

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

DELTA-MENDOTA SUBBASIN GSP IMPLEMENTATION GRANT APPLICATION

SPECIAL PROJECT AGREEMENT

THIS SPECIAL PROJECT AGREEMENT (this "Special Project Agreement") is entered into this ____ day of _____, 2020 (the "Effective Date"), by and among (i) the San Luis & Delta-Mendota Water Authority (the "Authority"), and (ii) San Luis Water District, a California water district ("SLWD"); Del Puerto Water District, a California water district ("DPWD"); Central California Irrigation District, a California irrigation district ("CCID"); Aliso Water District, a California water district ("AWD"); and Grassland Water District, a California water district ("GWD") (collectively, the "Special Project Participants"). The Authority and the Special Project Participants may be collectively referred to herein as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the Special Project Participants, through their participation in their respective Groundwater Sustainability Agencies ("GSAs"), have entered into that certain Delta-Mendota Subbasin Coordination Agreement (the "Coordination Agreement"); and

WHEREAS, the GSAs have adopted multiple Groundwater Sustainability Plans ("GSPs") within the Delta-Mendota Subbasin, and the purpose of the Coordination Agreement is to ensure that such GSPs are developed and implemented utilizing the same methodologies and assumptions, and that the elements of the GSPs are appropriately coordinated to support sustainable management for compliance with the Sustainable Groundwater Management Act ("SGMA"); and

WHEREAS, a purpose of the Coordination Agreement is to provide the contractual basis for its signatories to utilize the resources of the Authority to allow for coordinated access to administrative resources, technical resources, and other services, and to provide mechanisms for sharing the benefits and expenses of obtaining such resources; and

WHEREAS, the Coordination Agreement further defines the role of the Authority and describes the services and designated functions to be performed by the Authority, contingent upon the execution and performance of a separate cost sharing agreement among the participating parties; and

WHEREAS, the Authority and DPWD are each Members to that certain Northern Delta-Mendota Region Sustainable Groundwater Management Act Services Activity Agreement (the "Northern DM Activity Agreement"); and

WHEREAS, the Authority and SLWD are each Members to that certain Central Delta-Mendota Region Sustainability Groundwater Management Act Services Activity Agreement (the "Central DM Activity Agreement"); and

WHEREAS, like the Coordination Agreement, a purpose of both the Northern DM Activity

Agreement and the Central DM Activity Agreement (collectively, the “Activity Agreements”), is to provide the contractual basis for its signatories to utilize the resources of the Authority to allow for coordinated access to administrative resources, technical resources, and other services, and to provide mechanisms for sharing the benefits and expenses of obtaining such resources for compliance with SGMA; and

WHEREAS, Section 16.1 of the Activity Agreements provides that fewer than all of the Activity Participants may enter into a special project agreement to achieve any of the purposes or activities authorized by the Activity Agreements, and to share in the expenses and costs of such activities, that is not carried out by all of the Activity Participants; and

WHEREAS, SLWD is a member of the Central Delta-Mendota Groundwater Sustainability Agency (the “CDMGSA”), and the CDMGSA is currently in the process of obtaining a grant under the 2019 Sustainable Groundwater Management Grant Program Implementation – Round 1 Grant (the “Grant”) pursuant to the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (Proposition 68) (Pub. Resource Code, § 80000 et seq.); and

WHEREAS, the Special Project Participants each desire to enter into this Special Project Agreement with the Authority for the purposes of submitting the Grant application and to share in the expenses and costs of such activity under the Coordination Agreement, consistent with the Activity Agreements, and pursuant to the terms described herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and in the Activity Agreements, the Parties hereto agree as follows:

1. **Title**. The title of this special project is “Delta-Mendota Subbasin GSP Implementation Proposal.”

2. **Funding Source**. The Authority shall provide funding for the entire special project and provide accounting and billing services to collect from the Special Project Participants in accordance with this Special Project Agreement and the terms of the Coordination Agreement and Activity Agreements.

3. **Funding Amount**. The total funding amount is not to exceed Eighty Thousand Dollars and 00/100 (\$80,000.00) for services provided by Woodard & Curran, Baker, Manock & Jensen, and Authority staff support.

4. **Description**. Woodard & Curran will gather all necessary data and conduct any investigations for preparation of the Grant application for submission to the Department of Water Resources (“DWR”).

