



**SPECIAL MEETING
STRATEGIC PLANNING COMMITTEE
MONTECITO WATER DISTRICT
583 SAN YSIDRO ROAD, MONTECITO, CALIFORNIA
THURSDAY, FEBRUARY 15, 2018
2:30 P.M.**

AGENDA

1) CALL TO ORDER, DETERMINATION OF COMMITTEE QUORUM

2) PUBLIC FORUM

NOTE: This portion of the agenda may be utilized by any person to address the Committee on any matter within the jurisdiction of the Committee. No consideration or discussion shall be undertaken by Committee members at this time on any item not appearing on this agenda except as permitted by the Ralph M. Brown Act. Discussion items receiving recommendations by the Committee, and/or items requiring action will be placed on the agenda of a future meeting of the Montecito Water District Board of Directors.

3) ITEMS FOR COMMITTEE CONSIDERATION

- A. Drought and Quarterly Water Supply Update
- B. Participation in the Central Coast Water Authority (CCWA) 2018 Supplemental Water Purchase Program
- C. Status of contracts for participation in Semitropic Water Storage District Groundwater Banking and Exchange Program
- D. Discussion on desalination and other water supply opportunities

4) ADJOURNMENT

Note: This agenda was posted at the Montecito Water District front counter and outside front office at 5:00 p.m. on Tuesday, February 13, 2018. The Americans with Disabilities Act provides that no qualified individual with a disability shall be excluded from participation in, or denied the benefits of, the District's programs, services or activities because of any disability. If you need special assistance to participate in this meeting, please contact the District Office at 805/969-2271. Notification at least twenty-four (24) hours prior to the meeting will enable the District to make appropriate arrangements.

Materials related to an item on this agenda submitted to the Board's Strategic Planning Committee after distribution of the agenda packet are available for public inspection in the Montecito Water District offices located at 583 San Ysidro Road, Montecito, during normal business hours.

**MONTECITO WATER DISTRICT
MEMORANDUM**

SECTION: 3-B

DATE: FEBRUARY 15, 2018

TO: STRATEGIC PLANNING COMMITTEE

FROM: GENERAL MANAGER

**SUBJECT: 2018 CCWA SUPPLEMENTAL WATER PURCHASE PROGRAM AND
AUTHORIZATION TO ENTER INTO AN AGREEMENT TO PURCHASE
SUPPLEMENTAL WATER IN 2018**

RECOMMENDATION:

1. That the Strategic Planning Committee recommend the Board of Directors approve participation in the Central Coast Water Authority (CCWA) 2018 Supplemental Water Purchase Program (SWPP) with an initial requested Delivery Goal of up to 3,000 AF of water; The Board may wish to increase this amount during the year if the need arises.
2. That the Strategic Planning Committee recommend the Board of Directors authorize the General Manager to enter into a binding agreement, when water is needed and an opportunity is made available, to purchase up to 3,000 AF of water through the 2018 SWPP with a not-to-exceed unit price of \$300/AF or total price of \$900,000;

DISCUSSION:

Now in the seventh year of drought, the District continues to rely heavily on imported water supplies via the State Water Project. With a reduced State Water Project Table A allocation of 20% as of the date of this report, and dry conditions forecasted in Santa Barbara County and across the State, the District must continue to rely on supplemental water purchases from suppliers around the state to meet its reduced customer demands.

Since 2014, the District has participated in the CCWA SWPP. Below is a list of the District's supplemental water purchased to date through the program.

