY AND WATER QUALITY -- Would the project:

a) Violate any water quality standards or waste discharge requirements?

☐☐☐☒

b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

☐☐☐☒

c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?

☐☐☐☒

d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?

☐☐☐☒

e) Create or contribute runoff water which would exceed the capacity of existing or

☐☐☐☒

planned stormwater drainage systems or provide substantial additional sources of polluted runoff?

f) Otherwise substantially degrade water quality?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

j) Inundation by seiche, tsunami, or mudflow?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

IX. LAND USE AND PLANNING - Would the project:

a) Physically divide an established community?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

c) Conflict with any applicable habitat conservation plan or natural community conservation plan?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

X. MINERAL RESOURCES -- Would the project:

a) Result in the loss of availability of a known mineral resource that would be of

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

value to the region and the residents of the state?

b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?

☐☐☐☒

Comments: There are no known mineral resources on the property which is currently developed.

XI. NOISE -- Would the project result in:

a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

☐☐☐☒

b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?

☐☐☐☒

c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?

☐☐☐☒

d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?

☐☐☐☒

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

☐☐☐☒

f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?

☐☐☐☒

XII. POPULATION AND HOUSING -- Would the project:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or

☐☐☐☒

indirectly (for example, through extension of roads or other infrastructure)?

b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Police protection?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Schools?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Parks?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

Other public facilities?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

XIV. RECREATION

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

XV. TRANSPORTATION/TRAFFIC --
Would the project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

e) Result in inadequate emergency access?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

f) Result in inadequate parking capacity?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

XVI. UTILITIES AND SERVICE SYSTEMS
-- Would the project:

a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
--------------------------	--------------------------	--------------------------	-------------------------------------

b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? ☐ ☐ ☐ ☒

c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? ☐ ☐ ☐ ☒

d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? ☐ ☐ ☐ ☒

e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments? ☐ ☐ ☐ ☒

f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs? ☐ ☐ ☐ ☒

g) Comply with federal, state, and local statutes and regulations related to solid waste? ☐ ☐ ☐ ☒

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory? ☐ ☐ ☐ ☒

b) Does the project have the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals. ☐ ☐ ☐ ☒

c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

☐☐☐☒

d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?

☐☐☐☒

RESOLUTION NO. 5-16-2023

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
MALAGA COUNTY WATER DISTRICT APPROVING AN AGREEMENT FOR A
SUPPLY OF SURFACE WATER WITH THE FRESNO IRRIGATION DISTRICT**

WHEREAS, the Sustainable Groundwater Management Act ("Act") requires severely over drafted basins, including the Kings Basin, where the Malaga County Water District is located, to achieve sustainable groundwater pumping yields within twenty (20) years; and

WHEREAS, the North Kings Basin is a sub-basin of the Kings Basin has developed a Groundwater Management Plan, which is pending approval, which requires, among other things, each groundwater pumping agency within the sub-basin to achieve a sustainable groundwater pumping rate; and

WHEREAS, the North Kings Groundwater Sustainability Agency has prepared an estimate of the amount of water the North Kings GSA believes that the Malaga County Water District ("District") must either stop pumping from the groundwater supply or find a supplemental source of water for, to achieve groundwater sustainability; and

WHEREAS, the Malaga County Water District understands that it may need a supplemental supply of water once the North Kings Groundwater Sustainability Agency's Groundwater Management Plan is approved and the final amount of supplemental water, if any, the Malaga County Water District needs to obtain for recharge is determined and therefor, the Board of Directors of the Malaga County Water District has determined that entering into an agreement, a true and correct copy of which is attached hereto and incorporated herein by this reference as Attachment "A" for a supply of surface water with the Fresno Irrigation District ("Agreement ") will insure that the Malaga County Water District can achieve groundwater sustainability now, and during the life of the Agreement (the "Project"); and

WHEREAS, the District has prepared an initial study, a true and correct copy of which is attached hereto and incorporated herein by this reference as Attachment "B"; and

WHEREAS, having considered the initial study, and based upon documentary and oral evidence received at the public meeting, the Board of Directors desires to and hereby does find the Project exempt from CEQA and authorizes the filing of the Notice of Exemption, a true and correct copy of which is attached hereto and incorporated by this reference herein as Attachment "C", with the Fresno County Clerk.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
THE MALAGA COUNTY WATER DISTRICT as follows:**

1. That the forgoing Recitals are true and correct and are incorporated by this reference herein as though fully set forth at this point.

2. That the Board of Directors of the Malaga County Water District hereby approves the Agreement as attached hereto and incorporated herein by this reference as Attachment A.

3. The Board of Directors of the Malaga County Water District hereby authorizes the President of the Board of Directors to sign the attached Agreement (Attachment A) on behalf of the District. The Board of Directors further authorizes the General Manager to perform all duties, obligations or services required or permitted by the Agreement, and to sign any and all documents necessary on behalf of the District to perform any obligations, duties or services required by the District under the Agreement.

4. The Board of Directors of the Malaga County Water District finds, based upon documentary and oral evidence received, and exercising their independent judgment, that it can be seen with certainty that there is no possibility that the proposed Project as referred to in the above recitals may have a significant impact on the environment and therefore the Project is exempt from the California Environmental Quality Act pursuant to 14 CCR §15061(b)(3) and adopts the Notice of Exemption attached hereto and incorporated by reference herein as Attachment "C".

* * * * *

This Resolution passed and adopted this 16th day of May, 2023, by the following vote:

AYES:

NOES:

ABSENT:

Charles Garabedian, Jr., President
Malaga County Water District

ATTEST:

Moises Ortiz, M.P.A., General Manager-
Secretary of the Board of Directors
Malaga County Water District

5.d

**Surface Water Supply Agreement
Between Fresno Irrigation District and Malaga County Water District**

This AGREEMENT (Agreement) is made by and between Fresno Irrigation District, a California irrigation district ("District" or "FID") as water supplier; and Malaga County Water District, a special district in Fresno County (Malaga CWD), as water user, made and entered into this ____ day of _____, 2023 (Effective Date).

RECITALS

A. WHEREAS, the District holds certain water rights and has developed water supplies and a water distribution system that conveys surface water from the Kings and San Joaquin rivers and other water sources to its customers within District boundaries, as depicted and described in **Exhibit A**, attached hereto, and elsewhere for surface water irrigation, municipal uses, and groundwater banking for the benefit of its customers, and other beneficial uses.

B. WHEREAS, Malaga CWD is located within the boundaries of the District and the North Kings Groundwater Sustainability Agency (NKGSA) and is the owner of a groundwater pumping and distribution system for the delivery of extracted groundwater to its customers within Malaga CWD's boundaries and sphere of influence (SOI), as depicted and described in **Exhibit B** attached hereto.