5. **CEQA Compliance**. Compliance with the California Environmental Quality Act (“CEQA”) for this special project is not required, because it will not result in a direct or indirect physical change in the environment and is therefore not a “project” as defined under Public Resources Code section 21065 and CEQA Guidelines section 15378.

6. **Participation**. The Authority will assist the Special Project Participants by soliciting

and accepting a proposal of Woodard & Curran, which is attached as Exhibit A. The Authority has previously entered into a consulting services agreement with Woodard & Curran. The Authority will provide all administrative services to the Special Project Participants in accordance with the Coordination Agreement and the Activity Agreements. The Special Project Participants shall cooperate with each other to achieve the purposes of this Special Project Agreement.

7. **Special Project Expense Share.** The Special Project Participants shall pay, in equal shares, all of the expenses and costs of activities performed under this Special Project Agreement. The Special Project Participants agree that all expenses and costs incurred by the Authority under this Special Project Agreement are the expenses and costs of the Special Project Participants only, and not of the Authority or of any other party not participating in this Special Project.

8. **Participation Obligations.** The Special Project Participants shall hold the Authority, and all Authority members and other third-parties that are not participating in this Special Project Agreement, free and harmless from liability and shall indemnify each of them against any and all costs, losses, damages, claims and liabilities arising from performance of this Special Project Agreement.

9. **Term and Termination.** This Special Project Agreement shall remain in effect once executed and for the duration of performance of special project services. This Special Project Agreement shall terminate at the conclusion of implementation of the special project services pursuant to the Grant.

10. **Information Access.** The Special Project Participants shall have reasonable access to all compiled monitoring data, draft documents, reports, records and other such information that is developed and submitted to the Authority.

11. **Interpretation of Documents.** As to matters addressed by this Special Project Agreement, in the event of any conflict or inconsistency between the terms of the Special Project Agreement and the Coordination Agreement or the Activity Agreements, this Special Project Agreement shall govern. All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them by the Coordination Agreement.

[SIGNATURE PAGE FOLLOWS]

NOW, THEREFORE, the duly authorized undersigned representatives have executed this Special Project Agreement as of the Effective Date.

Authority:

**SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY**

By: _____

Name: _____

Title: _____

Special Project Participant:

DEL PUERTO WATER DISTRICT

By: _____

Name: _____

Title: _____

Special Project Participant:

SAN LUIS WATER DISTRICT

By: _____

Name: _____

Title: _____

Special Project Participant:

**CENTRAL CALIFORNIA
IRRIGATION DISTRICT**

By: _____

Name: _____

Title: _____

Special Project Participant:

ALISO WATER DISTRICT

By: _____

Name: _____

Title: _____

Special Project Participant:

GRASSLAND WATER DISTRICT

By: _____

Name: _____

Title: _____

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EXHIBIT A

**WOODARD & CURRAN
PROPOSAL**



Fee Estimate

Strawman Cost Estimate - Conservative/High
Prop 68 Sustainable Groundwater Management Implementation Grant Application

Tasks	Labor				ODCs		Total
	Principal-In-Charge	Project Manager	Project Engineer	Admin.	ODCs	Total ODCs (\$)	
	PIC	PM	PE	Graphics and Support Team			
	\$315	\$266	\$200	\$125			
Task 1: Coordination with GSAs							
Kickoff Meeting	4	6	10			\$0	\$2,264
Conference Call (2)	4	8	12			\$0	\$2,664
Ongoing Coordination and PM	2	8	26	8		\$0	\$5,358
Subtotal Task 1:	2	16	22	8		\$0	\$10,286
Task 2: Preparation of Grant Application and Submitted to DWR							
Draft Application	4	67	206	0		\$0	\$60,282
Grant/US Checklist	1	2					
Review Final PSP	2	4					
Authorization and Eligibility Requirements	2	4					
Work Plan - Grant Admin	2	4					
Budget - Grant Admin	1	2					
Schedule - Grant Admin	1	2					
Work Plan - Project 1	4	20					
Budget - Project 1	4	8					
Schedule - Project 1	2	8					
Work Plan - Project 2	4	20					
Budget - Project 2	4	8					
Schedule - Project 2	2	8					
Work Plan - Project 3	4	20					
Budget - Project 3	4	8					
Schedule - Project 3	2	8					
Work Plan - Project 4	4	20					
Budget - Project 4	4	8					
Schedule - Project 4	2	8					
Work Plan - Project 5	4	20					
Budget - Project 5	4	8					
Schedule - Project 5	2	8					
URC Documentation	4	6	2				
QC Review	4	4	8	2			
Final Application	4	4	8	2			
Submitted to GRANT	8	72	216	2		\$0	\$4,174
Subtotal Task 2:	8	72	216	2		\$0	\$66
						\$0	\$65,122