PARTICIPATION IN CCWA SWPP			
Date	Source	Net (AF)	Cost/AF
03/31/14	Santa Ynez ID 1	465	\$465
04/28/14	Biggs-West Gridley	488	\$776
05/16/14	Vandenberg Air Force Base	383	\$1,070
06/06/14	Dudley Ridge	860	\$424
07/09/14	Mojave Water Agency	416	\$322
02/24/15	Antelope Valley East Kern	2531	\$500
03/30/15	Biggs-West Gridley	113	\$664
09/04/15	Santa Ynez ID 1	750	\$1,015
04/22/16	Antelope Valley East Kern	5000	\$253
10/04/16	City of Santa Maria	2000	\$600

Based on the District's current water supply outlook, as briefly described below, staff recommends the District participate in the 2018 Supplemental Water Purchase Program by authorizing the execution of the attached agreement.

Current Water Supplies Outlook

The District's local supplies continue to be affected by the persisting drought conditions in Santa Barbara County. Based on current weather patterns and predictions, the District does not anticipate water supply conditions improving during WY17/18. The Cachuma Project allocation for WY17/18 is expected to remain at 40%, with no allocation projected in subsequent water years. Supplies of Jameson Lake remain reduced, and water quality will be affected over the short and long term as a result of the Thomas Fire. Groundwater supplies remain depleted with no signs of recovery following the 16/17 winter. As previously stated, the State Water Project allocation is currently at 20% and is not expected to increase significantly this winter based on the three-month NOAA forecast indicating dryer than normal conditions for Santa Barbara County and across the State.

Because the District's current water supplies are nearly all rainfall dependent and drought conditions remain, supplemental water is needed to make up the shortfall in local and regional water supplies. The additional supplies are needed to meet the District's reduced customer demands.

DWR Policy Change on Storing Carryover Water in San Luis Reservoir

Historically, DWR has allowed State Water Contractors to enter into water transfers and exchanges with other State Water Contractors and water suppliers. Water acquired via water transfers and exchanges was then allowed to be stored in San Luis Reservoir for future use, and to be carried over into subsequent calendar years if unused. In 2016 DWR changed this policy preventing unused exchange water from being carried over into future calendar years, meaning unused exchange water had to be stored elsewhere, i.e. groundwater banking, or lost. This change did not impact transfer water,

or exchange water, already in storage. This policy change added additional challenges to water planning and management.

At CCWA's January 25, 2018 board meeting, Executive Director Ray Stokes presented a notice received from the Department of Water Resources titled, "Water Management and the Existing Long-Term Water Supply Contracts". This notice addressed a number of changes to the water management provisions of the State Water Project contracts, including the provision allowing the carryover of exchange water in San Luis Reservoir. According to Mr. Stokes, the State Water Contractors (SWC) are working on a State Water Project contract amendment that will affirm the SWC's ability to carry over both transfer and exchange water in the future. Therefore, water purchases under an exchange agreement in 2018 can be carried over into 2019 and beyond if necessary. Note that transfer and exchange water will remain the first water to be lost in the event of a reservoir spill.

COSTS

The execution of the *Central Coast Water Authority Supplemental Water Purchase Program Participation Agreement (for 2018)* does not commit the District to a water purchase but does provide CCWA with notice of the District's interest in pursuing new supplemental water supply opportunities in 2018.

The costs to participate in the CCWA 2018 SWPP are based on a pro-rata share of CCWA's total administrative expenses, as set forth in Section 2.4 of the referenced and attached Agreement. These costs are incurred whether or not water is purchased through the program. Exact costs are unknown at this time but are estimated to be between \$5,000- \$7,500.

The costs to purchase water under the 2018 SWPP are unknown at this time. When a potential purchase is available, the specific terms of the agreement will be available. CCWA will be utilizing a consultant, Sierra Water Development Inc to assist in identifying, structuring and negotiating a water purchase, lease, exchange or other acquisition of water. The consultant's fees, which are 5% of the cost of the water, are only due upon a successful transaction.

Any water purchase made through the 2018 SWPP, and under this board authorization, would be brought to the Board for ratification at the next regular board meeting after the purchase agreement is entered into.

