



## CENTRAL COAST WATER AUTHORITY

### MEMORANDUM

February 22, 2020

**TO:** CCWA Board of Directors

**FROM:** Ray A. Stokes   
Executive Director

**SUBJECT:** 2022 Supplemental Water Purchase Program Contracts

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#### SUMMARY

For consideration by the Board of Directors, Staff has prepared the contracts required to implement CCWA's Supplemental Water Purchase Program for 2022.

Through CCWA's Supplemental Water Purchase Program, CCWA assists CCWA Participants in identifying, securing and delivering supplemental water supplies when Participants' State Water Project supplies are reduced due to dry conditions. Supplemental water supplies are delivered through the State Water Project and CCWA facilities.

The Board's approval of the proposed agreements will allow Staff to implement the program. However, no transfer or exchange will proceed without returning to the CCWA Board for review and consideration of the specific purchase opportunity and compliance with CEQA (as may be required) and all other applicable laws.

#### RECOMMENDATION

Staff recommends that the Board of Directors:

**1. 2022 Supplemental Water PARTICIPATION Agreement**

- (a) approve the proposed Participation Agreement (Attachment 1), and
- (b) authorize the Executive Director to execute one or more Participation Agreements with CCWA Participants who have indicated their interest in purchasing additional water supplies in 2022 due to continuing drought conditions.

**2. FORM of 2022 Supplemental Water PURCHASE Agreement**

- (a) approve the FORM of proposed Purchase Agreement (Attachment 2), and
- (b) authorize the Executive Director, with assistance from CCWA's General Counsel, to tailor each Purchase Agreement to address the unique characteristics of each proposed purchase opportunity as that information becomes available.

## DISCUSSION

In light of the continuing dry conditions, CCWA has initiated a Supplemental Water Purchase Program for 2022 to allow CCWA Participants to purchase additional imported water supplies to augment the State Water Project supplies that otherwise would be available to them pursuant to their respective Water Supply Agreements with CCWA. The State Water Contract allows State Water Contractors to transfer and exchange their State Water Project supplies and to use available capacity in the State Water Project for the conveyance and delivery of project and non-project supplies, subject to the California Department of Water Resources' (DWR) approval and compliance with all applicable laws. To date, several CCWA Participants have indicated their desire to purchase additional imported water supplies for 2022.

Upon review, the agreements used in prior years' Supplemental Water Purchase Programs were outdated, especially in light of the new procedures required by the Water Management Amendment to the State Water Contract.

In updating these agreements, our overarching approach was to ensure that the costs and liabilities associated with the program, and any specific purchase opportunity, are borne by the beneficiaries of the program, and as applicable, each purchase opportunity, and not by CCWA or CCWA Participants who are not participating in the program. Staff's proposed updated agreements are attached.

### 1. 2022 Participation Agreement

The first phase of the program is implemented through the Participation Agreement, which allows CCWA Participants to opt in to the program for 2022. To participate in the program, CCWA enters into a Participation Agreement with each participant. The key provisions of this agreement are:

- The Participation Agreement remains in effect for 2022, unless terminated.
- One or more CCWA Participants elect to participate and identify the quantity of water they are interested in purchasing, which is referred to as the delivery goal.
- CCWA Staff identifies and negotiates the terms of one or more purchase opportunities and provides those opportunities to the program participants.
- Purchase opportunities are made available to all program participants. In the event the combined delivery goals of the program participants exceed the quantity of water available from any purchase opportunity, the water available is allocated pro-rata based on each participant's delivery goal.
- All costs and liabilities of the program are allocated among the program participants pro-rata, even after a participant's delivery goal has been satisfied and even if the participant quits the program. Program costs are generally not significant.
- All costs and liabilities associated with a specific purchase opportunity are allocated among the program participants who have executed Statements of Intent.
- It is anticipated that there will be a period of time between execution of the Statement and Intent and execution of the Purchase Agreement (below) and some associated expenses, including CCWA negotiation and drafting of an agreement with the seller.

### 2. FORM of 2022 Purchase Agreement

The second phase of the program is implemented through the Purchase Agreement. Unlike the Participation Agreement, the Purchase Agreement is specific to a purchase opportunity. As a result, the proposed Purchase Agreement between CCWA and program participants who elect to purchase the specific supply is presented to the Board in template or draft form and will need to be revised to address the unique attributes of each proposed transfer or exchange as that

information becomes known. There may be more than one purchase opportunity during the year, each with different participants purchasing different quantities of water. Each will require a new Purchase Agreement and each purchase opportunity will require Board approval. The key terms of this agreement are:

- Program participants will be provided a deadline to execute the agreement and an estimate of the participant's costs.
- Exhibit B to the agreement will state each participant's total quantity to be purchased and allocated share of all costs and liabilities associated with the specific purchase.
- Upon execution, participants must deliver a deposit to CCWA.
- Upon receipt of all deposits, and all other conditions have been satisfied, CCWA will undertake environmental compliance and comply with the Water Management Amendment of the State Water Contract.
- At a meeting of the CCWA Board, the Board will consider the specific purchase opportunity and CEQA, as applicable.
- In the event the Board approves the specific purchase opportunity, the Executive Director will execute an agreement with the seller, seek DWR's approval of the transfer or exchange, request that the Santa Barbara County Flood Control and Water Conservation District execute an agreement with DWR that authorizes the delivery to CCWA, and execute an agreement to indemnify the District from any liability associated with the transfer or exchange.
- All costs and liabilities associated with a specific purchase opportunity are allocated among the participants who have executed a Purchase Agreement for the specific purchase.
- CCWA will have no liability for any transfer or exchange, including CCWA's inability to obtain approvals for, secure or deliver the supply, whether as a result of transmission losses, environmental constraints, water quality considerations, capacity constraints, or any other reason.

## **ENVIRONMENTAL REVIEW**

CEQA Guidelines Section 15061(b)(3) provides a "common sense" exemption to environmental review that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to review.

The Board's approval of the Participation Agreement and authorization to execute the agreement with one or more CCWA Participants does not have a potential for causing a significant effect on the environment. It is an administrative program.

The Board's approval of the FORM of Purchase Agreement does not have a potential for causing a significant effect on the environment because no specific transaction has been identified at this time. When a specific purchase opportunity is presented, and CCWA executes of one or more Purchase Agreements with CCWA Participants, CCWA will evaluate whether, and if so to what extent, compliance with CEQA is required. Each purchase opportunity will be presented to the Board for its consideration.

### **Attachments:**

1. 2022 Supplemental Water PARTICIPATION Agreement
2. FORM of 2022 Supplemental Water PURCHASE Agreement

**CENTRAL COAST WATER AUTHORITY**  
**2022 SUPPLEMENTAL WATER PURCHASE PROGRAM**  
**PARTICIPATION AGREEMENT**

This 2022 Supplemental Water Purchase Program Participation Agreement (“**Agreement**”) is made as of [REDACTED] by and between

CENTRAL COAST WATER AUTHORITY (“**CCWA**”)

and

[REDACTED] (“**Contractor**”) (each, a “**Party**,” and together, the “**Parties**”).

