

SUBJECT: AKIN WATER COMPANY AND CITY OF PORTERVILLE WATER SERVICE AGREEMENT

SOURCE: Public Works Department - Engineering Division

COMMENT: At the October 15, 2013, City Council meeting, staff presented a report outlining the difficulties the Akin Water Company faced in providing potable water to its customers. The Akin wells have tested high in nitrates. The Akin Water Company provides water to 22 individual parcels located south of Lincoln Avenue between 4th Street and Plano Street.

During negotiations between the City and Akin Water, the City provided a "roadmap" whereby the City would be able to provide potable water. One of the conditions included the annexation of the area in question. Annexation rules as promulgated by the Tulare County Local Agency Formation Commission (LAFCo) stipulate that a successful annexation cannot result in the formation of an island. This would have been the case in this situation due to the surrounding area's reluctance to annex to the City.

In the audience and assisting the Akin Water Company was the California Department of Public Health (CDPH). The CDPH offered to pay for the installation of a pipeline system to the Akin properties, install water meters to all properties, pay for the inspection of all constructed work, pay all City water connection fees, and offered to construct and dedicate a new well to the City.

After much deliberation, the City Council accepted the CDPH offer and agreed to provide water to the Akin properties under an extra territorial water service agreement. The Water Service Agreement prepared by staff, reviewed, edited and approved by the City Attorney and found acceptable by the California Department of Public Health is attached for Council's action.

RECOMMENDATION: That the City Council:

1. Authorize the Mayor to execute the Akin Water Company and City of Porterville Water Service Agreement; and
2. Direct the City Clerk to notarize and transmit the Water Service Agreement to the California Department of Public Health.

ATTACHMENTS: Water Service Agreement
Locator Map

P:\pubworks\General\Council\Akin Water Service Agreement.doc

Dir  Appropriated/Funded  CM 

Item No. 10

**AGREEMENT BETWEEN THE CITY OF PORTERVILLE
AND THE AKIN WATER COMPANY
FOR POTABLE WATER SERVICE AND SYSTEM MAINTENANCE**

THIS AGREEMENT, made and entered into by and between the CITY OF PORTERVILLE, a California Charter City, hereinafter referred to as City, and the AKIN WATER COMPANY, a private water company located in Tulare County, hereinafter referred to as Water Company.

W I T N E S S E T H:

WHEREAS, Water Company exists for the purpose of providing water to certain residents of East Lincoln Street, located southeast of Porterville in unincorporated Tulare County, California; and

WHEREAS, Water Company is unable to provide safe drinking water to its residents; and

WHEREAS, Water Company's service territory is located within the sphere of influence of City; and

WHEREAS, City has agreed to serve the residents presently served by Water Company with potable water, per City Council Resolution Number _____, adopted by the Porterville City Council on _____; and

WHEREAS, City's request for an Extra-Territorial Service Agreement to serve Water Company was approved by Tulare County LAFCo on _____, per LAFCo Extra-Territorial Service Agreement _____; and

WHEREAS, City has the capacity to serve the Water Company's customers with potable water; and

WHEREAS, Water Company has received Proposition 84 funds from the California Department of Public Health for the purposes of planning and designing the replacement distribution system and

infrastructure necessary to connect Water Company's water system to City's water system, as well as for planning and design of a replacement water source for City; and

WHEREAS, the funding agreements for the aforementioned Proposition 84 funds require an agreement between City and Water Company that commits the City to providing potable water supply after construction of the new system is complete and identifies the party responsible for operation and maintenance of the new water distribution system within Water Company's service territory after construction. The agreement is conditioned on Water Company's surrender of its water supply permit after the Consolidation is complete and the design and construction of a new water source (well) for the City is completed, prior to connecting Water Company to City's water system.

NOW THEREFORE BE IT RESOLVED, that City shall supply with potable water the properties currently served by Water Company, subject to the following terms and conditions:

1. **Consolidation.** City agrees to serve with potable water the properties currently served by Water Company, including all twenty-three (23) subdivision lots and homes located thereon. All drinking water connections shall comply with all applicable local, state and federal requirements, and shall be made under the supervision of City and City's agents. The area to be served includes roads internal to the subdivision, specifically East Lincoln Street and Fourth Street as depicted on the attached map, incorporated as Exhibit A to this Agreement. Water mains will be constructed in Fourth Street and Lincoln Street and in pipeline easements as necessary to provide water service to customers of the Water Company. The reconstructed water distribution system shall be integrated into and made part of the City's water distribution network, and City shall supply water to the residents currently served by Water Company who will become individual customers of the City.
2. **Ownership of Pipeline.** Upon completion of construction of the reconstructed water system, ownership of the water distribution system within Water Company's service territory shall transfer from

Water Company to City. The new system shall be owned, operated and maintained by City as part of its reconstructed municipal water system. In all other ways, Water Company's service territory shall remain independent of City government and remain an unincorporated area of the County and subject to County of Tulare codes, zoning restrictions, and services.

3. **User Fees.** When Water Company's customers become City's customers, they shall pay the current rates for water services charged to other City customers, as set by the City Council.