ATTACHMENTS

1. Central Coast Water Authority Supplemental Water Purchase Program Participation Agreement for 2018

1/26/2018

**CENTRAL COAST WATER AUTHORITY
SUPPLEMENTAL WATER PURCHASE PROGRAM
PARTICIPATION AGREEMENT (for 2018)**

This Supplemental Water Purchase Program Participation Agreement (“Agreement”) is made as of _____ by

CENTRAL COAST WATER AUTHORITY (“Authority”)

and

_____ (“Contractor”).

Recitals

A. The Authority owns, operates and maintains water conveyance, storage and treatment facilities to deliver water from California’s State Water Project to cities, water districts and other water purveyors and users in Santa Barbara County.

B. The Authority and Contractor are parties to a Water Supply Agreement dated August 1, 1991 related to the matters described in Recital A.

C. Due to a serious statewide drought, it is anticipated that the State Water Project will be unable to deliver to the Authority the quantity of water needed by the Authority for delivery to its Project Participants.

D. The Authority has determined that it should seek to acquire water from other sources. .

E. The Contractor has determined that it wishes to participate in the Authority’s program to secure supplemental sources of water, and is willing to share in the expenses pertaining thereto.

Agreement

1. Representation; Delivery Goal; Cooperation with Authority. Contractor agrees that the Authority shall be authorized to represent Contractor in the identification, structuring and negotiation of transactions for the acquisition of imported water rights, contract water and other water and/or water related assets (collectively, the “Water”). Contractor represents that it is seeking to acquire _____ AFY of Water over the term of this Agreement (“Contractor’s Delivery Goal”). Contractor shall be entitled to request an increase in the Delivery Goal stated in this paragraph by executing and delivering to the Authority, at any time during the term of this Agreement, an Amendment to Participation Agreement in a form

approved by the Authority, subject to the provisions of this Contract requiring that all costs allocated under this contract – including costs incurred prior to the delivery of the notice -- shall be allocated to the Contractor in accordance with the Revised Delivery Goal. No such Amendment to Participation Agreement shall be effective unless and until it is executed by the Authority.

2. Notification of Purchase Opportunity; Statement of Intent; Allocation of Delivered Water; Allocation of Costs; Deposits.

2.1 Notification of Purchase Opportunity. The Authority shall notify Contractor of each opportunity to acquire a supplemental water supply identified by the Authority, which notification to the Contractor shall be either in electronic or written format and shall include a deadline for the Contractor's response and the following information to the extent it is available to the Authority: anticipated available quantity, purchase price, date of scheduled delivery, delivery risk (including anticipated transmission losses), and the anticipated procedure and schedule for environmental review.

2.2 Statement of Intent. The Contractor may submit to the Authority a Statement of Intent ("Statement of Intent" or "SOI"), in the form of the attached **Exhibit A**, which shall include the quantity of water the Contractor intends to acquire in connection with that specific water transaction ("SOI Quantity"). If the Contractor submits a Statement of Intent prior to the deadline, the Authority shall secure and provide to the Contractor (1) a copy of the proposed purchase agreement for the Water supply, and (2) a Binding Agreement to Purchase in the form of the attached **Exhibit B** to be signed by the Contractor under which the Contractor agrees to take delivery of the SOI Quantity of the offered Water on the terms and conditions stated therein.

2.3 Oversubscription; Allocation of Delivered Water. For each Water purchase opportunity, if the Contractors who have delivered signed Statements of Intent ("Participating Contractors") collectively indicate an intent to purchase more of the Water being offered than is available, the total amount of Water being offered shall be allocated for purchase in proportion to the respective Delivery Goals of the Participating Contractors, provided, however, that no Participating Contractor shall be allocated an amount that exceeds that Contractor's Delivery Goal.

2.4 Allocation of Costs. The Contractor shall pay to the Authority the Contractor's pro-rata share of the Authority's Total Expenses, which pro-rata share shall be calculated as follows:.