**RECITALS**

A. Pursuant to the Transfer of Financial Responsibility Agreement, the Santa Barbara County Flood Control and Water Conservation District (“**SBCFCWCD**”) transferred to CCWA, and CCWA accepted and assumed, all rights and obligations to the State Water Supply Contract between SBCFCWCD and the Department of Water Resources (“**DWR**”) that provides for the delivery of water from California’s State Water Project to Santa Barbara County.

B. Additionally, CCWA owns, operates and maintains water conveyance, storage and treatment facilities to deliver water made available to CCWA pursuant to the State Water Supply Contract to cities, water districts and other water purveyors and users in Santa Barbara County pursuant to one or more water supply agreements (collectively, the “**CCWA Participants**”).

C. CCWA and Contractor are parties to a Water Supply Agreement, as amended from time to time, related to the matters described in Recitals A and B.

D. Due to persistent drought conditions, it is anticipated that the State Water Project will be unable to deliver to CCWA the quantity of water needed by CCWA for delivery to the CCWA Participants.

E. CCWA has determined that it should seek to acquire water from other sources to supplement the supply provided for in Contractor’s Water Supply Agreement (“**Supplemental Water**”) and has implemented the 2022 Supplemental Water Purchase Program to identify Supplemental Water that may be available for purchase by one or more CCWA Participants (“**2022 Supplemental Water Purchase Program**”).

F. Contractor has determined that it wishes to participate in the 2022 Supplemental Water Purchase Program and is willing to share in the expenses pertaining thereto in accordance with the terms and conditions of this Agreement. Contractor and any other CCWA Participants

that have executed a “2022 Supplemental Water Purchase Program Participation Agreement,” in a form substantially the same as this Agreement (“**Participation Agreement**”), are referred to herein as “**Participating Contractors.**”

G. The Parties have determined that this Agreement is exempt from the California Environmental Quality Act (“**CEQA**”) pursuant to the “common sense” exemption to environmental review under Section 15061 subdivision (b)(3) of Title 14 of the California Code of Regulations because the Parties’ actions pursuant to this Agreement do not have the potential for causing a significant effect on the environment.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

**1. Purpose and Intent.** The purpose of this Agreement is to provide for CCWA’s identification of one or more opportunities for Participating Contractors to acquire Supplemental Water in exchange for the Participating Contractors’ reimbursement of CCWA’s Total Expenses, as that term is defined in Paragraph 4.2, arising from and associated with such activities. It is the intention of the Parties that neither CCWA, nor any CCWA Participant that is not a Participating Contractor shall incur any expense or liability related to or arising from this Agreement or the 2022 Supplemental Water Purchase Program.

### **2. Cooperation; Delivery Goal**

2.1 Cooperation. Contractor acknowledges that CCWA’s ability to identify, structure and negotiate one or more opportunities for the acquisition of Supplemental Water, as provided in this Agreement, requires Contractor’s cooperation. Contractor shall reasonably cooperate with CCWA, at CCWA’s request, in all ways as may be necessary to carry out the terms and conditions of this Agreement.

2.2 Delivery Goal. Contractor represents that it is seeking to acquire [REDACTED] acre feet of Supplemental Water over the term of this Agreement (“**Delivery Goal**”). At any time during the term of this Agreement, Contractor may request an increase, but not a decrease, in the Delivery Goal by executing and delivering to CCWA a Request for Increase in Delivery Goal, in a form approved by CCWA. No such Request for Increase in Delivery Goal shall be effective unless and until it is executed by CCWA’s Executive Director. Any increased Delivery Goal supersedes any prior Delivery Goal for all purposes related to this Agreement and without regard to the date on which any Delivery Goal is increased.

### **3. Notification of Purchase Opportunity; Statement of Intent; Allocation of Supplemental Water**

3.1 Notification of Purchase Opportunity. CCWA shall notify Contractor of each opportunity to acquire Supplemental Water identified by CCWA (each, a “**Purchase Opportunity**”). Each notice shall include a deadline for Contractor’s response and, to the extent

it is available to CCWA, the following information: anticipated available quantity, purchase price, date of scheduled delivery, and delivery risk, including anticipated transmission losses (the “**Notice**”).

### 3.2 Statement of Intent

3.2.1 Upon receipt of the Notice, Contractor shall submit to CCWA a Statement of Intent (“**Statement of Intent**” or “**SOI**”), in a form approved by CCWA, which shall include the quantity of water Contractor intends to acquire in connection with a particular Purchase Opportunity (“**SOI Quantity**”).

3.2.2 If Contractor submits a Statement of Intent prior to the deadline set forth in the Notice, CCWA shall provide to Contractor (a) a proposed agreement between CCWA and Contractor whereby Contractor agrees to purchase and take delivery of the SOI Quantity on the terms and conditions stated therein (“**Supplemental Water Purchase Agreement**”), and (b) the deadline by which Contractor must elect to execute the Supplemental Water Purchase Agreement if it wants to participate in a specific Purchase Opportunity. Participating Contractors who submit a Statement of Intent are referred to herein as “**Purchase Opportunity Participants**” for each Purchase Opportunity.

3.3 Oversubscription; Allocation of Supplemental Water. As to each Purchase Opportunity, if CCWA receives signed Statements of Intent from Purchase Opportunity Participants where the aggregate SOI Quantity from all Purchase Opportunity Participants exceeds the amount of Supplemental Water available under the particular Purchase Opportunity, the amount of Supplemental Water available under each Purchase Opportunity shall be allocated for purchase to the Purchase Opportunity Participants in proportion to the respective Delivery Goal of each Purchase Opportunity Participant without regard to whether the Purchase Opportunity Participant has elected to participate in any other Purchase Opportunity; provided, however, that no such Purchase Opportunity Participant shall be allocated an amount that exceeds that Purchase Opportunity Participant’s Delivery Goal, whether under a particular Purchase Opportunity or in aggregate across multiple Purchase Opportunities.

## 4. **Allocation of Costs; Deposit; Contractor Payment**

4.1 Contractor shall pay to CCWA Contractor’s pro-rata share of CCWA’s Total Expenses (as defined in Paragraph 4.2), which share shall be calculated as follows:

4.1.1 For Total Expenses arising from services rendered by CCWA pursuant to this Agreement, Contractor’s pro-rata share shall be equal to Contractor’s Delivery Goal divided by the sum of the Delivery Goals of all Participating Contractors as defined in its respective Participation Agreements.

4.1.2 For Total Expenses related to a specific Purchase Opportunity, Contractor’s pro-rata share of such expenses shall be equal to Contractor’s SOI Quantity for that Purchase Opportunity divided by the sum of the SOI Quantities set forth in the Statements of Intent submitted by all Purchase Opportunity Participants for that Purchase Opportunity. In the event that no Statements of Intent are executed and delivered by any Participating Contractor for a

particular Purchase Opportunity, Contractor's pro-rata share under this Paragraph shall be calculated in accordance with Paragraph 4.1.1 above.