1. The individual hourly rates include salary, overhead and profit.
2. Subcontractors will be billed at actual cost plus 10%.
3. Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines) and travel expenses, will be billed at actual cost plus 10%.
4. We reserve the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

V. B.

DEL PUERTO WATER DISTRICT

STAFF REPORT/ACTION ITEM REQUEST

BOD Meeting Date: December 16, 2020

Title: Change to Equitable Share Per Irrigable Acre Allotment of the District's CVP Contract Allocation from 3.1 AF/ac to 3.2Af/ac

Background Information:

The District's CVP 100% Contract allocation of 140,210 AF has been equitably allotted to each irrigable acre in the District since 1995-1996 in the amount of 3.1 AF/acre, with the small residual reserved for use in the District Bank, mainly as part of the Annual Additional Supplies Pool. Over time, the District has lost irrigable acreage to municipal land conversion, a solar farm, and most recently several small removals from service of lands along the periphery of the District's boundaries. Despite now being able to provide service to 292 additional acres of irrigated lands which were formerly considered Excess under Reclamation Law and did not receive a surface water allocation, District Staff has determined that there now exists enough acreage that has been removed from service and which had a water supply to increase the remainder irrigable acreage from 3.1 AF/acre to 3.2 AF/acre effective for the 2021-22 water year. The acreage eligible for this increase totals 41,295 irrigable acres, and does not include 1,334 acres of land retired under the Supplemental Water Purchase Program (SWPP) or 455 acres of previously excess land which is not under cultivation (gravel pits), the latter of which is not assessed a Water Availability Charge.

Issues for Consideration:

1. Because the acreage associated with the available contract allocation does not receive service or pay assessments, this change would have no monetary impact on the District or its customers in terms of the per-acre assessment.
2. Staff has consulted with legal counsel and advised that as long as the allotment of available supplies is equitable, the Board may change the assigned quantity with no further changes required to its Rules and Regulations.
3. Because this available contract allocation would be redistributed and thus unavailable for use as part of the least-rated component of the Annual Additional Supplies Pool, this change would have the effect of raising the melded costs of developed Additional Supplies, but not more so in good water years when additional supplies are less in demand.

Staff Recommendation:

Staff recommends the increase from 3.1 AF/acre to 3.2 AF/acre effective for the 2021-22 water year.

V.C

Draft

Name
Address
City, State, Zip

December 10, 2020

Re: North Valley Regional Recycled Water Program (NVRWP) Turnback Information

Dear Customer:

In order to accommodate those Landowners/Water Users who do not actively farm their parcel(s), the District has previously provided an opportunity for participation in a 1-Year Turnback Option for allocated NVRWP Supplies. Beginning for 2021, in addition to the 1-Year option, the District will implement a 5-Year option. The primary difference between these two options are as follows:

Under the 1-Year option, the 1st installment will be due by January 1st of each year and there is no guarantee that the program will commence for the upcoming year, obligating the landholder to pay the second installment, as well.

Under the 5-Year option, the District will seek subscribers to commit to purchase the available NVRWP Supply for a multiple year commitment, thus guaranteeing that those requesting to turnback will not be responsible for any payments during the 5-Year term, or longer if extensions are offered.

We recognize that there is a very limited group of our customers who desire to be relieved of their allocated NVRWP Supply, however out an abundance of caution, we are providing this notice to all of our Water users. If you are interested in Turning Back your NVRWP Supply, under either option, please review the attached materials and respond accordingly. If you are interested in purchasing additional NVRWP Supply made available under the 1-Year or 5-Year program(s), watch for a request to be mailed out in February after all of the 1st assessments are collected.

Sincerely,

Anthea G. Hansen
General Manager

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V.C.

Title: Administrative Procedures for 2021-22 NVRRWP 1-Year Turnback Option

Background Information: The District's North Valley Regional Recycled Water Program will be fully implemented during the 2021-22 Water Year. The Board of Directors intends at some point this year to approve a long-term NVRRWP turnback option for those few customers who may be interested, but until such time as the final project costs are known, the parameters for such a long-term program would be difficult to determine with certainty.