2.4.1 For Total Expenses arising from services rendered by the Authority prior to the Authority's identification, in writing, of a specific Water purchase opportunity, the Contractor's pro-rata share shall be that Contractor's Delivery Goal as stated herein (or the Revised Delivery Goal) divided by the sum of all Contractors' Delivery Goals as stated in their respective Agreements. Once a Contractor has received a quantity of water that meets its Delivery Goal, that Contractor is no longer obligated to share in the Total Expenses allocated under this Subparagraph 2.4.1.

2.4.2 For Total Expenses arising from services rendered by the Authority after the Authority's identification, in writing, of a specific Water purchase opportunity, and that relate specifically to that purchase opportunity, the Contractor's initial pro-rata share shall be that Contractor's SOI Quantity for that particular opportunity divided by the sum of SOI Quantities of all Contractors that have submitted a signed Statement of Intent for that purchase opportunity. In the event that no Statements of Intent are executed and delivered by any Contractor, the pro-rata share under this subparagraph shall be calculated in accordance with subparagraph 2.4.1 above. After all water related to a specific Water purchase opportunity has been delivered, and all expenses have been determined, the Total Expenses related to that purchase opportunity shall be reallocated by the Authority among the participating Contractors according to the actual quantity of water delivered to each Participant.

2.4.3 For all payments made by the Authority to any Seller (as that term is defined in a Binding Agreement to Purchase), the Participating Contractor's pro-rata share shall be that Contractor's quantity of water to be purchased under the Binding Agreement to Purchase divided by the sum of such quantities for all Contractors who have executed such Binding Agreements to Purchase.

2.4.4 In any event, for Total Expenses arising from services that are of benefit to only one Contractor, that Contractor shall pay for the expenses related to said services.

2.4.5 "Total Expenses" shall include all out-of-pocket expenditures made by the Authority for environmental review, consultant reports, legal expenses and other costs related to any transaction arising under this Agreement.

2.5 Deposit. Prior to execution of this Agreement, the Authority prepared and delivered to the Contractor an estimate of the Contractor's anticipated financial obligations under subparagraph 2.4 of this Agreement through the end of the 2018 calendar year, and has provided that estimate to the Contractor. Concurrently with execution of this Agreement, Contractor shall place on deposit with the Authority the amount stated in the estimate.

2.6 Subsequent Deposits. Prior to the end of the 2018 calendar year, the Authority shall provide to the Contractor an estimate of the Contractor's anticipated financial obligations under subparagraph 2.4 of this Agreement for such period of time as shall be determined by the Authority's Executive Director. The Contractor shall place on deposit with the Authority the amount stated in the estimate no later than the deadline established by the Authority's Executive Director.

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

2.8 Obligation in the Event of Default.

2.8.1 Written Demand Upon Failure to Make Payment. Upon failure of the Contractor to make any payment in full when due under this Agreement or to perform any other obligation hereunder, the Authority shall make written demand upon the Contractor, and if such failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each other Contractor by the Authority. Upon failure of the Authority to perform any obligation of the Authority hereunder, the Contractor shall make written demand upon the Authority, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each Contractor by the Contractor making such written demand.

2.8.2 Other Events of Default. In addition to any default resulting from breach by the Authority or the Contractor of any agreement, condition, covenant or term hereof, if the Authority or the Contractor shall file any petition or institute any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the Authority or the Contractor asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension or time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the Authority or the Contractor shall make a general or any assignment for the benefit of its creditors, then in each and every such case the Authority or the Contractor, as the case may be, shall be deemed to be in default hereunder.

2.8.3 Termination of Contractual Rights; Continuing Obligations. Upon the failure of the Contractor to make any payment which failure constitutes a default under this Agreement and causes the Authority to be in default under the Purchase Agreement or the Brokerage Agreement, the Authority may (in addition to the remedy provided by section 2.8.2 hereof), terminate the provisions of this Agreement insofar as the same entitle the Contractor to any deliveries of Water. Irrespective of such termination, the obligations of the Contractor to the Authority to pay the full amount of costs under this Agreement shall continue in full force and effect.