4.1.3 For Total Expenses arising from services that are of benefit to only one Participating Contractor, that Participating Contractor shall pay for the Total Expenses related to said services.

4.2 "**Total Expenses**" shall mean all out-of-pocket expenditures made by CCWA pursuant to this Agreement, including consultant and legal expenses, any expenses incurred by CCWA in defense of this Agreement, as provided in Paragraph 9, and any other costs related to or arising under this Agreement.

4.3 Deposit. Prior to execution of this Agreement, CCWA prepared and delivered to Contractor an estimate of Contractor's anticipated financial obligations under Paragraph 4.1.1 of this Agreement. Concurrently with Contractor's execution of this Agreement, Contractor shall place on deposit with CCWA the amount stated in the estimate.

4.4 Subsequent Deposits. Prior to the end of the calendar year of this Agreement, CCWA shall provide to Contractor an estimate of any additional anticipated financial obligations not covered by the deposit required by Paragraph 4.3. Contractor shall place on deposit with CCWA the amount stated in the estimate no later than the deadline established by CCWA's Executive Director.

4.5 Invoices and Payments. In the event CCWA reasonably determines that the deposit paid by Contractor to CCWA pursuant to Paragraph 4.3 and/or Paragraph 4.4 will be insufficient to cover Contractor's financial obligations hereunder, CCWA is authorized to deliver to Contractor a revised estimate of those financial obligations and an invoice for an additional deposit. Contractor shall remit the amount stated in the invoice within thirty (30) days of receipt.

4.6 Reconciliation. Upon termination of this Agreement, CCWA shall provide to Contractor an accounting of the actual amounts Contractor is obligated to pay hereunder. Any overpayment by Contractor shall be promptly refunded by CCWA and any underpayment by Contractor shall be promptly paid to CCWA.

**5. Contractor's Representative.** Upon Contractor's execution of this Agreement, Contractor shall provide to CCWA a written Designation of Representative, in a form approved by CCWA, identifying Contractor's authorized representative with full authority to grant, provide and enter into, by and on behalf of Contractor, any and all consents, approvals, instructions, authorizations or agreements by Contractor in connection with this Agreement (collectively, "**Contractor Directions**"). CCWA shall be entitled to rely upon, without inquiry, the full authority of Contractor's designated representative. Without limiting the foregoing, Contractor's representative shall be solely responsible for requesting and obtaining in advance any special or further authorizations on behalf of Contractor that may be necessary in connection with any Contractor Direction given to CCWA hereunder and CCWA may assume, without further inquiry, that all such authorizations have been obtained. Contractor may designate a different individual as its representative in connection with this Agreement at any time by amending its Designation of Representative and providing such to CCWA pursuant to this Paragraph.

## 6. Obligation in the Event of Default

6.1 Written Demand Upon Failure to Make Payment or Perform Obligation. Upon Contractor's failure to make any payment in full when due under this Agreement or to perform any other obligation hereunder, CCWA shall make written demand upon Contractor, and if such failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default. CCWA shall also provide a copy of the notice of such demand to each Participating Contractor. Upon failure of CCWA to perform any obligation of CCWA hereunder, Contractor shall make written demand upon CCWA, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default. Contractor shall also provide a copy of the notice of such demand to each Participating Contractor.

6.2 Termination of Contractual Rights; Continuing Obligations. Notwithstanding any provision in this Agreement to the contrary, including Paragraph 10.2, upon Contractor's failure to make any payment, which failure constitutes a default under this Agreement, CCWA may terminate this Agreement. Irrespective of such termination, the obligations of Contractor to CCWA to pay the full amount of costs under this Agreement, shall continue in full force and effect. Termination under this Paragraph is in addition to all other remedies provided by this Agreement.

6.3 Increase in Non-defaulting Contractor Costs. Notwithstanding any provision in this Agreement to the contrary, including Paragraphs 4.1.2 and 10.2, upon the failure of any Participating Contractor to make any payment, which failure constitutes a default under this Agreement, the pro-rata share of each non-defaulting Participating Contractor shall be automatically increased (pro rata with the other non-defaulting Participating Contractors) for the remaining term of any and all of the non-defaulting Participating Contractors' respective Participation Agreements. Contractor acknowledges and agrees that Contractor's pro rata share of Total Expenses may increase as a result of a default by another Participating Contractor.

6.4 Right of Recovery from Defaulting Participating Contractor. If a Participating Contractor shall fail or refuse to pay any amounts due to CCWA, the fact that a non-defaulting Participating Contractor has increased its obligation to make such payments shall not relieve the defaulting Participating Contractor of its liability for such payments. The non-defaulting Participating Contractor shall have a right of recovery from the defaulting Participating Contractor to the extent of such non-defaulting Participating Contractor's respective increase in obligation caused by the defaulting Participating Contractor. Any amounts received by CCWA from the defaulting Participating Contractor for costs that were previously paid by a non-defaulting Participating Contractor pursuant to Paragraph 6.3, shall be reimbursed by CCWA to the non-defaulting Participating Contractor.

## 7. Remedies

7.1 If Contractor does not timely perform its obligations pursuant to this Agreement, CCWA shall be entitled to proceed to protect and enforce its rights as provided in this Agreement by such appropriate judicial proceedings as CCWA shall deem most effectual, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in CCWA by this Agreement or by law. The provisions of this Agreement and the duties of Contractor and of its



elected officials, officers, agents, or employees shall be enforceable by CCWA by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

7.2 The Parties agree that in the event of a Default or breach of this Agreement, the other Party shall have all remedies in law or equity available to them, including specific performance and termination of this Agreement, and no remedy or election shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

## 8. Disclaimer of Liability

8.1 Contractor acknowledges and agrees that CCWA is in good faith facilitating the purchase of Supplemental Water on behalf of Contractor and the other Participating Contractors, in exchange for the Contractor's and the other Participating Contractors' full reimbursement of CCWA's Total Expenses and full assumption of CCWA's liabilities related to or arising out of this Agreement or any related agreements to which CCWA is a party. As a result, it is the intent and agreement of the Contractor and CCWA that CCWA shall not incur any liability for assistance to Contractor under this Agreement, or any related agreements to which CCWA is a party, regardless of the cause.

8.2 To the maximum extent permitted by law, neither CCWA, nor any of its elected officials, officers, agents, employees, consultants, or attorneys, shall be liable to Contractor pursuant to this Agreement or otherwise for any claims, liabilities, damages, losses, actions, penalties, proceedings, or expenses in the event Supplemental Water is not available for purchase by CCWA, Supplemental Water is not available for purchase on the terms and conditions acceptable to Contractor, any approval required to permit the delivery of Supplemental Water is not obtained or is conditioned in any manner that is not acceptable to Contractor, or Supplemental Water is not delivered to CCWA for any reason whatsoever.