4. **Other Fees.** The Water Company agrees to pay capacity and connection charges on behalf of its existing customers' construction fund obtained for the purposes of installing new water mains and making water system upgrades as described below. Future development in need of new water service may be subject to regular City fees at the time of connection. If construction funding does not materialize or does not cover such charges and other funding sources cannot be found, this agreement shall be deemed null and void.

5. **Water System Upgrades.** Water Company agrees that prior to the consolidation with the City's system, its water distribution system shall be fully functional, constructed in accordance with City standards and specifications and system improvements accepted by the City Council. Specific conditions to be completed prior to the consolidation are as follows:

A. The Water Company shall reconstruct the existing water distribution system to meet City Standards including, but not limited to, the installation of residential water services and meters of a size and type specified by the City, and pay all applicable water related fees. The reconstruction is subject to plan approval and inspection by City.

B. The two (2) existing wells owned by Water Company will be abandoned in accordance with local, state and federal requirements after the expiration of a mutually agreed-upon period of time to allow residents to connect to the reconstructed water distribution system.

C. The Water Company, within applicable funding rules and restrictions and in accordance

with the scope of work authorized by the California Department of Public Health, consents to the use of a portion of its planning/design and construction grant(s) for the planning and development of an additional water source by and for the City of Porterville.

D. By this Agreement, maintenance of the reconstructed water system shall be performed by City commencing with the transfer of ownership as provided for in Item 2 of this Agreement.

6. **Project Funding.** It is mutually understood that the planning, design and construction of improvements described herein is contingent upon the receipt of anticipated funding from the State of California. Should project funding fail to materialize, or if it is insufficient to accomplish the necessary improvements, then neither party is obligated to the terms of this Agreement.

7. **Inspection.** City will inspect the reconstruction of the drinking water system as construction of the water system progresses on an inspection schedule established by the City. Fees for inspection required by the Consolidation process shall be paid by Water Company.

8. **Permits.** Water Company agrees to obtain all permits necessary for construction. City agrees to submit a Water Supply Permit Amendment Application to the California Department of Public Health, reflecting the change in service area.

9. **Dissolution.** Upon final execution of the consolidation described herein, the Water Company, Akin Water Company, shall cease operation and dissolve its organizational structure, and shall voluntarily surrender its existing water permit for Public Water System ID number 5401038.

10. **Liability.** Upon consolidation of the reconstructed water distribution system and acceptance of the new water source (well), City will assume responsibility for the delivery of safe, potable drinking water to the residents formerly served by Water Company.

11. **Indemnification.** Prior to consolidation/connection of the reconstructed water distribution system, Water Company assumes all responsibility for the control, distribution and disposal of water delivered under this agreement. Water Company shall, to the fullest extent permitted by law, hold

harmless, and indemnify City and its officers, officials, employees and volunteers from and against all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Water Company and its employees, agents and subconsultants, except where and to the extent caused by the negligence or willful misconduct of the City. Upon connection of the reconstructed water distribution system, City assumes all responsibility for the control, distribution and disposal of water delivered under this agreement. City shall, to the fullest extent permitted by law, hold harmless, and indemnify Water Company and its officers, officials, employees and volunteers from and against all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the City and its employees, agents and subconsultants, except where and to the extent caused by the negligence or willful misconduct of the Water Company. The provisions of this section survive completion of the services or the termination of this Agreement.

12. **Attorney's Fees.** Should any litigation be commenced between the parties concerning this Agreement, or the rights and duties of either party under this Agreement, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorneys' fees in such litigation, which shall be determined by the court in such litigation or in a separate action brought for that purpose.

13. **Term.** This agreement shall become effective upon its execution, and shall remain in effect until such time as all conditions described herein are met and the consolidation can be consummated or until _____, whichever occurs first.

14. **Notices.** Any and all notices or other matters required or permitted by this Agreement or by law to be served on, given to, or delivered to either party by the other party to this Agreement shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is directed or to a supervisory employee of that party, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to City at 291 N. Main Street,

Porterville, CA 93257 (Attn: John Lollis, City Manager), or to Water Company at 642 E. Henderson Avenue, Porterville, CA 93257 (Attn: James N. Akin, Owner). Either party may change its address for purposes of this Paragraph by giving written notice of this change to the other party in the manner prescribed by this Paragraph.

15. **Sole and Only Agreement.** This instrument constitutes the sole and only agreement of the parties, City and Water Company, relating to water system consolidation and correctly sets forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

16. **Binding on Heirs and Successors.** This Contract shall inure to the benefit of and be binding on the heirs, executors, administrators, successors, and assigns of each party to this Agreement.

17. **Subject to Valid Laws.** This Agreement is subject at all times to any and all valid laws, ordinances, and governmental regulations whether federal, state, county, or city, and any modification made to this Agreement by any such law or ordinance or regulation or to the conduct of the parties under this Agreement shall not impose liability on either party for breach of their duties under this Agreement.

EXECUTED on _____, 2014


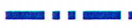

City of Porterville:

By: _____
Mayor of Porterville

WATER COMPANY:

By: _____
Owner, Akin Water Company



-  Existing Pipeline
-  Proposed Pipeline
-  Akin Water District