2.8.4 Increase in Non-defaulting Contractor Costs. Upon the failure of any Contractor to make any payment which failure constitutes a default under its respective Binding Agreement to Purchase, and except as transfers are made pursuant to Section 2.8.2 hereof, (i) the pro-rata share of each non-defaulting Contractor shall be automatically increased for the remaining term of the Purchase Agreement pro rata with those of the other non-defaulting Contractors, and (ii) such defaulting Contractor's right to receive Water shall be reduced accordingly. Upon payment of such increase, a non-defaulting Contractor shall be entitled to take delivery of its pro rata share of such defaulting Contractor's Water.

2.8.5 Right of Recovery from Defaulting Contractor. If a Contractor shall fail or refuse to pay any amounts due to the Authority, the fact that a non-defaulting

Contractor has increased its obligation to make such payments shall not relieve the defaulting Contractor of its liability for such payments, and the non-defaulting Contractor shall have a right of recovery from the defaulting Contractor to the extent of such respective increase in obligation caused by the defaulting Contractor. Any amounts received by the Authority from the defaulting Contractor for costs that were previously paid by a Non-Defaulting Contractor pursuant to Section 2.8.4 above, shall be reimbursed by the Authority to the Non-Defaulting Contractor.

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

3. Term; Termination.

3.1 Term. The term of this Agreement shall commence on January 1, 2018 and shall continue until December 31, 2018, unless sooner terminated as provided for herein.

3.2 Termination.

3.2.1 This Contract may be terminated by the Authority at any time, provided all Contractors agree in writing thereto.

3.2.2 This Contract may be terminated by Contractor effective March 1, 2018, or such other date as may be established by the Authority, upon the expiration of thirty (30) days following the later of (i) delivery of written notice of termination to the Authority, and (ii) discharge by the Contractor, or satisfactory assurance of performance, of all financial obligations hereunder. The Authority shall promptly transmit any such notice of termination to all other Contractors.

3.2.3 In the event any Contractor submits a notice of termination pursuant to Section 3.2.2, any other Contractor may terminate this Contract effective March 1, 2018, or such other date as may be established by the Authority, upon the expiration of forty-five (45) days following the later of (i) delivery of written notice of termination to the Authority, and (ii) discharge by the Contractor all financial obligations hereunder.

4. Contractor's Representative; Coordination Among Contractors.

4.1 Contractor's Representative. For purposes of this Agreement, Contractor shall provide to the Authority a written Designation of Representative identifying its authorized representative with full authority to grant, provide and enter into, by and on behalf of the Contractor, any and all consents, approvals, instructions, authorizations or agreements by the Contractor in connection with this Agreement (collectively, "Contractor Directions"). The Authority shall be entitled to rely upon, without inquiry, the full authority of the Contractor's designated representative. Without limiting the foregoing, the 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 the Authority hereunder and the Authority 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 written notice to Authority.

4.2 Coordination Among Contractors.

4.2.1 Contractors Committee. A Contractors Committee shall be created with each Contractor's Representative as stated in Section 4.1. The Committee shall be authorized to advise the Authority with respect to its duties under this Agreement, and to perform such other functions as the Contractors shall deem appropriate. Each member of the Committee shall have a weighted vote corresponding to the Contractor's Delivery Goal as a proportion of the total Delivery Goals for all Contractors. A quorum shall be at least 50% of the voting percentages. Committee decisions shall be made by the following vote:

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

4.2.1.2 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.