## 9. Indemnification and Defense

9.1 Indemnification. Contractor ("**Indemnifying Party**") agrees to indemnify, defend, protect and hold harmless CCWA and its officers, directors, employees, agents, consultants and attorneys (each an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") from and against any and all claims, actions, liabilities, damages, losses and expenses, including attorneys', paralegals', consultants', and experts' fees, costs and expenses, arising from or relating to this Agreement and any related agreements pertaining to any purchase of Supplemental Water, whether claims, actions, liabilities, damages, losses or expenses arise prior to or following termination or expiration of this Agreement, except to the extent any liability, loss, cost or expense is caused by the Indemnified Party's sole negligence or willful misconduct.

9.2 Defense of Action. If requested by the Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party reasonably believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity

provided for in this Paragraph 9.2 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

## **10. Term; Termination**

10.1 Term. Except as provided in Paragraph 10.2, the term of this Agreement shall commence on the last date executed by all Parties and shall continue until December 31, 2022, or until Contractor's final payment to CCWA of all costs attributable to this Agreement, whichever is later.

### **10.2 Termination**

10.2.1 This Agreement may be terminated by CCWA at any time, provided all Participating Contractors agree in writing thereto. Irrespective of such termination, the obligations of Contractor to CCWA to pay the full amount of costs under this Agreement shall continue in full force and effect.

10.2.2 This Agreement may be terminated by Contractor upon the expiration of thirty (30) days following the later of (i) delivery of written notice of termination to CCWA, and (ii) discharge by Contractor, or satisfactory assurance of performance, of all financial obligations hereunder. CCWA shall promptly provide a copy of any such notice of termination received by CCWA to all other Participating Contractors.

10.2.3 Notwithstanding any provision in this Agreement to the contrary, the obligations set forth in Paragraphs 4, 7, 8, and 9 shall survive in full force and effect until the expiration of the applicable statute of limitations, or any claim or litigation concerning this Agreement within the applicable statute of limitations is finally resolved, whichever occurs later.

## **11. General Provisions**

11.1 Assignability. This Agreement shall not be assigned by Contractor without the prior written consent of CCWA, which consent shall not be unreasonably withheld. Any attempted assignment without the prior written approval of CCWA shall be void.

11.2 Attorneys' Fees. In any action to enforce or interpret this Agreement, the prevailing party shall recover from the non-prevailing party, in addition to any damages, injunctive or other relief, all costs (whether or not allowable as "cost" items by law) reasonably incurred by the prevailing party at, before and after trial or on appeal, or in any bankruptcy proceeding, including attorneys' and witness (expert and otherwise) fees, deposition costs, copying charges and other expenses.

11.3 Construction. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of all parts of this Agreement shall be construed simply

according to its plain meaning. Any rule of contract interpretation to the effect that ambiguities or uncertainties are to be interpreted against the drafting party or the party who caused it to exist shall not be employed in the interpretation of this Agreement or any document executed in connection herewith, as each party has participated in the drafting of this document and had the opportunity to have their legal counsel review it. The Recitals to this Agreement are incorporated herein and made a part hereof by this reference. The headings in this Agreement are for convenience of reference only and shall not be used in construing this Agreement. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The terms “person” and “party” include individuals, corporations, partnerships, trust, and other entities and associations. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

11.4 Counterparts; Delivery by Email. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document. The signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Any Party may deliver its signed counterpart of the Agreement to any other Party by email, and such delivery shall be deemed made and completed upon receipt of such email transmission by the other Party. Any Party delivering a signed counterpart by email agrees to promptly send the counterpart bearing its original signature to the other Party; provided that a delay or failure to do so shall not negate the effectiveness of the delivery made by the email transmission.

11.5 Due Authority. Each Party hereby represents and warrants that the individual(s) executing this Agreement are expressly authorized to do so on behalf of such Party and to bind that party to perform all acts required by this Agreement, and that the consent, approval, or execution of or by any additional person or party is not required to legally bind that party to the terms and conditions of this Agreement.

11.6 Entire Agreement; Modification. The making, execution and delivery of this Agreement have not been induced by any representations, statements, warranties or agreements other than those herein expressed. This Agreement constitutes the entire agreement and understanding of the Parties concerning the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, representation and understandings of the Parties relating to the subject matter hereof, including Participation Agreements from prior years. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Parties.

11.7 Good Faith. The Parties agree to exercise their best efforts and utmost good faith to effectuate all the terms and conditions of this Agreement and to execute such further instruments and documents as are necessary or appropriate to effectuate all of the terms and conditions of this Agreement.

11.8 Governing Law; Venue. This Agreement and all matters relating to this Agreement shall be governed by the laws of the State of California, without regard to principles of conflicts of laws. Venue for any disputes under this Agreement shall be in Santa Barbara County, California.

11.9 Legal Advice. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions of this Agreement.

11.10 No Agency. This Agreement shall not create, nor shall it be construed to create, any agency, partnership or similar relationship among the Parties.

11.11 Notices. All notices, approvals, acceptances, requests, demands and other communications required or permitted under this Agreement, to be effective, shall be in writing and shall be delivered, either in person or by email or by Federal Express or other similar overnight delivery service, to the party to whom the notice is directed at the address of such party as follows:

If to Authority:

Central Coast Water CCWA  
255 Industrial Way  
Buellton, CA 93427  
Attn: Ray Stokes, Executive Director  
Telephone: (805) 688-2292  
Email: [RAS@ccwa.com](mailto:RAS@ccwa.com)

If to Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Any communication given by email shall be deemed delivered on such mailing date and any communication given by overnight service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its email and overnight service addresses by giving the other party written notice of its new addresses.

11.12 Severability. If any provision of this Agreement or its application to any party or circumstance is held invalid or unenforceable, then the remainder of this Agreement and the affected provision to the extent it is not so held shall remain valid and enforceable and in full force and effect. The forgoing shall not apply, however, if the invalid or unenforceable provision in question or, as applicable, the portion or application thereof held invalid or unenforceable, is a fundamental and material provision of this Agreement.

11.13 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

11.14 Third Party Beneficiary; Enforcement. The Parties agree that this Agreement is for the benefit of (i) Contractor, (ii) CCWA, (iii) other Participating Contractors, and (iv) all CCWA Participants, and all of the aforementioned entities and persons shall be entitled to enforce the provisions of this Agreement.

11.15 Time of the Essence. Except as otherwise provided in this Agreement, time is of the essence with respect to this Agreement and the performance of each and every obligation contained in this Agreement.

11.16 Time for Performance. Notwithstanding any provision of this Agreement to the contrary, in the event a Party fails to perform any obligation under this Agreement (other than an

obligation to pay money) because of strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, government or judicial actions, inclement weather or other causes beyond its reasonable control, that failure will not constitute a default under this Agreement, and the performance in question will be excused during the period in which the cause for failure continues.

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the date first written above.