C. WHEREAS, the District and Malaga CWD agree that Malaga CWD shall acquire a contractual right to receive certain surface water(s) (Surface Water Supply) from the District as specifically authorized by, and entered into pursuant to, Chapter 9 [commencing with Section 26670(1.b.)], Part 10, Division 11 of the California Water Code and Section 56133 of the California Government Code, providing for contractual water delivery in lieu of District water deliveries to lands within Malaga CWD's *existing* boundaries and *existing* SOI, as depicted in **Exhibit B**.

D. WHEREAS, Malaga CWD and the NKGSA have determined that Malaga CWD is pumping groundwater at an unsustainable rate and must either stop pumping or find a supplemental source averaging 756 acre-feet annually to achieve groundwater sustainability.

E. WHEREAS, by the terms of this Agreement Malaga CWD intends to address its groundwater sustainability obligations by banking and recovering the Surface Water Supply for subsequent delivery and use on lands within Malaga CWD's *existing* boundaries and *existing* SOI, as depicted in **Exhibit B**.

F. WHEREAS, Malaga CWD, as the lead agency pursuant to the California Environmental Quality Act (CEQA), has reviewed the potential environmental impacts of the execution and implementation of this Agreement in accordance with the requirements of CEQA and, having concluded that it can be seen with certainty that there is no possibility that the execution and implementation of this Agreement may have a significant effect on the environment, has determined that this Agreement is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

G. WHEREAS, the District accepted the Agency's CEQA exemption determination on _____, 20____.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained and for good and adequate consideration, the District and Malaga CWD (each a "Party" and collectively the "Parties") agree as follows:

AGREEMENT

1. **Recitals.** The Recitals stated above are true and a substantive part of this Agreement.

2. **Term; Termination; Early Termination.** This Agreement is effective as of the Effective Date listed above and will remain in effect until December 31, 2040, and will continue thereafter for additional terms of five (5) years each. When this Agreement becomes effective, it will replace and/or supersede any and all other water supply, water recharge, water conveyance, surface water conveyance, or similar agreement(s), if any, between the Parties. This Agreement may be terminated by either Party by giving written notice at least ninety (90) days prior to the expiration of the original term or any five (5)-year additional term.

3. **Purchases of Water from the District by Malaga CWD for Groundwater Banking, Management, and Extraction**

a. **Surface Water Supply to be delivered by the District to Malaga CWD.** The District will make available to Malaga CWD the Surface Water Supply, to consist of a multi-year average of 756 acre-feet annually. The Surface Water Supply to Malaga CWD will not be adjusted based on lands annexed into Malaga CWD over time nor will it be adjusted to reflect any changes in Malaga CWD or NKGSA's recommended, targeted, or required contribution to groundwater recharge. The Surface Water Supply shall be used on lands within Malaga CWD's boundaries and SOI as existing at the time this Agreement is executed by the Parties, as depicted in **Exhibit B**. If lands are annexed into the Malaga CWD and converted from agricultural to developed, those lands will be removed from the District's assessment rolls, but will remain within the District and Malaga CWD will be charged a contract rate for surface water rather than an assessed rate.

b. **Surface Water Supply cost and payment timing.**

i. The annual Malaga CWD Surface Water purchase amount payable to the District is computed by multiplying the District's then-established water service assessment rate for that year times 378 acres, based on the fact that FID delivers on average 2 acre-feet per acre per year, so the equivalent acreage for 756 acre-feet is 378 acres. For example, if the District's water service assessment rate is \$53.76 in 2023, Malaga CWD's cost for water that year would be \$20,321 [378 x \$53.76=\$20,321]. As the District's annual water service rate(s) increase,

Malaga CWD's annual surface water payment obligation for the fixed acreage of 378 acres will be determined by multiplying this number of acres by the applicable District water service rate each year to determine the annual payment due to the District from Malaga CWD. Amounts payable to the District pursuant to this Agreement shall be paid by Malaga CWD at 60% of the total amount due on or before the 20th day of December preceding the Water Year for which such amounts are due, and the remaining 40% shall be paid on or before the 20th day of June during the current Water Year. Consistent with other municipal agreements and ratepayers, the total amount will be paid in full each year by Malaga CWD regardless of the amount of available supply or the amount actually delivered to or used by Malaga CWD.

ii. If any payment by Malaga CWD to the District under this Agreement is not made in full within thirty (30) days of its due date, or if Malaga CWD is otherwise in breach of any term, agreement, act, or condition to be performed by Malaga CWD hereunder, then the District may suspend all or any of the rights, deliveries, and permissions given to Malaga CWD hereunder until such payment is made or breach is corrected by Malaga CWD, including the withholding of Surface Water Supplies. Should the District be in breach in the performance of any term, agreement, act, or condition to be done or performed by the District, Malaga CWD may suspend all or any of its rights, duties, or obligations hereunder until such breach by the District is corrected.

c. Use of Surface Water Supply delivered to Malaga CWD by the District

i. The Surface Water Supply shall be diverted into Malaga CWD's groundwater basins for purposes of groundwater banking and recovery. Malaga CWD shall not sell, transfer, deliver, or exchange any of the Surface Water Supply without written consent of the District first had and obtained. Should Malaga CWD fail to use the Surface Water Supply for groundwater banking and subsequent use on lands within Malaga CWD's *existing* boundaries and *existing* SOI, as depicted in **Exhibit B**, or fail to comply with directives from the NKGSA regarding pumping rates and volumes, or maintenance of certain groundwater levels, the District in its sole and absolute discretion reserves the right to terminate the Agreement, by the written notice procedure described in Section 2 of this Agreement.

ii. At no time will the Surface Water Supply delivered to Malaga CWD by the District be directly treated and used by Malaga CWD for municipal, industrial, or residential uses (i.e. the Surface Water Supply must be banked and recovered prior to use). As an exception, if requested of the District by Malaga CWD, the District would permit Malaga CWD's pumping of some water directly out of recharge basin(s) for landscaping/irrigation uses by Malaga CWD, including the blending of such pumped basin water with treated (purple pipe) water, if any, for exclusive use within **Exhibit B** lands.

iii. Malaga CWD shall not market, transfer, sell or exchange any portion of this supply.

d. Water Delivery

i. The District shall use reasonable efforts to find and make available for delivery to Malaga CWD the total volume of the Surface Water Supply. The District shall deliver water to Malaga CWD at the points shown on **Exhibit B**, and any additional points upon mutual agreement. Water shall be delivered at such times and in amounts that are convenient for the District in its sole discretion. This may include, but is not limited to, during the District's scheduled irrigation water run or during flooding events.

ii. In the event the District determines, in its sole discretion, that delivery of all or any portion of the Surface Water Supply in any given year will interfere with District operations, obligations, or for reasons beyond District control would result in harm to the District or its facilities, the District shall have no obligation to deliver such water to Malaga CWD during that particular year or portion(s) thereof. Regardless, Malaga CWD shall pay the annual cost for such water in accordance with the provisions hereof.