4.2.2 Subcommittees of Participating Contractors. For each Water transaction in which one or more Contractors have signed and delivered a Binding Agreement to Purchase, a Subcommittee shall be created with a representative from each such participating Contractor. The Subcommittee shall be authorized to advise the Authority with respect to its duties under the Binding Agreement to Purchase for that Water transaction, and to perform such other functions as those Participating Contractors shall deem appropriate. Each member of the Subcommittee shall have a weighted vote corresponding to the quantity of Water to be delivered to that Contractor under its Binding Agreement to Purchase as a proportion of the total quantity of Water to be delivered to all Participating Contractors under their respective Binding Agreements to Purchase. A quorum shall be at least 50% of the voting percentages. Subcommittee decisions shall be made by the following votes:

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

4.2.2.2 If the Subcommittee 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.

5. Miscellaneous

5.1 Incorporation of Recital and Exhibits. The Recitals to this Agreement and exhibits attached to this Agreement are incorporated herein and made a part hereof by this reference.

5.2 Headings. The headings in this Agreement are for convenience of reference only and shall not be used in construing this Agreement.

5.3 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. 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.

5.4 Terms Generally. 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."

5.5 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.

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

5.7 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.

5.8 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.

5.9 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.

5.10 Notices. All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following address:

If to Contractor:

Telephone: _____
Facsimile: _____

If to Authority:

Central Coast Water Authority
255 Industrial Way
Buellton, CA 93427
Attn: Executive Director
Telephone: (805) 688-2292
Facsimile: (805) 686-4700

Any such notices may be sent by (a) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the U.S. mail, (b) a recognized and reputable overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier (on or prior to 5:00 p.m., local time of the sender; if deposited after such time, it shall be deemed to have been deposited on the next business day); provided, however, that this method of delivery will not be applicable to a party that has specified a P.O. Box for its address, or (c) facsimile transmission, in which case notice shall be deemed delivered upon electronic verification (on or prior to 5:00 p.m., local time of the recipient; if verification is received after such time, it shall be deemed to have been delivered on the next business day) that transmission to recipient was completed (which verification may include a fax transmission receipt, or fax transmission log, from the sending party's fax machine which includes the date and time of a stated successful transmission to the recipient). The above addresses and facsimile numbers may be changed by written notice to the other party; provided that no notice of a change of address or facsimile number shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

5.11 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.

5.12 Due Authority. The parties hereby represent that the individuals executing this Agreement are expressly authorized to do so on and in behalf of the parties.

5.13 Counterparts; Delivery by Facsimile. 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 facsimile transmission, and such delivery shall be deemed made and completed upon receipt of such facsimile transmission by the other party. Any party delivering a signed counterpart by facsimile transmission 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 facsimile transmission.

5.14 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. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties.

5.15 Indemnification and Defense. Contractor agrees to indemnify, defend, protect and hold harmless the Authority and its officers, directors, employees, agents, Members, Associate Members and contractors from and against all claims, actions, damages, losses and expenses, including reasonable attorneys' fees, arising from or relating to this Agreement, whether said claims, actions, damages, losses or expenses arise prior to or following termination or expiration of this Agreement. If more than one Contractor signs this Agreement, the obligations of this paragraph 5.15 shall be allocated among such Contractors according to their respective Delivery Goals as stated herein.

5.16 Third Party Beneficiary; Enforcement. The parties agree that this Agreement is for the benefit of (i) the Contractor, (ii) the Authority, (iii) all Project Participants under their respective Water Supply Agreements with the Authority dated August 1, 1991, and (iv) all other Contractors who are signatories to agreements in substantially the same form as this Agreement, and all of the aforementioned entities and persons shall be entitled to enforce the provisions of this Agreement.

5.17 Superseding Previous Agreement. This Agreement entirely supersedes and replaces any Water Purchase Representation Agreement or similar agreement concerning the same subject executed between the parties hereto.

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

“Authority”

“Contractor”

CENTRAL COAST WATER AUTHORITY
a California joint powers agency

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Approved as to form:

Approved as to form:

Brownstein Hyatt Farber Schreck

[Insert Contractor’s counsel name]

By: _____

By: _____

Attachments:

Exhibit A – Statement of Intent

Exhibit B – Binding Agreement to Purchase