CENTRAL COAST WATER AUTHORITY      [CONTRACTOR]

By: \_\_\_\_\_  
Name: Ray Stokes  
Title: Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Approved as to form:*

*Approved as to form:*

Brownstein Hyatt Farber Schreck

[Insert Contractor's counsel name]

By: \_\_\_\_\_

By: \_\_\_\_\_

**Attachments:**

- Statement of Intent
- Request for Increase in Delivery Goal
- Designation of Representative

**CENTRAL COAST WATER AUTHORITY**  
**2022 SUPPLEMENTAL WATER PURCHASE PROGRAM**

**STATEMENT OF INTENT**

Participating Contractor: \_\_\_\_\_

Pursuant to the 2022 Supplemental Water Purchase Program Participation Agreement (“Agreement”) between the Central Coast Water Authority and the above-named Participating Contractor, the undersigned, on behalf of the Participating Contractor, states its intent to acquire \_\_\_\_\_ acre-feet of water in connection with the proposed Purchase Opportunity to acquire supplemental water from [ *insert proposed Seller name* ] for delivery of water to CCWA in 2022.

All terms used in this Statement of Intent have the meaning given to them in the Agreement.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CENTRAL COAST WATER AUTHORITY**  
**2022 SUPPLEMENTAL WATER PURCHASE PROGRAM**

**REQUEST FOR INCREASE IN DELIVERY GOAL**

Participating Contractor: \_\_\_\_\_

Pursuant to the 2022 Supplemental Water Purchase Program Participation Agreement ("Agreement") between the Central Coast Water Authority and the above-named Participating Contractor, the undersigned, on behalf of the Participating Contractor, represents that it is seeking to increase its Delivery Goal from \_\_\_\_\_ acre-feet of water to \_\_\_\_\_ acre-feet of water over the term of the Agreement. The requested increased Delivery Goal supersedes Participating Contractor's prior Delivery Goal for all purposes related to this Agreement.

All terms used in this Request for Increase in Delivery Goal have the meaning given to them in the Agreement.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by CENTRAL COAST WATER AUTHORITY.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CENTRAL COAST WATER AUTHORITY**  
**2022 SUPPLEMENTAL WATER PURCHASE PROGRAM**

**DESIGNATION OF REPRESENTATIVE**

**Participating Contractor:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Authorized Representative:**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**CENTRAL COAST WATER AUTHORITY**  
**2022 SUPPLEMENTAL WATER PURCHASE PROGRAM**

**PURCHASE AGREEMENT**  
[insert name of transaction]

This Supplemental Water Purchase Program Purchase Agreement (“**Agreement**”) is made as of [REDACTED], 2022 by

CENTRAL COAST WATER AUTHORITY (“**CCWA**”)

and

\_\_\_\_\_ (“**Contractor**”) (each, a “**Party**,”  
and together, the “**Parties**”).

**RECITALS**

A. Pursuant to the Transfer of Financial Responsibility Agreement, the Santa Barbara County Flood Control and Water Conservation District (“**SBCFCWCD**”) transferred to CCWA, and CCWA accepted and assumed, all rights and obligations to the State Water Supply Contract between SBCFCWCD and the Department of Water Resources (“**DWR**”) that provides for the delivery of water from California’s State Water Project to Santa Barbara County.

B. Additionally, CCWA owns, operates and maintains water conveyance, storage and treatment facilities to deliver water made available to CCWA pursuant to the State Water Supply Contract to cities, water districts and other water purveyors and users in Santa Barbara County pursuant to one or more water supply agreements (collectively, the “**CCWA Participants**”).

C. CCWA and Contractor are parties to a Water Supply Agreement, as amended from time to time, related to the matters described in Recitals A and B.

D. Due to persistent drought conditions, it is anticipated that the State Water Project will be unable to deliver to CCWA the quantity of water needed by CCWA for delivery to the CCWA Participants. Accordingly, CCWA implemented the 2022 Supplemental Water Purchase Program.

E. CCWA and Contractor entered into a 2022 Supplemental Water Purchase Program Participation Agreement (“**Participation Agreement**”). Pursuant to Contractor’s Participation Agreement, CCWA has identified an opportunity to purchase a source of supply from [SELLER NAME] (“**Seller**”) to supplement the supply provided for in Contractor’s Water Supply Agreement (“**Supplemental Water**”) on behalf of Contractor and Contractor has determined to participate in the purchase of Supplemental Water and has submitted to CCWA a Statement of

Intent (as that term is defined in the Participation Agreement) related thereto. All references to the “purchase” of water herein include both transfers of water and exchanges of water.

F. [IF APPLICABLE] The Parties anticipate that one or more other CCWA Participants, having also submitted a Statement of Intent pursuant to a Participation Agreement with CCWA, have or will elect to participate in the purchase of Supplemental Water and have or will execute an Agreement to Purchase in substantially the same form as this Agreement for that purpose. Contractor and these other participating CCWA Participants are collectively referred to herein as “**Purchase Contractors.**”

G. The Parties anticipate that numerous approvals will be required to effectuate CCWA’s acquisition of Supplemental Water from Seller and delivery to Contractor (the “**Transfer/Exchange**”), including DWR’s approval of the Transfer/Exchange in the form of a contract (“**DWR Approval Agreement**”), and that the DWR Approval Agreement will require that SBCFCWCD, as party to the State Water Contract, execute the DWR Approval Agreement on behalf of CCWA and further, that as a condition precedent to executing the DWR Approval Agreement, SBCFCWCD will require CCWA to enter into an SBCFCWCD Agreement, as this term is defined in Paragraph 4.3 of this Agreement, to indemnify and release the SBCFCWCD from any liabilities arising from or related to the Transfer/Exchange.

H. The Parties desire to enter into this Agreement to set forth the rights, responsibilities and obligations of the Parties as it relates to the proposed Transfer/Exchange.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follow:

## **AGREEMENT**

**1. Purpose and Intent.** The purpose of this Agreement is to provide for CCWA’s acquisition and delivery of Supplemental Water on behalf of Contractor in exchange for Contractor’s payment of its pro-rata share of CCWA’s Total Expenses, as that term is defined in Paragraph 5.3, and assumption of all liability arising out of and associated with such activities, should CCWA’s Board of Directors approve the Transfer/Exchange. It is the intention of the Parties that neither CCWA, nor any CCWA Participant that is not a Purchase Contractor shall incur any expense or liability related to or arising under this Agreement or the related Transfer/Exchange.

**2. Compliance with all Laws.** The Parties’ respective obligations pursuant to this Agreement are contingent upon compliance with all applicable laws and legal requirements associated with the Transfer/Exchange, including but not limited to the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.) (“**CEQA**”), and securing any required consents, approvals, permits or orders necessary to effectuate the Transfer/Exchange. Contractor acknowledges that CCWA retains sole and absolute discretion with respect to whether to approve or not approve the Transfer/Exchange. CCWA is not restricted from considering any feasible mitigation measures and alternatives, including not approving the Transfer/Exchange.

### 3. Acquisition, Delivery, Acceptance and Assumption

3.1 CCWA agrees to acquire and deliver to Contractor, and Contractor agrees to purchase and accept delivery of, Supplemental Water to be provided to CCWA by Seller pursuant to, and subject to the terms and conditions of (a) the proposed agreement between CCWA and Seller (“**Transfer/Exchange Agreement**”), a copy of which is attached hereto as **Exhibit A**, and (b) the DWR Approval Agreement. The quantity of Supplemental Water being purchased by CCWA for Contractor (“**Purchase Amount**”) shall be as stated in the table attached hereto as **Exhibit B** and incorporated herein.

