

RESOLUTION NO. 23-06

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE CENTRAL COAST WATER AUTHORITY APPROVING
THE SURPLUS WATER TRANSFER PROGRAM**

RECITALS

- A. In 1963, the Santa Barbara County Flood Control and Water Conservation District (“**District**”) and the Department of Water Resources (“**DWR**”), acting on behalf of the State of California, executed that certain agreement dated February 26, 1963 for the supply and delivery of State Water Project (“**SWP**”) water (“**State Water Contract**”). The State Water Contract has been amended on numerous occasions, including by the Water Management Amendment dated April 22, 2021 (the “**Water Management Amendment**”).
- B. On November 12, 1991, the District and Central Coast Water Authority (“**CCWA**”) entered into the Transfer of Financial Responsibility Agreement whereby the District transferred to CCWA and CCWA accepted and assumed responsibility for the District’s obligations pursuant to the State Water Contract.
- C. CCWA entered into a series of “Water Supply Agreements” with various cities, water districts, and other water supply retailers who purchase and deliver water to their customers, and other end users, in Santa Barbara County (each a “**CCWA Participant**” and collectively, the “**CCWA Participants**”).
- D. From time to time, such as in years of high precipitation, the SWP is capable of delivering to CCWA more water than is needed by each CCWA Participant. Additionally, in some years, water that is available for delivery to one or more CCWA Participants, but is not delivered in that year, may be lost due to delivery, storage, and other constraints within the SWP and local facilities.
- E. The Water Management Amendment provides CCWA Participants with flexibility to manage their water supplies in a changing environment by permitting transfers and exchanges of SWP water which in turn improves water supply reliability.
- F. CCWA has determined that it should create a program (the “**Surplus Water Transfer Program**”), on behalf of CCWA Participants that elect to participate in the program (each a “**Participating Contractor**”), to utilize the water management tools provided in the Water Management Amendment to transfer or exchange water that may be available to each Participating Contractor under its Water Supply Agreement that is surplus to the needs of the Participating Contractor.
- G. For this purpose, CCWA has prepared and proposes to enter into the Surplus Water Transfer Program Participation Agreement (“**Agreement**”) attached hereto as **Exhibit A** with any Participating Contractor that determines to participate in the Surplus Water Transfer Program and to share in the expenses pertaining thereto in accordance with the terms and conditions of the Agreement.
- H. Under the Agreement, CCWA would identify opportunities for Participating Contractors to transfer or exchange their surplus SWP water to other parties that contract with DWR for SWP water (“**Transfer Opportunity**”).

- I. To proceed with a Transfer Opportunity, each interested Participating Contractor would enter into an agreement with CCWA to transfer or exchange a particular quantity of SWP water on the terms and conditions stated therein ("**Transfer Agreement**"), including numerous conditions precedent to the effectiveness of CCWA's approval of the Transfer Agreement, such as CCWA's receipt of payment and certification of certain matters required by Article 57(g) of the State Water Contract.
- J. Each Transfer Agreement would be subject to the terms and conditions of the State Water Contract, as amended by the Water Management Amendment, and shall be carried out consistent with CCWA Resolution No. 2021-01, adopted on February 17, 2021, under which a "proposed transfer outside of the County of Santa Barbara shall be subject to a right of first refusal of all [CCWA] Participants on a pro rata basis to take delivery of such SWP Water on the same terms and conditions."
- K. Each Transfer Agreement would require DWR's approval, which is anticipated in the form of a Change in Point of Delivery Agreement ("**DWR Agreement**").
- L. For so long as the District remains the contracting party to the State Water Contract for Santa Barbara County, it is anticipated that DWR will require the District's execution of the DWR Agreement, on behalf of CCWA. To obtain the District's execution of the DWR Agreement, it is anticipated that the District will require CCWA to indemnify the District from all liabilities associated with the DWR Agreement, as provided in an Assignment, Assumption, Indemnification and Release Agreement ("**SBCFCWCD Agreement**").
- M. Compliance with the California Environmental Quality Act ("**CEQA**") for each Transfer Opportunity will occur on a project-specific basis.
- N. The CCWA Board of Directors has considered, agrees with, and incorporates herein all of the findings made by the Executive Director in the Staff Report accompanying this Resolution, including but not limited to, the determinations that the Agreement is exempt from CEQA, including 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 the Agreement do not have the potential for causing a significant effect on the environment, and because CEQA compliance for each Transfer Opportunity will occur on a project-specific basis.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1

The above recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2

Based on the findings set forth herein, the Board of Directors approves the Surplus Water Transfer Program and the Agreement and authorizes the Executive Director to execute the Agreement on behalf of CCWA.