iii. In the event the District makes available for diversion/delivery or offers to deliver all or any portion of the Surface Water Supply volume to Malaga CWD at times or in amounts that do not suit the convenience of Malaga CWD, or if Malaga CWD is otherwise unable or refuses to take all or any portion of the Surface Water Supply offered by the District at the times that the District offers it, the District shall have no obligation to deliver such water on behalf of Malaga CWD at any future date or time, and Malaga CWD's obligation to make its annual payment called for hereunder shall not be adjusted based on water actually delivered to or accepted by Malaga CWD. Surface Water Supply that is rejected by Malaga CWD and not diverted into Malaga CWD basins will neither be included in the reports of Annual target volumes diverted into Malaga CWD basins for recharge nor inure to the credit of Malaga CWD for its volumetric recharge mandate mutually agreed to by the NKGSA/Malaga CWD as the target recharge volume to achieve groundwater balance and sustainability for Malaga CWD, even though it will be fully paid for by Malaga CWD.

iv. Malaga CWD shall bear all conveyance losses, if any, incurred in the District water system downstream of the applicable point of delivery; provided, that no such losses shall be assessed against Malaga CWD when the District is simultaneously delivering water to its landowners or water users via the portions of the District water system used to convey the Surface Water Supply, if any, to the points on the District water system where Malaga CWD will assume physical control of the delivered water.

e. Water Source and Quality. The District may use any source of surface water, including surface water that was banked and recovered from the ground, for delivery of the Surface Water Supply. Malaga CWD acknowledges that the Surface Water Supply will be "raw," non-potable and untreated. The District is under no obligation to deliver a Surface Water Supply of a particular water quality, and Malaga CWD may not refuse to pay for the Surface Water Supply

or otherwise avoid the terms of this Agreement based on water quality issues associated with the Surface Water Supply.

4. **Water Measurement & Basin Capacities.**

a. **Annual Groundwater Extraction Measured.** Malaga CWD will maintain well-calibrated meters to measure its groundwater extraction from wells located within the Kings Basin, and report the instantaneous flow and volume of water extracted by those wells to the NKGSA and the District.

b. **Measurement of Deliveries and Basin Capacity.** Malaga CWD's initial recharge basin(s) are set forth in **Exhibit C**, attached hereto and incorporated herein by reference. At its expense, Malaga CWD shall provide, install, and grant the District access to and maintain a flow meter or meters in accordance with District requirements for measurement and reporting of all surface water deliveries by the District to Malaga CWD and/or its basins. Additionally, Malaga CWD shall be responsible for maintaining adequately sized recharge facilities that are connected to District facilities/canals and capable of receiving surface water deliveries from the District at times when and in volumes made available by the District. Malaga CWD's unwillingness to increase basin capacities, location(s) or percolation rates to enable seasonal deliveries of surface waters for recharge when available in order to achieve a multi-year cumulative average of recharged water approximating 400 acre-feet annually would constitute a breach under this Agreement.

If Malaga CWD determines that it needs additional recharge facilities to meet its groundwater impact mitigation targeted recharge requirements in consultation with the NKGSA, the District may be able to provide a more cost-effective recharge alternative at one of its existing or planned nearby groundwater recharge facilities than Malaga CWD might develop itself. If it is mutually determined that additional recharge facilities are needed by Malaga CWD, a separate groundwater recharge agreement may be developed to augment Malaga CWD's groundwater recharge requirements using District facilities, at a mutually agreed to additional cost.

5. **Indemnities; Hold Harmless**

a. **General Indemnities by Malaga CWD.** Malaga CWD shall, to the fullest extent permitted by law, be solely responsible for any and all claims by or damage or injury to persons or property that, without sole negligence or willful misconduct on the part of the District, result directly or indirectly from the discharge of any water by Malaga CWD or its member agencies into District Facilities; the groundwater recharge and recovery of water by Malaga CWD; or, the acts or omissions of Malaga CWD, or its member agencies, or any of their officials, officers, employees, contractors, consultants, agents, invitees, or authorized volunteers in performing or carrying out the obligations or rights of Malaga CWD hereunder. Malaga CWD shall indemnify, defend and hold the District, and its elected officials, officers, employees, contractors, consultants, agents, invitees, or authorized volunteers (collectively the "Indemnified Parties"), free of and

harmless from any fine, civil penalty, loss, cost, damage, or expense, including reasonable attorneys' fees and costs, that may be caused to or incurred by them because of any injury or damage to persons or property arising from the negligence or fault of Malaga CWD, or its member agencies, or any of their elected officials, officers, employees, contractors, consultants, agents, invitees, or authorized volunteers in connection with: the discharge of any water by Malaga CWD, or its member agencies, into the District Facilities; the recharge or recovery of water into recharge project facilities/basins; any failure or refusal to observe or perform any term, covenant or condition in this Agreement to be observed or performed on Malaga CWD's part or those acts or omissions. This indemnification agreement shall not be restricted to any insurance proceeds available to Malaga CWD and shall survive the termination of this Agreement.

b. Malaga CWD's Defense of the District. If any action or proceeding is brought against any Indemnified Party in connection with any claim, then the District will use good-faith efforts to send prompt written notice to Malaga CWD. At the time Malaga CWD receives such written notice, Malaga CWD shall, at Malaga CWD's sole cost and expense, resist and defend such action or proceeding with legal counsel reasonably acceptable to the District. Malaga CWD may not admit any liability or enter into any compromise or settlement agreement on any Indemnified Party's behalf without the District's prior written consent, which the District shall not unreasonably withhold, condition, or delay. The District's legal counsel will be permitted to cooperate with Malaga CWD and its legal counsel and to participate in any action or proceeding brought against any Indemnified Party in connection with any claim.

c. District's Indemnification Obligations. The District shall indemnify, and hold the Malaga CWD, and its elected officials, officers, employees, contractors, consultants, agents, invitees, or authorized volunteers free of and harmless from any fine, civil penalty, loss, cost, damage, or expense, including reasonable attorneys' fees and costs, that may be caused to or incurred by them because of any injury or damage to person or property arising from the negligence or fault of the District, or any of its elected officials, officers, employees, contractors, consultants, agents, invitees, or authorized volunteers in connection with any failure or refusal to observe or perform any term, covenant or condition in this Agreement to be observed or performed on the District's part or those acts or omissions.

6. Notices. All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by overnight courier) or may be sent by regular mail or certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Section 6. The addresses noted below shall be that Party's address for delivery or mailing of notices.

To District: Fresno Irrigation District
 2907 S. Maple Avenue

Fresno, CA 93725-2208
Attn: General Manager

To District: Malaga County Water District
3580 S. Frank Street
Fresno, CA 93725
Attn: Board President

Either Party may by written notice to the other specify a different address for notice.

7. **Amendment to Agreement.** No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by both Malaga CWD and the District.