### 4. Procedure

4.1 CCWA’s Board of Directors will hold a regular meeting to consider whether to approve or deny the Transfer/Exchange Agreement by adopting a resolution or other appropriate document in compliance with the State Water Contract and all applicable laws and authorizing the CCWA Executive Director to execute all agreements necessary to effectuate the Transfer/Exchange, as further provided in this Paragraph 4.

4.2 CCWA’s Board of Directors’ consideration of the Transfer/Exchange Agreement is expressly conditioned upon, and subject to, all of the following:

4.2.1 CCWA, acting in its sole and absolute discretion, shall comply with CEQA and all other applicable laws.

4.2.2 Contractor shall have delivered the deposit and all other payments due to CCWA pursuant to this Agreement and shall not be in default of this Agreement or Contractor’s Participation Agreement.

4.2.3 Contractor shall have certified by resolution or other appropriate document all of the matters set forth in this Paragraph 4.2.3 and delivered said certification to CCWA.

a. Contractor has complied with all applicable laws, including as applicable, CEQA.

b. Contractor has provided any required notices to public agencies and the public.

c. Contractor is informed and believes that the Transfer/Exchange will not harm other CCWA Participants or State Water Contractors.

d. Contractor is informed and believes that the Transfer/Exchange will not adversely impact CCWA or State Water Project operations.

e. Contractor is informed and believes that the Transfer/Exchange will not affect its ability to make all payments, including payments when due under the Water Supply Agreement and this Agreement.

f. Contractor has considered the potential impacts of the Transfer/Exchange within its service area.

4.1 CCWA Execution of Transfer/Exchange Agreement. In the event CCWA's Board of Directors approves the Transfer/Exchange, CCWA's Executive Director will endeavor to timely execute the Transfer/Exchange Agreement.

4.2 Review of DWR Approval Agreement. Upon receipt of the proposed DWR Approval Agreement for the Transfer/Exchange, CCWA will endeavor to timely deliver the DWR Approval Agreement to Contractor for Contractor's review and approval of the terms and conditions of the Transfer/Exchange. In turn, Contractor will timely notify CCWA whether Contractor agrees to the terms and conditions of the Transfer/Exchange as set forth in the DWR Approval Agreement.

4.3 SBCFCWCD Agreement

4.2.4 As may be required to obtain the SBCFCWCD's execution of any DWR Approval Agreement, Contractor requests that CCWA agree to indemnify SBCFCWCD by executing an Assignment, Assumption and Indemnification Agreement in the form attached hereto as **Exhibit C** ("**SBCFCWCD Agreement**"). Upon CCWA's execution of the SBCFCWCD Agreement, as provided in Paragraph 4.3, the Parties agree and acknowledge that Contractor agrees to and shall be bound to CCWA under the terms of the SBCFCWCD Agreement, just as CCWA is bound to SBCFCWCD by the terms of the SBCFCWCD Agreement. Contractor also shall be bound to CCWA under the terms of any other commitments by CCWA in connection with the Transfer/Exchange, just as CCWA is bound under said commitments.

4.2.5 Upon receipt of Contractor's notice that it agrees to the terms and conditions of the Transfer/Exchange as set forth in the DWR Approval Agreement, and provided that Contractor has satisfied all obligations and conditions precedent set forth in this Agreement, and further provided that CCWA's Board of Directors has approved the Transfer/Exchange, as set forth in Paragraph 4.1, CCWA's Executive Director will endeavor to timely execute and deliver the SBCFCWCD Agreement, as necessary, to SBCFCWCD and request SBCFCWCD's execution of both the SBCFCWCD Agreement and the DWR Approval Agreement on behalf of CCWA.

4.3 Delivery. In the event DWR approves the Transfer/Exchange pursuant to the terms and conditions of the State Water Contract and all contracting parties to the DWR Approval Agreement execute the DWR Approval Agreement, CCWA shall coordinate with DWR and arrange for delivery of the Supplemental Water to Contractor pursuant to the terms and conditions of the DWR Approval Agreement and Contractor's Water Supply Agreement. In the event of a conflict between this Agreement and the Water Supply Agreement, the terms and conditions of this Agreement shall prevail. In the event DWR approval is not obtained, CCWA may terminate this Agreement as provided in Paragraph 11.2.

**5. Allocation of Costs; Deposit; Contractor Payment**

5.1 Contractor shall pay to CCWA Contractor's pro-rata share of CCWA's Total Expenses (as defined in Paragraph 5.3), which pro-rata share shall be equal to Contractor's

Purchase Amount divided by the sum of such quantities for all Purchase Contractors, as stated in Exhibit B.

5.2 For Total Expenses arising from services that are of benefit to only one Purchase Contractor, that Purchase Contractor shall pay for the Total Expenses related to said services.

5.3 “**Total Expenses**” shall include (i) all payments made by CCWA to Seller pursuant to the Transfer/Exchange Agreement (“**Transfer/Exchange Agreement Expenses**”), and (ii) all out-of-pocket expenditures made by CCWA pursuant to this Agreement (“**CCWA Administrative Expenses**”). CCWA Administrative Expenses shall include, but not be limited to, consultant and legal expenses, any expenses associated with CCWA’s compliance with CEQA, any expenses associated with securing any required approvals, any expenses incurred by CCWA in defense of this Agreement, and any other costs related to or arising under this Agreement.

5.4 Deposit. Prior to execution of this Agreement, CCWA prepared and delivered to Contractor an estimate of the Contractor’s anticipated financial obligations hereunder with respect to the Transfer/Exchange. Concurrently with execution of this Agreement, Contractor shall place on deposit with CCWA the amount stated in the estimate.

5.5 Invoices and Payments. In the event CCWA reasonably determines that the deposit paid by Contractor to CCWA pursuant to Paragraph 5.4 will be insufficient to cover Contractor’s financial obligations hereunder, CCWA is authorized to deliver to the Contractor a revised estimate of those financial obligations and an invoice for an additional deposit. Contractor shall remit the amount stated in the invoice within thirty (30) days of receipt.

5.6 Reconciliation. Upon termination of this Agreement, CCWA shall provide to Contractor an accounting of the actual amounts Contractor is obligated to pay hereunder. Any overpayment by Contractor shall be promptly refunded by CCWA and any underpayment by Contractor shall be promptly paid to CCWA. For clarity, in the event that (i) the conditions precedent set forth in Paragraph 4.2 are not satisfied, and/or (ii) CCWA approval or any other approval required by the Transfer/Exchange is not received, CCWA shall only be obligated to refund Contractor’s deposit of its Transfer/Exchange Agreement Expenses. CCWA shall not be obligated to refund Contractor’s pro-rata share of incurred CCWA Administrative Expenses.

## **6. Cooperation; Purchase Contractor’s Representative; Coordination Among Purchase Contractors**

6.1 Cooperation. Contractor acknowledges that CCWA’s ability to purchase and deliver Supplemental Water to Contractor, as provided in this Agreement, requires Contractor’s cooperation. Contractor shall reasonably cooperate with CCWA, at CCWA’s request, in all ways as may be necessary to carry out the terms and conditions of this Agreement.