Based on the current allocation situation, Staff is aware that a small number of the District's Customers have expressed a desire to be relieved of their NVRRWP obligations & supply, which have been allocated to all eligible acres for Water Year 2021-22 at the current year allocation. As such, this 1-Year Turnback Option has been designed to accommodate those Landowners/Waterusers who do not actively farm their parcel(s) and who typically do not request surface supplies from the District. Please note: The Turnback Program is not intended to be a groundwater substitution program, and customers who actively farm their parcel(s) are encouraged to utilize all NVRRWP supply available to their lands.

How to Make a 1-Year Turnback Program Participation Request:

1. **Any customer who timely paid their first NVRRWP Installment and who wishes to make a request to "TURNBACK" their 2021-22 NVRRWP Supply will need to contact the District directly to request an appointment for completing a "TURNBACK PARTICIPANT FORM".** Turnback Participant Forms must be completed by XXXXX, 2021. Once made, a commitment to "TURNBACK" will be binding on the Turnback Participant, although there will be no guarantee that the District can fulfill the "Turnback Request". Any portion of a Turnback Participant's NVRRWP supply that cannot be assigned to a purchaser will remain the financial responsibility of the Turnback Participant.

Program Parameters:

2. During March, the District will send out a "NVRRWP Turnback and Annual Additional Supplies Pool Request Form". Customers wishing to purchase Turnback & Additional Supplies will indicate the quantity requested and submit the Form and any required deposit by COB on XXXXX, 2021.
3. If the quantity of Turnback & Additional Supplies requested is greater than the amount of NVRRWP Turnback Supply, Participants will receive a refund of their first installment during XXXXX 2021, and the Turnback Program will be closed for the 2021-22 Water Year.
4. In the unlikely event that the quantity of Turnback & Additional Supplies requested is greater than the amount of NVRRWP Turnback Supply available, the District will continue

to accept Turnback Program requests between XXXX and XXXXX on a first-come, first served basis. The Turnback Program will be closed at such time as the entire amount of Turnback Supply is requested, or at 5pm on XXXXX, 2021, whichever is sooner.

5. If the entire amount of Turnback Supply becomes fully requested between XXXX and XXXX, Turnback Participants will receive a refund of their first installment within two weeks of the Turnback Program becoming fully subscribed, and the Turnback Program will be closed for the 2021-22 Water Year.
6. If the Turnback Program does not end up being fully subscribed by XXXXX, 2021, any credits due to Turnback Participants for the partially subscribed quantity will be applied to the balance due for the 2nd assessment, which will be issued to all customers on XXXXX, 2021 and due on XXXXX, 2021.

Title: Administrative Procedures for 2021-22 NVRRWP 5-Year Turnback Option

Background Information: The District's North Valley Regional Recycled Water Program will be fully implemented during the 2021-22 Water Year. The Board of Directors intends to approve a multi-year commitment for subscribers to commit to purchase the available 5-Year NVRRWP Turnback Supply from those customers who would be interested in a long-term Turnback agreement.

Based on the current allocation and cropping situation, Staff is aware that a small number of the District's Customers have expressed a desire to be relieved of their NVRRWP obligations & supply under a long-term contract. As such, this 5-Year Turnback Option has been designed to accommodate those Landowners/Waterusers who do not actively farm their parcel(s) and who typically do not request surface supplies from the District. Please note: The 5-Year Turnback Program is not intended to be a groundwater substitution program, and customers who actively farm their parcel(s) are encouraged to utilize all NVRRWP supply available to their lands.

How to Make a 5-Year Turnback Program Participation Request:

1. **Any customer who timely paid their first NVRRWP Installment and who wishes to make a request to "TURNBACK" their 2021-22 NVRRWP Supply will need to contact the District directly to request an appointment for completing a "TURNBACK PARTICIPANT FORM".** 5-Year Turnback Participant Forms must be completed by XXXXX, 2021. Once made, a commitment to "TURNBACK" will be binding on the 5-Year Turnback Participant, although there will be no guarantee that the District can fulfill the "Turnback Request". Any portion of a 5-Year Turnback Participant's NVRRWP supply that cannot be assigned to a purchaser will remain the financial responsibility of the 5-Year Turnback Participant.