8. **Further Actions.** Both Parties shall cooperate and take such further action as may be necessary or convenient to the performance of this Agreement.

9. **Relationship of Agreement to Other Obligations.** This Agreement shall be at all times subject to all of the terms and conditions of the following contractual agreements, and regulatory/operational oversight of Pine Flat Dam. Collectively, these are referred to as the "Senior Commitments," and in no event shall the District be required to deliver water or take any other action in contravention of the Senior Commitments. To the extent that any provision contained in this Agreement is inconsistent with any term or condition of the Senior Commitments, that contrary provision of this Agreement shall be subordinate to the Senior Commitments or, if subordination does not resolve such inconsistency, such contrary provision shall be unenforceable.

The Senior Commitments include:

(a) Kings River Water Association Agreements aka "Blue Book," and any court or administrative rulings affecting the water rights of the member agencies in the Kings River Water Association (KRWA);

(b) Contract dated December 22, 2010 between District and the United States of America identified as Contract No. 14-06-200-1122D ("District's Bureau Contract") pursuant to which District is entitled to purchase certain water from the United States; and

(c) The operation of Pine Flat Dam by the U.S. Corps of Army Engineers, the operation and oversight of the State of California and the U.S. Government affecting State and Central Valley Project waters, dams, licenses, canals, and other societal interests, including but not limited to the Bureau of Reclamation, federal and state fish and game agencies, the State Water Resources Control Board, etc.

10. **No Water Rights Created.** Malaga CWD acknowledges herein that it has no historic or current rights to any Central Valley Project or Kings River Supply under this Agreement other than those contractual rights provided for herein, which are neither water rights nor water entitlements. Nothing in this Agreement authorizes or shall be construed or deemed to constitute the sale or transfer of a water right from either Party to the other, and nothing in this Agreement shall constitute the dedication by either Party of water or water storage to a public use. No right in or to any water, storage, or other water right owned by the District or Malaga CWD shall be acquired or lost by virtue of this Agreement or the actions contemplated hereby. At no time shall Malaga CWD make any claim, assert any right, or otherwise seek, confirm, or perfect in any forum any legal or beneficial interest, right, or title to any of District's water supply or storage rights. Malaga CWD will not acquire any permanent right to the delivery or diversion of any water made available by the District pursuant to this Agreement. Nothing in this Agreement is intended to or will be construed to act as a forfeiture, diminution, or impairment of any water right of the District.

11. **Protection and Acknowledgement of District Facilities.** Malaga CWD shall not permit the development of any parcel of land or the use of any easements (including a public utility easements) affecting land within its boundaries, if any, on which any portion of the District Water System is located until and unless the landowner and/or the developer enters into written agreements acceptable to the District for the acknowledgment, restatement, granting, or clarification of use and access to, operation of, repair, rehabilitation, relocation, replacement, reconfiguration, or pipelining of the District Water System facilities on the parcel, and on any adjacent parcels, all as the District determines is necessary or appropriate in order to: (i) avoid disruption of District operations or maintenance activities as a result of the development; (ii) make District facilities suitable for operation within a developed area, establish and acknowledge the District's historic and future rights to operate, access, upgrade, and maintain such facilities; or (iii) address public safety concerns as determined by the District.

12. **Dispute Resolution.**

a. District and Malaga CWD staff shall exercise every effort to resolve disputes through the development of a consensus.

b. To the extent District and Malaga CWD staff cannot promptly resolve an issue in dispute; the parties shall promptly convene a meeting of senior Party representatives to attempt to resolve the dispute. Either Party may request a dispute resolution meeting pursuant to this section by providing written notice to the other Party, including a summary of the issue in dispute. District representatives shall be its Board chair or president and another Board member. Malaga CWD representatives shall be the Board of Directors. These senior Party representatives shall make every reasonable effort to meet as frequently and as promptly as possible to negotiate the terms and conditions of a resolution. If these Party representatives are unable to resolve the dispute through this informal process within a reasonable period, either Party may pursue any remedy it may have under law or equity. Nothing in this section will be construed to create any right to arbitration.

c. The dispute resolution process described above shall be limited to material disputes hereunder as determined by the Parties.

d. In cases where a dispute arises between the Parties that, if unresolved, may result in imminent danger to the public health, safety, or welfare, the Parties shall not be subject to the provisions of this section.

13. **Defense of Agreement.** In the event of litigation challenging compliance with CEQA or any other aspect of this Agreement, the Parties shall cooperate to provide a joint defense of the litigation. Each Party shall bear its own costs of such litigation, including attorneys' fees and expert witness fees incurred in defending against any litigation challenging this Agreement on any grounds. However, if any CEQA challenge arises out of the determinations and conclusions by Malaga CWD that there is no possibility that the execution and implementation of this Agreement may have a significant effect on the environment, where Malaga CWD has determined that this Agreement is exempt from CEQA pursuant to CEQA Guideline Section 15061(b)(3); or, that Malaga CWD has reviewed the potential environmental impacts of the execution and implementation of this Agreement and determines that the requirements of CEQA have been met, then Malaga CWD, as the lead agency for CEQA purposes, shall coordinate and oversee the joint defense and shall pay the attorneys' fees and expert witness fees singularly without contribution from the District.

14. **Approvals.** Except as expressly provided in this Agreement, compliance with all legal/regulatory requirements and governmental or other third-party restrictions on the use or delivery of Malaga CWD's surface water to Malaga CWD's water users shall be the responsibility of Malaga CWD. The District shall be excused from delivering any water supply under this Agreement if, by so doing, the District would become subject to additional legal requirements or third-party restrictions imposed on deliveries of water to Malaga CWD's water users.

15. **Entire Agreement.** This Agreement, and each of the exhibits referred to herein, constitutes the entire agreement between the Parties pertaining to the settlement of disputes and obligations between them. This Agreement supersedes all prior and contemporaneous agreements, representations, and/or obligations concerning those obligations which are merged into this Agreement. Each Party has made its own independent investigation of the matters settled and is not relying upon any representation not specified herein.

16. **Applicable Law.** This Agreement shall be construed under and shall be governed by the laws of the State of California. Any action to interpret or enforce any aspect of this Agreement shall be brought in the California Superior Court of Fresno County, California. Malaga CWD and the District hereby expressly waive any right to remove any action to a county other than Fresno County as permitted pursuant to California Code of Civil Procedure Section 394.

17. **Construction of Agreement.** This Agreement is the product of a deliberative process involving the Parties and their legal counsel, including engaging in the give-and-take process of negotiation and preparation by and among each Party hereto and its attorneys, and the

Parties agree that this Agreement shall not be deemed to have been prepared or drafted by any one Party. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

18. **Counterparts**. This Agreement may be signed in any number of counterparts by the Parties, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument. Facsimile or other electronic signatures shall be binding.