SECTION 3

The Board of Directors authorizes the Executive Director to do and cause to be done any and all acts and things necessary or proper for carrying out the Surplus Water Transfer Program, including but not limited to making such non-substantive modifications to the Agreement as may be required prior to executing the Agreement with any Participating Contractor.

The Board of Directors further authorizes the Executive Director to prepare all agreements necessary to effectuate the Surplus Water Transfer Program with respect to any Transfer Opportunity, including any Transfer Agreement, DWR Agreement, and SBCFCWCD Agreement, and to bring those agreements back to the Board of Directors for its consideration and related CEQA findings.

I certify that the foregoing resolution was duly and regularly introduced and adopted by the Board of Directors of the Central Coast Water Authority at a special meeting held on July 27, 2023.

Eric Friedman, Chairman

APPROVED AS TO FORM:
Brownstein Hyatt Farber Schreck LLP

Attest:

Elizabeth Watkins
Secretary to the Board of Directors

Stephanie Osler Hastings

	VOTING PERCENTAGE	AYE	NAY	ABSTAIN	ABSENT
City of Buellton	2.21%	_____	_____	_____	_____
Carpinteria Valley Water District	7.64%	_____	_____	_____	_____
Goleta Water District	17.20%	_____	_____	_____	_____
City of Guadalupe	1.15%	_____	_____	_____	_____
Montecito Water District	9.50%	_____	_____	_____	_____
City of Santa Barbara	11.47%	_____	_____	_____	_____
City of Santa Maria	43.19%	_____	_____	_____	_____
Santa Ynez River Water Conservation District, Improvement District No. 1	7.64%	_____	_____	_____	_____

Exhibit:

- A. Surplus Water Transfer Program Participation Agreement

CENTRAL COAST WATER AUTHORITY
SURPLUS WATER TRANSFER PROGRAM
PARTICIPATION AGREEMENT

This Surplus Water Transfer Program Participation Agreement (“**Agreement**”) is made as of [MONTH AND DAY], 2023 by and between

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

and

each signatory to this Agreement (each a “**Participating Contractor**,” and if more than one, “**Participating Contractors**”). CCWA and each Participating Contractor are 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 (“**SWP**”) to portions of Santa Barbara County (“**State Water Supply Contract**”).

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 portions of Santa Barbara County pursuant to one or more water supply agreements (collectively, the “**CCWA Participants**”).

C. CCWA and each Participating Contractor are parties to a water supply agreement related to the matters described in Recitals A and B (“**Water Supply Agreement**”).

D. From time to time, such as in years of high precipitation, the SWP is capable of delivering to CCWA more water than is needed by each Participating Contractor. Additionally, in some years, water that is available for delivery to one or more CCWA Participants, but is not delivered in that year, may be lost due to delivery, storage, and other constraints within the SWP or local facilities.

E. Amendment No. 21 of the State Water Supply Contract dated April 22, 2021 (the “**Water Management Amendment**”) provides CCWA Participants with flexibility to manage

their water supplies in a changing environment by permitting transfers and exchanges of SWP water which in turn improves water supply reliability.

F. CCWA has determined that it should create a program (the “**Surplus Water Transfer Program**”), on behalf of each Participating Contractor, to fully utilize the flexibilities in the Water Management Amendment to transfer or exchange water that is or may be available to each Participating Contractor under its Water Supply Agreement but that is surplus to the needs of the Participating Contractor in any year during the term of this Agreement (“**Surplus Water**”).

G. Each Participating Contractor has determined that it wishes to participate in the Surplus Water Transfer Program and is willing to share in the expenses pertaining thereto in accordance with the terms and conditions of this Agreement. From time to time, additional CCWA Participants may wish to participate in the Surplus Water Transfer Program.

H. The Surplus Water Transfer Program shall be carried out consistent with the State Water Contract, as amended by the Water Management Amendment, and CCWA Resolution No. 2021-01, adopted on February 17, 2021, under which a “proposed transfer outside of the County of Santa Barbara shall be subject to a right of first refusal of all [CCWA] Participants on a pro rata basis to take delivery of such SWP Water on the same terms and conditions.”

I. The Parties have determined that this Agreement is exempt from the California Environmental Quality Act (“**CEQA**”), including 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, and because CEQA compliance for each Transfer Opportunity, as that term is defined in Paragraph 3.1, will occur on a project-specific basis.