6.2 Contractor’s Representative. Upon Contractor’s execution of this Agreement, Contractor shall provide to CCWA a written Designation of Representative, in a form approved by CCWA, identifying Contractor’s authorized representative with full authority to grant, provide and enter into, by and on behalf of Contractor, any and all consents, approvals, instructions, authorizations or agreements by Contractor in connection with this Agreement (collectively,

“**Contractor Directions**”). CCWA shall be entitled to rely upon, without inquiry, the full authority of Contractor’s designated representative. Without limiting the foregoing, Contractor’s representative shall be solely responsible for requesting and obtaining in advance any special or further authorizations on behalf of Contractor that may be necessary in connection with any Contractor Direction given to CCWA hereunder and CCWA may assume, without further inquiry, that all such authorizations have been obtained. Contractor may designate a different individual as its representative in connection with this Agreement at any time by providing written notice to CCWA pursuant to this Paragraph.

6.3 Coordination Among Purchase Contractors. If there is more than one Purchase Contractor, a committee shall be created with each Purchase Contractor’s designated representative as stated in Paragraph 6.2 (the “**Committee**”). The Committee shall be authorized to advise CCWA with respect to its duties under this Agreement, and to perform such other functions as the Purchase Contractors shall deem appropriate. Each member of the Committee shall have a weighted vote corresponding to the particular Purchase Contractor’s Purchase Amount. A quorum shall consist of those members of the Committee holding at least 50% of the voting percentages. Committee decisions shall be made by the following vote:

6.3.1 If the Committee has two members, a majority of the voting percentages shall be necessary to adopt a motion.

6.3.2 If the Committee has three or more members, sixty percent (60%) of the voting percentages, plus the affirmative vote of at least two members, shall be necessary to adopt a motion.

## 7. **Obligation in the Event of Default**

7.1 Written Demand Upon Failure to Make Payment or Perform Obligation. Upon Contractor’s failure to make any payment in full when due under this Agreement or to perform any other obligation hereunder, CCWA shall make written demand upon Contractor, and if such failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default. CCWA shall also provide a copy of the notice of such demand to each Purchase Contractor. Upon failure of CCWA to perform any obligation of CCWA hereunder, Contractor shall make written demand upon CCWA, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default. Contractor shall also provide a copy of the notice of such demand to each Purchase Contractor.

7.2 Termination of Contractual Rights; Continuing Obligations. Upon Contractor’s failure to make any payment, which failure constitutes a default under this Agreement or any other agreement related to this Agreement to which CCWA is a party, CCWA may terminate this Agreement.

7.3 Increase in Non-defaulting Contractor Costs. Upon the failure of any Purchase Contractor to make any payment, which failure constitutes a default under this Agreement, the pro-rata share of each non-defaulting Purchase Contractor shall be automatically increased (pro rata with the other non-defaulting Purchase Contractors) for the remaining term of the non-

defaulting Contractor's Agreement to Purchase. Contractor acknowledges and agrees that Contractor's pro rata share of Total Expenses may increase as a result of a default by another Purchase Contractor.

7.4 Right of Recovery from Defaulting Purchase Contractor. If a Purchase Contractor shall fail or refuse to pay any amounts due to CCWA, the fact that a non-defaulting Purchase Contractor has increased its obligation to make such payments shall not relieve the defaulting Purchase Contractor of its liability for such payments. The non-defaulting Purchase Contractor shall have a right of recovery from the defaulting Purchase Contractor to the extent of such non-defaulting Purchase Contractor's respective increase in obligation caused by the defaulting Purchase Contractor. Any amounts received by CCWA from the defaulting Purchase Contractor for costs that were previously paid by a non-defaulting Purchase Contractor pursuant to Paragraph 7.3, shall be reimbursed by CCWA to the non-defaulting Purchase Contractor.

7.5 Transfer of Defaulting Contractor's Account. Upon the failure of any Purchase Contractor to make any payment which failure constitutes an uncured default under this Agreement, CCWA shall use its best efforts to transfer all or a portion of the Supplemental Water to which the defaulting Purchase Contractor is entitled for all or a portion of the remainder of the term of this Agreement. Notwithstanding that all or any portion of Contractor's Supplemental Water is so transferred, any and all defaulting Contractors shall remain liable to CCWA to pay the full amount of its share of costs hereunder as if such sale or transfer has not been made, except that such liability shall be discharged to the extent that CCWA shall receive payment from the transferee thereof.

## **8. Disclaimer of Liability**

8.1 Contractor acknowledges and agrees that CCWA is in good faith facilitating the Transfer/Exchange on behalf of Contractor and the other Purchase Contractors, in exchange for the Purchase Contractors' full reimbursement of CCWA's Total Expenses and full assumption of CCWA's liabilities related to or arising out of this Agreement or any related agreements to which CCWA is a party. As a result, it is the intent and agreement of the Contractor and CCWA that CCWA shall not incur any liability for such assistance to Contractor, regardless of the cause.

8.2 To the maximum extent permitted by law, neither CCWA, nor any of its elected officials, officers, agents, employees, consultants, or attorneys, shall be liable to Contractor pursuant to this Agreement or otherwise for any claims, liabilities, damages, losses, actions, penalties, proceedings, or expenses in the event any condition precedent to this Agreement is not satisfied, any approval required to permit the Transfer/Exchange is not obtained or is conditioned in any manner that is not acceptable to Contractor, or Supplemental Water is not delivered to CCWA, or CCWA is unable to deliver the Supplemental Water to Contractor for any reason whatsoever.

## **9. Indemnification and Defense**

9.1 Indemnification. Contractor ("**Indemnifying Party**") agrees to indemnify, defend, protect and hold harmless CCWA and its officers, directors, employees, agents, consultants and

attorneys (each an “**Indemnified Party**” and collectively, the “**Indemnified Parties**”) from and against any and all claims, actions, liabilities, damages, losses and expenses, including attorneys’, paralegals’, consultants’, and experts’ fees, costs and expenses, arising from or relating to this Agreement and any related agreements pertaining to any purchase of Supplemental Water, whether claims, actions, liabilities, damages, losses or expenses arise prior to or following termination or expiration of this Agreement, except to the extent any liability, loss, cost or expense is caused by the Indemnified Party’s sole negligence or willful misconduct.

9.2 Defense of Action. If requested by the Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party reasonably believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party’s expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Paragraph 9.1 applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party’s expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

## 10. Remedies

10.1 If Contractor does not timely perform its obligations pursuant to this Agreement, CCWA shall be entitled to proceed to protect and enforce its rights as provided in this Agreement by such appropriate judicial proceedings as CCWA shall deem most effectual, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in CCWA by this Agreement or by law. The provisions of this Agreement and the duties of Contractor and of its elected officials, officers, agents, or employees shall be enforceable by CCWA by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

10.2 The Parties agree that in the event of a Default or breach of this Agreement, the other Party shall have all remedies in law or equity available to them, including specific performance and termination of this Agreement, and no remedy or election shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.