19. **Binding Effect**. This Agreement shall be of binding legal effect only when it has been executed by all the Parties. No rights or duties under this Agreement may be assigned or delegated by a Party without the express written consent of the other Party, which may be withheld in the sole and absolute discretion of such other Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

20. **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, in addition to damages, injunctive or other relief, its reasonable costs and expenses, including, but not limited to, taxable costs and reasonable attorneys' and experts' fees.

21. **Severability**. Subject to the Parties' rights under of this Agreement, if any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be automatically reformed to be valid, legal, and enforceable to the maximum extent permitted and the balance of this Agreement shall remain in full force and effect notwithstanding such invalidity, illegality, or unenforceability.

22. **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, district, or other form of organization or association of any kind that is not a party. Without limiting the generality of the foregoing, landowners, residents, water users and ratepayers of the Parties are not intended to be third-party beneficiaries of this Agreement. The District has no fiduciary duty to Malaga CWD because of this or any other Agreement between the Parties.

23. **Force Majeure**. Notwithstanding any other provision of this Agreement, neither Party shall be liable for any failure to perform resulting from any cause outside the reasonable control of that Party. For purposes of this Agreement, routine and emergency repairs and maintenance of the District Water System shall be deemed causes outside of the reasonable control of the District (including without limitation the annual shut down of certain canals for maintenance), provided that the District shall use reasonable efforts to schedule routine maintenance to avoid interference with deliveries of Malaga CWD's surface water.

24. **Authority**. Each of the signatories hereto warrant and represent that he or she is competent and authorized to enter into this agreement on behalf of the Party for whom he or she purports to represent.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

"District" FRESNO IRRIGATION DISTRICT, a California irrigation district By: _____ Ryan Jacobsen, President By: _____ Bill Stretch, Secretary	"Malaga CWD" MALAGA COUNTY WATER DISTRICT, a California special district By: _____ Charles E. Garabedian Jr., Board President By: _____ Moises Ortiz, General Manager
---	--

EXHIBIT A- FID Boundary

EXHIBIT A- FID Boundary

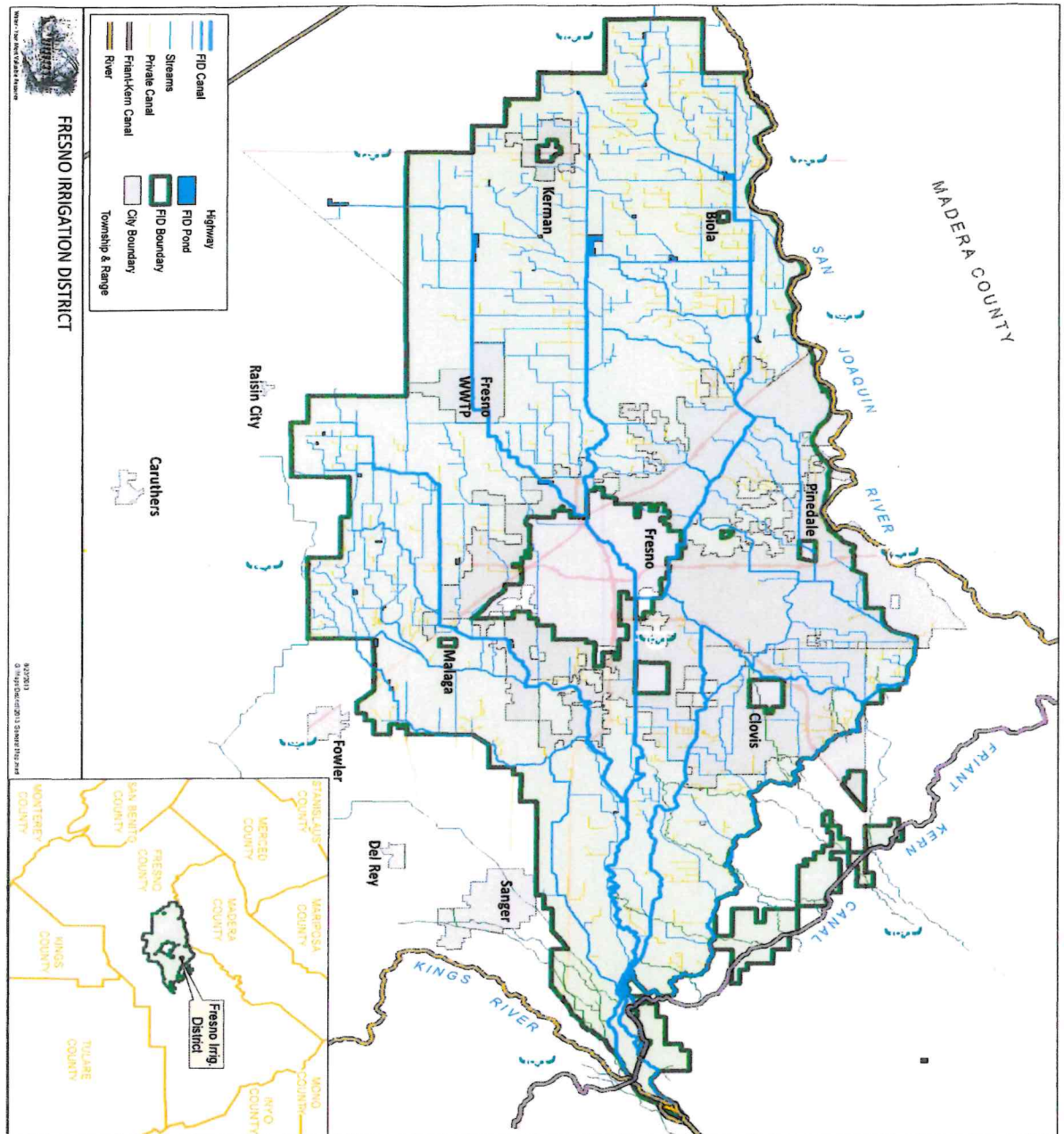
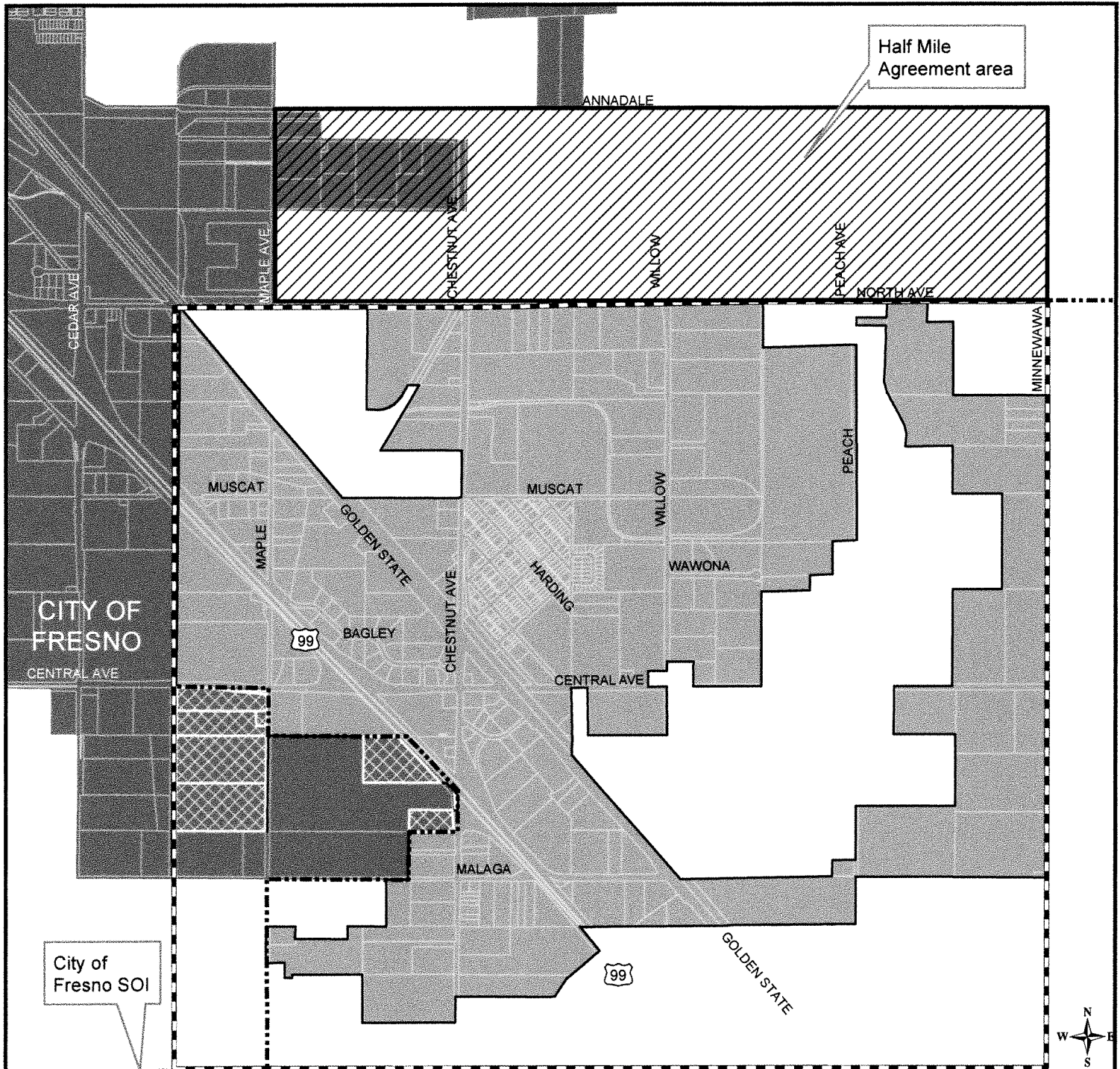