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 general administration of the Surplus Water Transfer Program, including the identification of one or more opportunities for Participating Contractors to transfer or exchange Surplus Water, in exchange for the Participating Contractors’ reimbursement of CCWA’s Total Expenses, as that term is defined in Paragraph 4.1, arising from and associated with such activities. It is the further intention of the Parties that CCWA Participants may participate in the Surplus Water Transfer Program from year to year, on an ongoing basis, but shall not be obligated to participate in any specific transfer or exchange of Surplus Water. The terms and conditions of any transfer or exchange of Surplus Water shall be governed by a separate agreement between CCWA and one or more Participating Contractors referred to as a “Transfer Agreement,” as further described in Paragraph 3.2.2. Finally, it is the intention of the Parties that neither CCWA nor any CCWA Participant that is not

also a Participating Contractor shall incur any expense or liability related to or arising from this Agreement or the Surplus Water Transfer Program.

2. Cooperation; Annual Transfer Goal

2.1 Cooperation. Each Participating Contractor acknowledges that CCWA's ability to identify, structure and negotiate one or more opportunities for the transfer or exchange of Surplus Water, as provided in this Agreement, requires Participating Contractors' cooperation. The Parties shall reasonably cooperate with each other in all ways as may be necessary to carry out the terms and conditions of this Agreement.

2.2 Annual Transfer Goal. Each Participating Contractor agrees that by April 1 of each calendar year, each Participating Contractor shall notify CCWA's Executive Director in writing of the amount of Surplus Water the Participating Contractor is seeking to transfer or exchange in that calendar year ("**Annual Transfer Goal**"). After receiving each Participating Contractor's Annual Transfer Goal, CCWA shall provide notice to all Parties in a form substantially similar to that set forth in **Exhibit A** to this Agreement. In any year during the term of this Agreement, any Participating Contractor may request an increase, but not a decrease, in their Annual Transfer Goal by providing notice to CCWA. No such request shall be effective unless and until it is approved in writing by CCWA's Executive Director. Any increased Annual Transfer Goal supersedes any prior Annual Transfer Goal for all purposes related to this Agreement and without regard to the date on which any Annual Transfer Goal is increased. In the event any Participating Contractor's Annual Transfer Goal is increased, CCWA shall provide notice to all Parties.

2.3 Additional Parties. From time to time, additional CCWA Participants may wish to participate in the Surplus Water Transfer Program. By executing this Agreement on or before December 31 of any calendar year, a CCWA Participant becomes a Party to this Agreement and a Participating Contractor beginning on January 1 of the following calendar year.

3. Notification of Transfer Opportunity; Statement of Intent; Allocation of Surplus Water

3.1 Notification of Transfer Opportunity. CCWA shall give notice to each Participating Contractor of each opportunity to transfer or exchange Surplus Water identified by CCWA (each, a "**Transfer Opportunity**"). Each notice (the "**Opportunity Notice**") shall include a deadline for Participating Contractors' responses and, to the extent it is available to CCWA, the following information: transfer or exchange quantity ("**Total Transfer Quantity**") desired by the proposed purchaser ("**Proposed Purchaser**"), price, date of scheduled delivery, and delivery risk, including anticipated transmission losses.

3.2 Statement of Intent

3.2.1 Upon receipt of the Opportunity Notice, any Participating Contractor that wishes to participate in the specified Transfer Opportunity shall provide notice to CCWA of the Participating Contractor's intent ("**Statement of Intent**" or "**SOI**"), which notice shall include the quantity of Surplus Water the Participating Contractor intends to transfer or exchange in connection with a particular Transfer Opportunity ("**SOI Quantity**").

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

3.3 Right of First Refusal. After the deadline by which each Participating Contractor must elect to execute a Transfer Agreement, CCWA shall provide notice to all CCWA Participants of the deadline by which CCWA Participants must notify CCWA of their intent to exercise a right of first refusal under CCWA Resolution No. 2021-01. Any CCWA Participant(s) that timely notify CCWA of their intent to exercise a right of first refusal under CCWA Resolution No. 2021-01 shall be entitled on a pro rata basis to take delivery of the Total Transfer Quantity on the same terms and conditions as the Proposed Purchaser.

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

4. Allocation of Costs; Deposit; Participating Contractor Payment

4.1 In each calendar year during the term of this Agreement, each Participating Contractor shall pay to CCWA the Participating Contractor’s pro-rata share of 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, and any other costs related to or arising under this Agreement (“**Total Expenses**”). Each Participating Contractor’s pro-rata share of CCWA’s Total Expenses in each calendar year shall be calculated as follows:

4.1.1 For Total Expenses arising from services rendered by CCWA pursuant to this Agreement, a Participating Contractor’s pro-rata share shall be equal to that Participating Contractor’s Annual Transfer Goal divided by the sum of the Annual Transfer Goal for all Participating Contractors.