## 11. Term; Termination

11.1 Except as otherwise provided in this Agreement, the term of this Agreement shall commence on the date this Agreement is executed by Contractor and CCWA and said executed agreement is delivered to CCWA (“**Effective Date**”), and shall continue until the termination of the DWR Approval Agreement, or until Contractor’s final payment to CCWA of all costs attributable to this Agreement, whichever is later.

11.2 This Agreement may be terminated by CCWA at any time, provided all Participating Contractors agree in writing thereto. Irrespective of such termination, the payment obligations of Contractor to CCWA under this Agreement shall continue in full force and effect.

11.3 Notwithstanding any provision in this Agreement to the contrary, the obligations set forth in Paragraphs 5, 8, 9, and 10 shall survive in full force and effect until the expiration of the applicable statute of limitations, or any claim or litigation concerning this Agreement within the applicable statute of limitations is finally resolved, whichever occurs later.

## 12. General Provisions

12.1 Assignability. This Agreement shall not be assigned by Contractor without the prior written consent of CCWA, which consent shall not be unreasonably withheld. Any attempted assignment without the prior written approval of CCWA shall be void.

12.2 Attorneys’ Fees. In any action to enforce or interpret this Agreement, the prevailing party shall recover from the non-prevailing party, in addition to any damages, injunctive or other relief, all costs (whether or not allowable as “cost” items by law) reasonably incurred by the prevailing party at, before and after trial or on appeal, or in any bankruptcy proceeding, including attorneys’ and witness (expert and otherwise) fees, deposition costs, copying charges and other expenses.

12.3 Construction. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of all parts of this Agreement shall be construed simply according to its plain meaning. Any rule of contract interpretation to the effect that ambiguities or uncertainties are to be interpreted against the drafting party or the party who caused it to exist shall not be employed in the interpretation of this Agreement or any document executed in connection herewith, as each party has participated in the drafting of this document and had the opportunity to have their legal counsel review it. The Recitals to this Agreement are incorporated herein and made a part hereof by this reference. The headings in this Agreement are for convenience of reference only and shall not be used in construing this Agreement. The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The terms “person” and “party” include individuals, corporations, partnerships, trust, and other entities and associations. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”

12.4 Counterparts; Delivery by Email. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together

shall constitute one and the same document. The signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. Any Party may deliver its signed counterpart of the Agreement to any other Party by email, and such delivery shall be deemed made and completed upon receipt of such email transmission by the other Party. Any Party delivering a signed counterpart by email agrees to promptly send the counterpart bearing its original signature to the other Party; provided that a delay or failure to do so shall not negate the effectiveness of the delivery made by the email transmission.

12.5 Due Authority. Each Party hereby represents and warrants that the individual(s) executing this Agreement are expressly authorized to do so on behalf of such Party and to bind that party to perform all acts required by this Agreement, and that the consent, approval, or execution of or by any additional person or party is not required to legally bind that party to the terms and conditions of this Agreement.

12.6 Entire Agreement; Modification. The making, execution and delivery of this Agreement have not been induced by any representations, statements, warranties or agreements other than those herein expressed. This Agreement constitutes the entire agreement and understanding of the Parties concerning the subject matter hereof. This Agreement supersedes all prior negotiations, agreements, representation and understandings of the Parties relating to the subject matter hereof, including Participation Agreements from prior years. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Parties.

12.7 Good Faith. The Parties agree to exercise their best efforts and utmost good faith to effectuate all the terms and conditions of this Agreement and to execute such further instruments and documents as are necessary or appropriate to effectuate all of the terms and conditions of this Agreement.

12.8 Governing Law; Venue. This Agreement and all matters relating to this Agreement shall be governed by the laws of the State of California, without regard to principles of conflicts of laws. Venue for any disputes under this Agreement shall be in Santa Barbara County, California.

12.9 Legal Advice. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions of this Agreement.

12.10 No Agency. This Agreement shall not create, nor shall it be construed to create, any agency, partnership or similar relationship among the Parties.

12.11 Notices. All notices, approvals, acceptances, requests, demands and other communications required or permitted under this Agreement, to be effective, shall be in writing and shall be delivered, either in person or by email or by Federal Express or other similar overnight delivery service, to the party to whom the notice is directed at the address of such party as follows:

If to Authority:

If to Contractor:

Central Coast Water CCWA  
255 Industrial Way  
Buellton, CA 93427  
Attn: Ray Stokes, Executive Director  
Telephone: (805) 688-2292  
Email: [RAS@ccwa.com](mailto:RAS@ccwa.com)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

Any communication given by email shall be deemed delivered on such mailing date and any communication given by overnight service shall be deemed delivered one (1) business day after the dispatch date. Either party may change its email and overnight service addresses by giving the other party written notice of its new addresses.

12.12 Severability. If any provision of this Agreement or its application to any party or circumstance is held invalid or unenforceable, then the remainder of this Agreement and the affected provision to the extent it is not so held shall remain valid and enforceable and in full force and effect. The forgoing shall not apply, however, if the invalid or unenforceable provision in question or, as applicable, the portion or application thereof held invalid or unenforceable, is a fundamental and material provision of this Agreement.

12.13 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

12.14 Third Party Beneficiary; Enforcement. The Parties agree that this Agreement is for the benefit of (i) Contractor, (ii) CCWA, (iii) other Participating Contractors, and (iv) all CCWA Participants, and all of the aforementioned entities and persons shall be entitled to enforce the provisions of this Agreement.

12.15 Time of the Essence. Except as otherwise provided in this Agreement, time is of the essence with respect to this Agreement and the performance of each and every obligation contained in this Agreement.

12.16 Time for Performance. Notwithstanding any provision of this Agreement to the contrary, in the event a Party fails to perform any obligation under this Agreement (other than an obligation to pay money) because of strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, government or judicial actions, inclement weather or other causes beyond its reasonable control, that failure will not constitute a default under this Agreement, and the performance in question will be excused during the period in which the cause for failure continues.

*–signatures follow on next page–*

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

CENTRAL COAST WATER AUTHORITY

CONTRACTOR

By: \_\_\_\_\_  
Name: Ray A. Stokes  
Title: Executive Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*Approved as to form:*

*Approved as to form:*

Brownstein Hyatt Farber Schreck

[Contractor's counsel]

By: \_\_\_\_\_

By: \_\_\_\_\_

**Exhibit A:** Transfer/Exchange Agreement between CCWA and Seller

**Exhibit B:** All Purchase Contractors' Purchase Amounts and Share of Total Expenses

**Exhibit C:** Form of SBCFCWCD Agreement

**Exhibit A**

Transfer/Exchange Agreement between CCWA and Seller

**Exhibit B**

All Purchase Contractors' Purchase Amounts and Share of Total Expenses

<b>Purchase Contractors</b>	<b>Purchase Amounts (acre-feet)</b>	<b>Share (%) of Total Expenses</b>

**Exhibit C**

Form of SBCFCWCD Agreement