EXHIBIT B – Malaga CWD Boundaries and Sphere of Influence

Figure: Malaga County Water District

Services: water, sewer, park and recreation



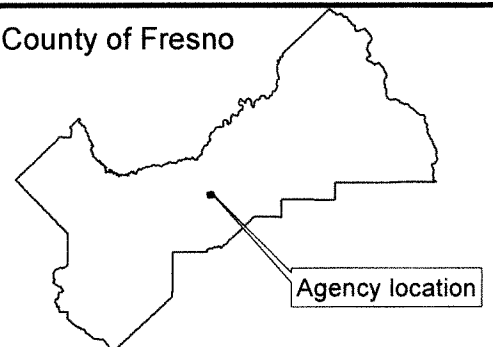
Fresno Local Agency Formation Commission

-  District SOI
-  Fresno SOI
-  District overlapping city
-  City of Fresno
-  MCWD Service area

Formation: 1958
 Sphere updated: 10/10/2007
 District area: 1,624 acres
 Sphere area: 2,674 acres

Map prepared: 03/03/2017

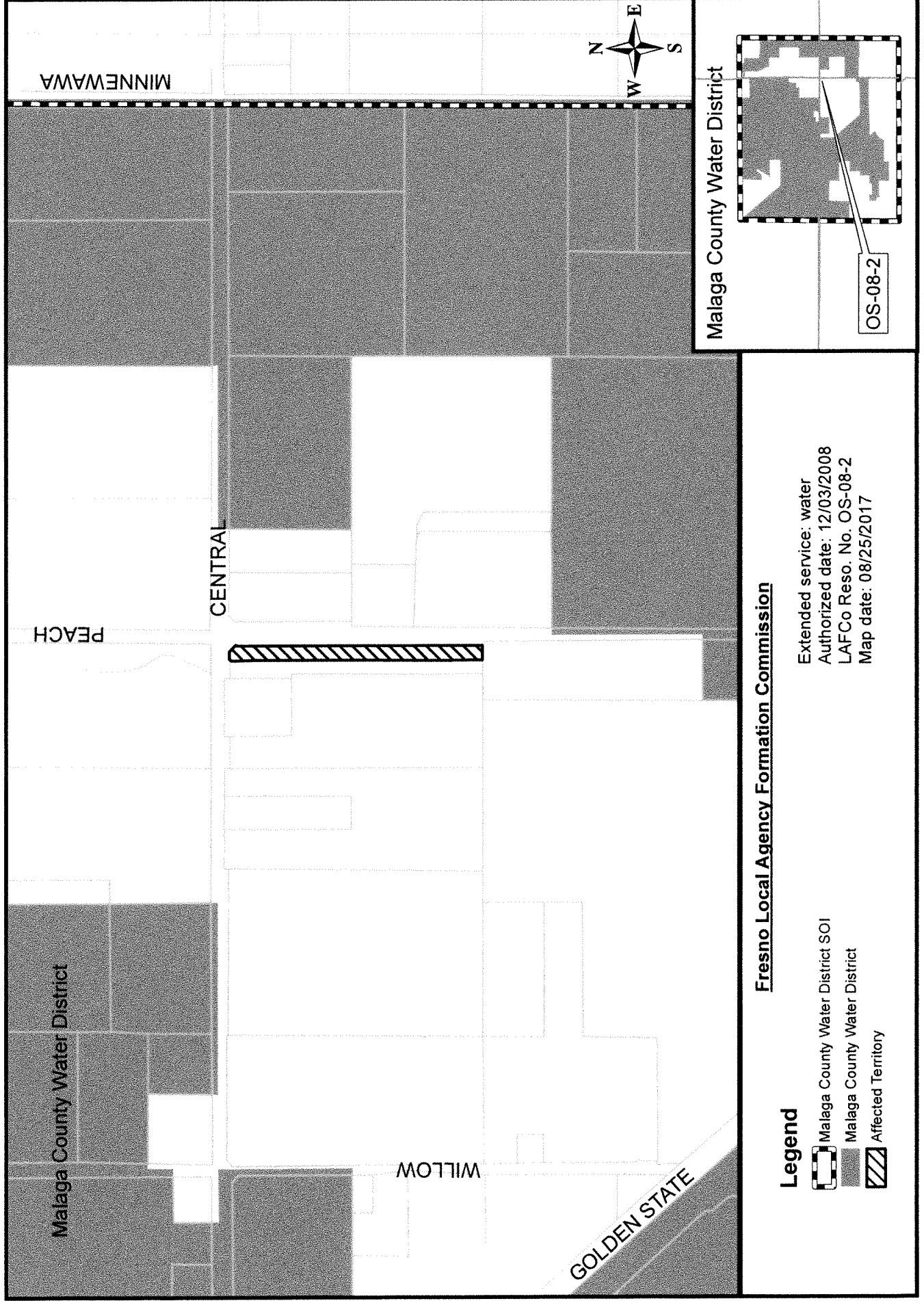
County of Fresno



Extensions outside service area

Malaga County Water District

Extension of services outside agency's service area (GC sec. 56133)