4.1.2 For Total Expenses related to a specific Transfer Opportunity before one or more Transfer Agreements are executed, each Participating Contractor’s pro-rata share of such expenses shall be equal to the Participating Contractor’s SOI Quantity for that Transfer Opportunity divided by the sum of the SOI Quantities set forth in the Statements of Intent submitted by all Transfer Opportunity Participants for that Transfer Opportunity. If no

Participating Contractor delivers a Statements of Intent to CCWA for a particular Transfer Opportunity, each Participating 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 Initial Deposit. Prior to execution of this Agreement, CCWA prepared and delivered to each Participating Contractor an estimate of the Participating Contractor's anticipated financial obligations under Paragraph 4.1.1 of this Agreement for the calendar year in which the Participating Contractor becomes a Party. Concurrently with each Participating Contractor's execution of this Agreement, Participating Contractor shall place on deposit with CCWA the amount stated in the estimate.

4.3 Annual Deposit. Prior to the end of each calendar year during the term of this Agreement, CCWA shall provide to each Participating Contractor an estimate of the Participating Contractor's annual financial obligations under Paragraph 4.1.1 of this Agreement for the following calendar year. Each Participating Contractor shall place on deposit with CCWA the amount stated in the estimate no later than the deadline established by CCWA's Executive Director.

4.4 Supplemental Deposits. Prior to the end of each calendar year during the term of this Agreement, CCWA shall provide to each Participating Contractor an estimate of any additional anticipated financial obligations for that calendar year not covered by the deposit required by Paragraph 4.2 or Paragraph 4.3 of this Agreement. Each Participating 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 any Participating Contractor to CCWA pursuant to Paragraph 4.2, Paragraph 4.3 and/or Paragraph 4.4 will be insufficient to cover that Participating Contractor's financial obligations hereunder, CCWA is authorized to deliver to any Participating Contractor a revised estimate of those financial obligations and an invoice for an additional deposit. Participating Contractor shall remit the amount stated in the invoice within 30 days of receipt.

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

5. Party's Authorized Representative. Concurrent with execution of this Agreement, in the signature block of this Agreement, each Party shall identify and provide the contact information for its authorized representative ("**Authorized Representative**"). Each Participating Contractor represents and warrants that its Authorized Representative has full authority to grant, provide and enter into, by and on behalf of Participating Contractor, any and all consents, approvals,

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

6. Obligation in the Event of Default

6.1 Written Demand Upon Failure to Make Payment or Perform Obligation

6.1.1 Upon any Participating 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 the Participating Contractor, and if such failure is not remedied within 30 days from the date of such demand, such failure shall constitute a default and breach of this Agreement. CCWA shall also provide a copy of the notice of such demand to all other Participating Contractors.

6.1.2 Upon failure of CCWA to perform any obligation of CCWA hereunder, a Participating Contractor shall make written demand upon CCWA, and if said failure is not remedied within 30 days from the date of such demand, such failure shall constitute a default and breach of this Agreement. Participating Contractor shall also provide a copy of the notice of such demand to all other Participating Contractors.

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

6.3 **CCWA’s Use of Other Funds.** CCWA may draw upon and use any unobligated funds held by CCWA as credits payable to the defaulting Participating Contractor, including “O&M Year-end Credits” and any other credits held by CCWA for the benefit of the defaulting Participating Contractor, and any cash that the defaulting Participating Contractor may have on deposit with CCWA, for example in the “DWR Reserve Fund” or the “Rate Coverage Reserve Fund,” to satisfy the defaulting Participating Contractor’s payment obligation, in whole or in part. CCWA shall provide to the defaulting Participating Contractor an accounting of any such credits or deposits applied. CCWA’s use of other defaulting Participating Contractor funds pursuant to this Paragraph is in addition to all other remedies provided by this Agreement.

6.4 Increase in Non-defaulting Participating Contractor Costs. Notwithstanding any provision in this Agreement to the contrary, including Paragraphs 4.1.2 and 10.2, in the event a defaulting Participating Contractor's payment obligations under this Agreement exceed the amount of funds available under Paragraph 6.3, 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 this Agreement. **Each Participating Contractor acknowledges and agrees that its pro rata share of Total Expenses may increase as a result of a default by another Participating Contractor.**

6.5 Right of Recovery from Defaulting Participating Contractor. If a Participating Contractor fails or refuses to pay any amounts due to CCWA under this Agreement, the non-defaulting Participating Contractors' increased obligations to make such payments shall not relieve the defaulting Participating Contractor of its liability for such payments. Each 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 6.4, shall be reimbursed by CCWA to the non-defaulting Participating Contractor.