Program Parameters:

2. During March 2021, the District will send out a "NVRRWP 5-Year Turnback Supplies Pool Request Form". Customers wishing to purchase 5-Year Turnback Supplies will indicate the quantity requested and submit the Form and any required deposit by COB on XXXXX, 2021.
3. If the quantity of 5-Year Turnback Supplies requested is greater than the amount of NVRRWP 5-Year Turnback Supply, Participants will receive a refund of their first installment during XXXXX 2021, and will no longer be responsible for any payments for the remainder of the 5-Year term.
4. If the 5-Year Turnback Program does not end up being fully subscribed by XXXXX, 2021, any credits due to 5-Year Turnback Participants for the partially subscribed quantity will be applied to the balance due for the 2nd assessment, which will be issued to all customers

on XXXXX, 2021 and due on XXXXX, 2021. The 5-Year Turnback Participant will be responsible for the amount of the unsubscribed portion of their NVRRWP assessment and receive the associated partial supply for the remainder of the 5-Year term. This unsubscribed portion could be made available each year should the District offer a 1-year Turnback Program that year.

5. At the end of February 2024, the 5-Year Turnback Participant will have a 2-Year call date to remove themselves from the 5-Year Turnback Program. 2-Years from that call date the 5-Year Turnback Participant will take back responsibilities for paying the NVRRWP assessments and receive the then current year NVRRWP supply.

V.D

DEL PUERTO WATER DISTRICT

STAFF REPORT/ACTION ITEM REQUEST

BOD Meeting Date: December 16, 2020

Title: Administrative Procedures for Allocation 2021-22 NVRRWP Supplies

Background Information:

The District's North Valley Regional Recycled Water Program will be fully implemented for the 2021-22 Water Year. Deliveries for the year are estimated to be 27,600 TAF, but will ultimately depend on operations of the Cities Treatment Facilities. For purposes of allocating supply between the District and the Refuge Water Supply Program, the District is currently estimating 20,073 AF available for allocation in-District, with the refuges receiving the remaining 7,527 AF.

Current year practice was to allocate the entire amount into customer accounts as of March 1st. This would only be problematic if the NVRRWP was the ONLY supply available at the beginning of the water year, which is not expected to be the case. Based on the estimates above, Staff feels confident that six inches per acre of reliable supply can be allocated to every irrigable acre in 2021-22.

As the NVRRWP has progressed, the Project has been extremely successful in its efforts to secure grant funding from various sources. These sources reduce the level of borrowing required to finance the implementation of the project, thus resulting in cost savings to the District and the Cities. For the District, this cost savings will be ultimately translated in a reduced rate required for the NVRRWP supply. Although final Project costs will not be fully known until construction activities are completed, Staff estimates that the costs of NVRRWP Supply delivered to the District's customers will be at or around \$185/AF for 2021-22

Staff Recommendation:

For 2020, the District will continue to charge the assessment in semi-annually, with due dates of January 1st and July 1st. Customers who need to use more than half of their NVRRWP supply before July 1st will be requested to accelerate their 2nd payment. Staff further recommends that a rate of \$185/AF be assessed to cover the costs of the 2021-22 NVRRWP Allocation, with the caveat that the second assessment due July 1, 2021 may need to be adjusted depending on SLDMWA final conveyance rates, which won't be known until Spring of 2021.

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**COOPERATIVE AGREEMENT REGARDING
DIVERSION OF WATER FROM DEL PUERTO CREEK**

This Cooperative Agreement Regarding Application to Divert Water From Del Puerto Creek (this "Agreement") is entered into this ____th day of _____, 2020 (the "Effective Date"), by and among (i) the DEL PUERTO WATER DISTRICT ("Del Puerto"), (ii) the SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY ("Exchange Contractors") and (iii) the CITY OF PATTERSON ("City"). Del Puerto and Exchange Contractors shall sometimes be referred to herein collectively as the "Applicants". Applicants and City shall sometimes be referred to herein individually as a "Party" and jointly as the "Parties".