Extension of services outside agency's service area (GC sec. 56133)

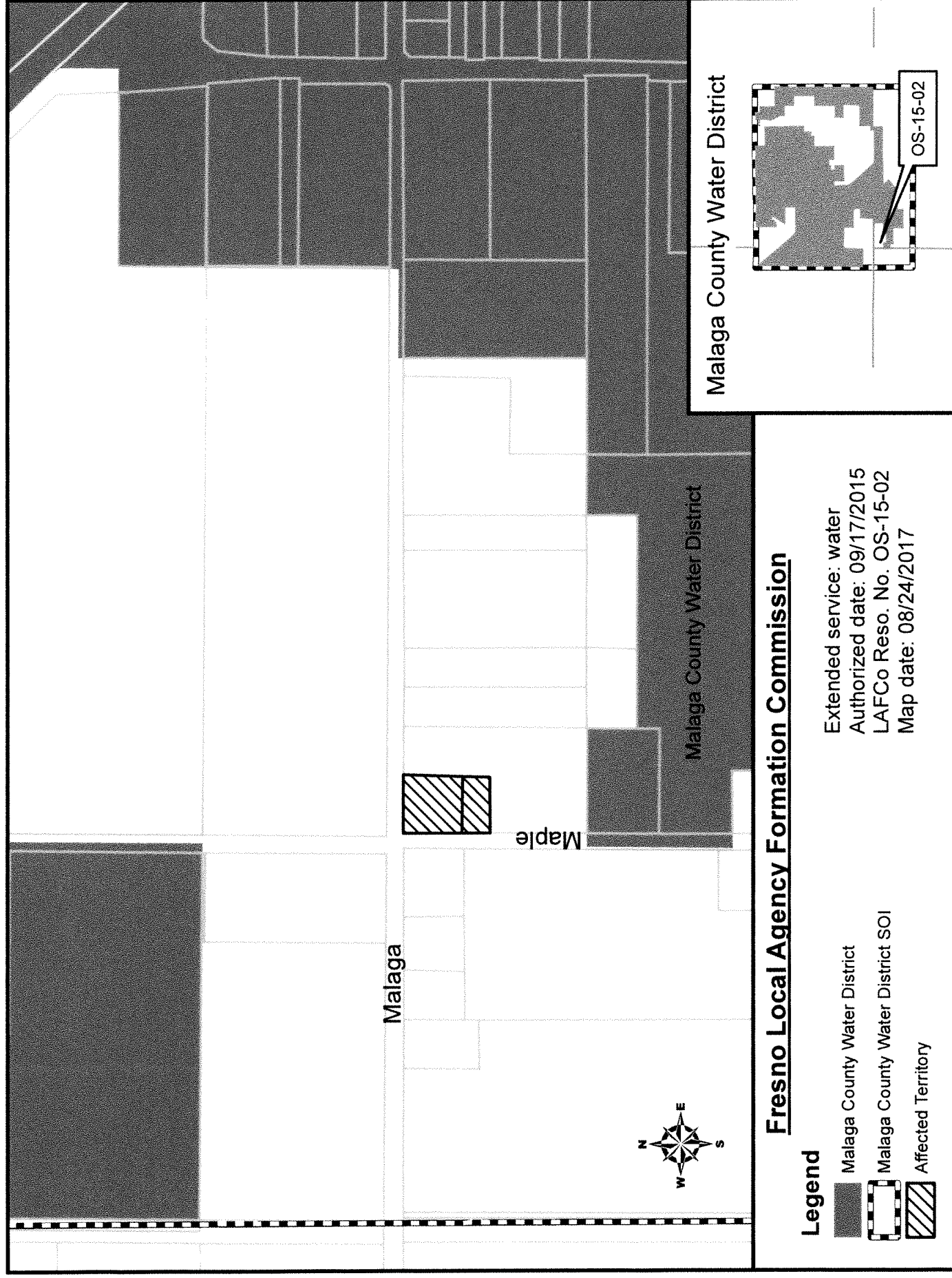
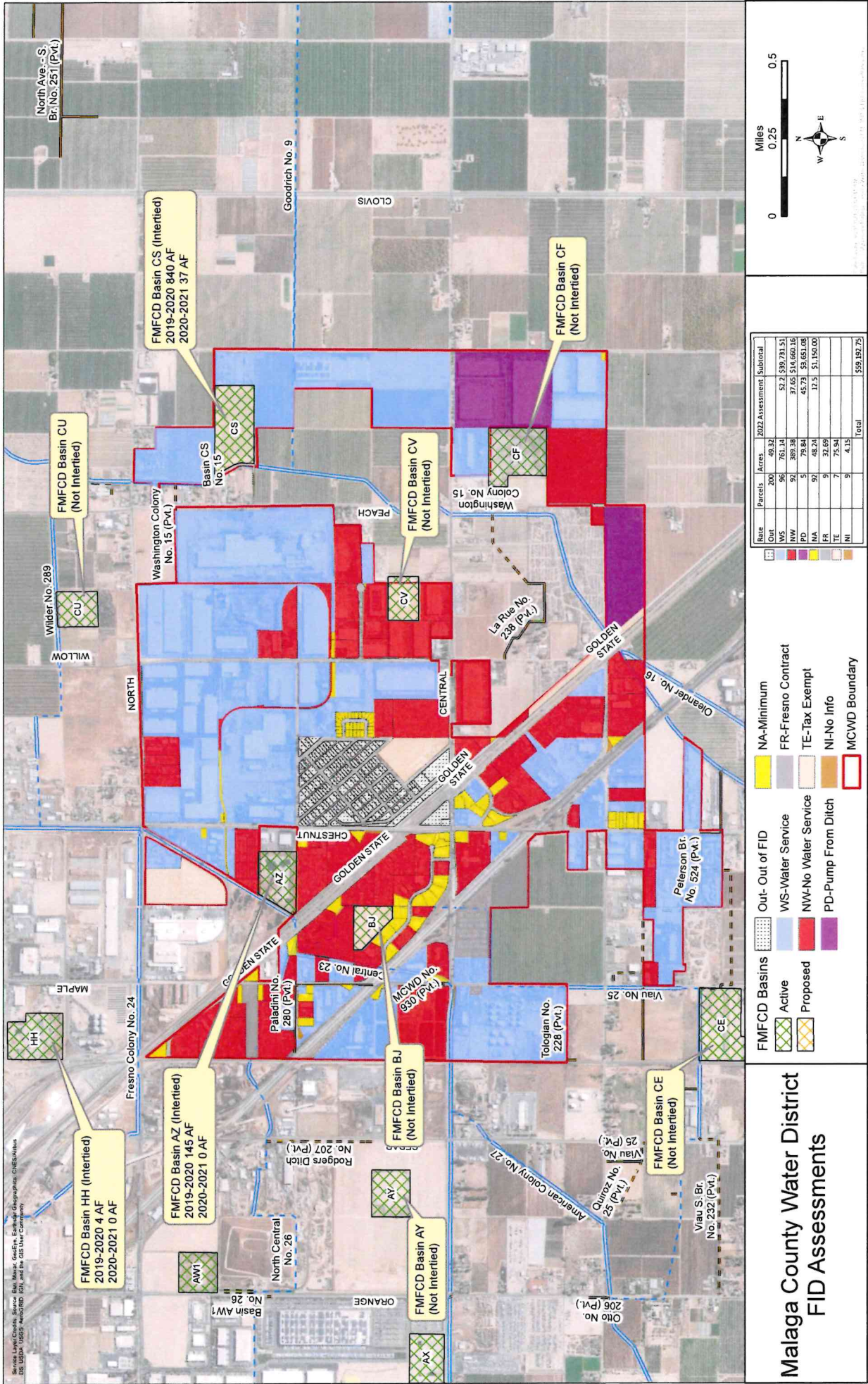