7. Remedies

7.1 If any Party does not timely perform its obligations pursuant to this Agreement, all other Parties shall be entitled to proceed to protect and enforce their rights as provided in this Agreement by such appropriate judicial proceedings as each Party may 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 by this Agreement or by law. The provisions of this Agreement and the duties of each Party and its elected officials, officers, agents, or employees shall be enforceable 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 of this Agreement by a Party, all other Parties 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 Each Participating Contractor acknowledges and agrees that CCWA is in good faith administering the Surplus Water Transfer Program and facilitating the transfer or exchange of Surplus Water on behalf of the Participating Contractors, in exchange for the 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 for purposes of the Surplus Water Transfer Program. As a result, it is the intent and agreement of each Participating Contractor and CCWA that CCWA shall not incur any liability for assistance to any Participating Contractor under this Agreement for any cause, except for any

loss or damage to the extent caused by CCWA's sole negligence or willful misconduct or CCWA's breach of this Agreement.

8.2 To the maximum extent permitted by law, neither CCWA, nor any of its elected officials, officers, agents, employees, consultants, or attorneys, nor any CCWA Participant that is not also a Participating Contractor, shall be liable to any Participating Contractor pursuant to this Agreement or otherwise for any and all claims, liabilities, damages, losses, actions, penalties, proceedings, or expenses in the event any Transfer Opportunity is not finalized and Surplus Water is not able to be transferred or exchanged by CCWA, Surplus Water is not available for transfer or exchange on the terms and conditions acceptable to any Participating Contractor, or any approval required to permit the delivery of Surplus Water is not obtained or is conditioned in any manner that is not acceptable to any Participating Contractor, for any reason, whether such claims, liabilities, damages, losses, actions, penalties, proceedings, or expenses arise prior to or following termination or expiration of this Agreement, except for any loss or damage to the extent caused by CCWA's sole negligence or willful misconduct or CCWA's breach of this Agreement.

9. Indemnification and Defense

9.1 Indemnification. Each Participating Contractor ("**Indemnifying Party**") agrees to indemnify, defend, protect and hold harmless CCWA and its officers, directors, employees, agents, consultants and attorneys and CCWA Participants who are not also Participating Contractors (each an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") from and against any and all claims, liabilities, damages, losses, actions, penalties, proceedings, or expenses, including attorneys', paralegals', consultants', and experts' fees, costs and expenses, arising from or relating to this Agreement, whether such claims, liabilities, damages, losses, actions, penalties, proceedings, 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 or CCWA's breach of this Agreement.

9.2 Defense of Action. If requested by an Indemnified Party, an 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 date included in the first sentences of this Agreement and shall continue until terminated by all Parties, or until each Participating 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 each Participating Contractor to CCWA to pay its share of CCWA's Total Expenses under this Agreement shall continue in full force and effect.

10.2.2 This Agreement may be terminated by any Participating Contractor as to that Participating Contractor only upon the expiration of 30 days following the later of (i) delivery of written notice of termination to CCWA, and (ii) discharge by the Participating 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 a Participating 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; Electronic Signatures; Delivery by Email. The Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document. Counterparts may be delivered via electronic mail (including PDF or any electronic signature complying with the federal Electronic Signatures in Global and National Commerce (ESIGN) Act of 2000 (P.L. 106-229), e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

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 similar agreements from prior years. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both 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 Authorized Representative of the Party to whom the notice is directed. 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. Any Party may change its email and overnight service addresses by giving all other Parties 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) Participating Contractors, (ii) CCWA, and (iii) all CCWA Participants that are not Participating Contractors. 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.

—Signatures Follow On Next Page(s)—

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

CENTRAL COAST WATER AUTHORITY

By: _____ Date: _____
Name: Ray A. Stokes
Title: Executive Director

Approved as to form:

Brownstein Hyatt Farber Schreck, LLP

By: _____
Name: Stephanie Osler Hastings

Authorized Representative:

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

–signatures continue on next pages–

[PARTICIPATING CONTRACTOR]

By:
Name: [Name of Authorized Representative]
Title: [Title]

Date: _____

Approved as to form:

[Attorney's Office]

By: _____
Name: [Attorney Name, Title]

Authorized Representative:

[Participating Contractor]
[Street Address]
[City, CA ZIP]
Attn: [Authorized Representative Name, Title]
Telephone: [(XXX) XXX-XXXX]
Email: [email]

Exhibit:

Exhibit A – Form of Annual Transfer Goal Summary

EXHIBIT A

FORM OF ANNUAL TRANSFER GOAL SUMMARY FOR [YEAR]

Participating Contractor	Transfer Goal (in AF)
TOTAL	