EXHIBIT C

The location, size, capacity, recharge/percolation rates and times available for use of said Recharge Facility are set forth below



Rate	Parcels	Acres	2022 Assessment	Subtotal
Out	200	49.32		
WS	96	761.14	57.2	\$39,731.51
NW	5	389.38	37.05	\$14,662.16
PD	5	79.84	45.73	\$5,651.08
NA	34	15.24	17.5	\$1,150.00
TE	7	35.69		
NI	9	75.35		
		41.15	Total	\$58,192.75

FMFCD Basins

Active

Proposed

Out-Of-FID

WS-Water Service

NW-No Water Service

PD-Pump From Ditch

NA-Minimum

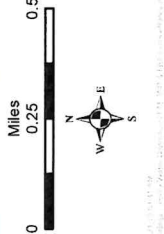
FR-Fresno Contract

TE-Tax Exempt

NI-No Info

MCWD Boundary

Malaga County Water District FID Assessments



Term Sheet for Water Supply Agreement between Fresno Irrigation District and the Malaga County Water District

BACKGROUND

1. The Malaga County Water District (Malaga) is located within the North Kings GSA, and the North Kings GSA is developing groundwater impact mitigation requirements for each of the agencies within the North Kings GSA. Preliminary impact estimates of Malaga's required mitigation for growth to its Sphere of Influence ("SOI") as depicted on Exhibit A attached hereto, is approximately 756 acre-feet per year.
2. Malaga plans to develop recharge facilities to provide for its groundwater impact mitigation, however Malaga currently does not have a surface water supply agreement with FID and would like to enter into an agreement for surface water supply from FID for delivery to groundwater recharge facilities consistent with the following parameters.

TERM SHEET

1. From surface water supply available to FID, FID will provide Malaga a surface water supply equivalent to up to 0.176% of FID's net Kings River supply (gross entitlement minus Pine Flat evaporations, losses, etc.) available for surface water customer deliveries in every Kings River Water year during the term of the Agreement. FID's Kings River supply averages approximately 430,000 acre-feet per year, so 0.176% equates to Malaga's needed 756 acre-feet per year. FID's Kings River supply fluctuates with hydrologic conditions, so the actual amount of surface water available to Malaga each year will also fluctuate with Kings River and other hydrologic conditions and FID's actual surface water supply availability in each given year.
2. The 756 acre-feet target for average annual groundwater recharge established by Malaga with the NKGSA as noted in this agreement is fixed and will not adjust based on land annexed into Malaga over time since the amount of the surface water supply included in this Agreement accounts for the Malaga's stated anticipated growth and future mitigation requirements including growth to its SOI as depicted on Exhibit A hereto. As lands are annexed into the Malaga and converted from agricultural to developed, those lands will be removed from FID assessment rolls, but will remain within FID and Malaga CWD will be charged a contract rate for surface water rather than an assessed rate.
3. FID will require Malaga to pay FID's current water service rate annually for 378 acres. The 378 acres is based on the fact that FID delivers on average 2 acre-feet per acre per year, so the equivalent acreage for 756 acre-feet is 378 acres. Consistent with other municipal agreements and ratepayers, the total amount will be paid in full each year by Malaga regardless of the amount of available supply or the amount actually delivered to or used by Malaga. FID's 2023 water service rate is \$53.76 per acre, so the total amount due for Malaga would be \$20,321 in 2023 [376 x \$53.76=\$20,321]. As FID's annual water service rate(s) increase, Malaga's annual surface water payment obligation for the fixed acreage of 378 acres will be determined by multiplying this number of acres by the applicable FID water service rate each year to determine the annual payment due to FID from Malaga. FID will deliver surface water exclusively for groundwater recharge and agricultural uses but by mutual agreement at no time will the surface water be directly treated by Malaga for municipal, industrial or residential uses.
4. FID will measure all surface water delivered to Malaga for groundwater recharge.
5. Malaga shall provide, install, provide access to and maintain a flow meter or meters per FID requirements. FID will provide a monthly report to Malaga reflecting water deliveries.
6. Malaga shall be responsible for basin facilities to be adequately maintained to receive surface water for delivery.
7. Malaga shall not market, transfer, sell or exchange any portion of this supply.
8. Malaga may not export or deliver any surface water or pumped groundwater to any lands outside its boundaries and sphere of influence without the express written permission of FID, which permission may be denied for any reason.
9. If Malaga determines that it needs additional recharge facilities to meet its groundwater impact mitigation targeted recharge requirements in consultation with the North Kings GSA, FID may be able to provide a more cost-effective recharge alternative at one of its existing or planned nearby groundwater recharge facilities than Malaga might develop itself. If it is mutually determined that additional recharge facilities are needed by Malaga, a separate groundwater recharge agreement may be developed to augment Malaga's groundwater recharge requirements using FID facilities, at a mutually agreed to additional cost.

EXHIBIT A

Figure: Malaga County Water District

Services: water, sewer, park and recreation