RECITALS

1. Applicants are in the process of developing the Del Puerto Canyon Reservoir Project (the "Project"), the principal feature of which is a reservoir (the "Reservoir") capable of storing approximately 82,000 acre-feet (AF) of water.
2. Del Puerto and Exchange Contractors have entered into that certain *Del Puerto Canyon Reservoir Project Joint Powers Agreement*, which in relevant part sets forth the terms and conditions under which Del Puerto and Exchange Contractors are to "apply for and obtain all . . . necessary federal, state, and local government agency permits and approvals related to the Project, including, but not limited to, approvals from the State Water Resources Control Board."
3. The Draft Environmental Impact Report for the Project (DEIR) identifies water from the Del Puerto Creek (the "Creek") as a source of supply for storage in the Reservoir and, ultimately, beneficial use by landowners within the Applicants' boundaries or other designees of Applicants.
4. Applicants are in the process of refining their Application to Appropriate Water (the "Application") to the State Water Resources Control Board ("State Board") to secure a permit and license to divert, store, and beneficially use water from the Creek.
5. City has adopted that certain *City of Patterson Water Master Plan Final Report* (the "Report") dated March, 2018, which identifies capture and recharge of stormwater flows from the Creek as an element of City's long-term water supply plan.
6. The Parties desire by this Agreement to reconcile their efforts to incorporate Creek flows into their water supply projects.

AGREEMENT

NOW, THEREFORE, in light of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. In connection with the Project, Applicants intend to submit an Application to divert, store and beneficially use for their own purposes _____ AF of water annually from the Creek (the "Application Total").
2. At such time as the Reservoir is operational and capable of storing water, and provided the Applicants have accepted a water right permit that provides for diversions of the Application Total to beneficial uses, Applicants agree to release water in the quantities set forth in the Agreement Release Schedule, set forth in Exhibit A hereto, in accordance with the terms and conditions of this Agreement.
3. The Parties acknowledge that the source of the water made available to City from the Reservoir will not necessarily be the Creek. Applicants anticipate that such water could also be water from the Central Valley Project that Del Puerto receives under its water service contract with the U.S. Bureau of Reclamation, a portion of which Del Puerto intends to store in the Reservoir from time to time.
4. Applicants shall satisfy all release obligations pursuant to the Agreement Release Schedule at the Reservoir channel release valve (the "Point of Release"). The total water released in any year according to the Schedule shall be referred to herein as the "Scheduled Release". Applicants make no commitment concerning the temperature, quality, or suitability of the Scheduled Release for any purpose. The Scheduled Release shall be in addition to other release obligations Applicants may have in connection with the Project.
5. Until such time as the Reservoir is operational and capable of storing water diverted from the Creek, nothing herein shall preclude City from taking such measures as it deems necessary and appropriate to capture flood flows from the Creek for the benefit of City.
6. City shall have no entitlement to water developed by the Project, or other Project related benefits, except those specifically stated in this Agreement. Without limiting the generality of the foregoing, City shall have no entitlement to store water in the Reservoir.
7. If City intends to divert water released to the Creek channel from the Reservoir, it shall do so using a turnout from the Creek channel that is constructed, owned, operated and maintained solely by City, and the Applicants shall have no rights or responsibilities relative to said turnout. The Parties shall cooperate in good faith to coordinate timing of releases from the Reservoir during Project flood release or irrigation releases from the Reservoir, to accommodate City's planned diversions.

8. On the basis that City has determined that it can satisfy its water supply goals regardless of the Project, City shall have no payment obligations to Applicants pursuant to this Agreement. As consideration for the assurances contained herein concerning releases pursuant to the Agreement Release Schedule, City acknowledges that this Agreement satisfies the mitigation measure in the DEIR designed to address "lost natural seepage due to the proposed [P]roject" (Impact HYD-2).
9. Applicants shall be responsible for any and all losses, claims, demands and causes of action ("Claims") related to the control, carriage, handling, use, disposal, or distribution of the Scheduled Release up to the Point of Release. City shall be responsible for all Claims related to control, carriage, handling, use, disposal, or distribution of the Scheduled Release past the Point of Release.
10. This Agreement shall be deemed to have commenced on the Effective Date and, subject to the terms and conditions of Section 12(b), shall remain in full force and effect for so long as the Project remains operational.
11. Without limiting any other term of this Agreement, each Party agrees to indemnify, defend and hold harmless the other, and each of its officers, directors, employees and agents from and against any third-party Claims brought against the indemnified Party that arise out of, result from or relate to, in whole or in part, intentional or negligent acts, errors, omissions, breaches, defaults or failure to adhere to the terms and conditions of this Agreement to the extent of the indemnifying Party's control over the actions giving rise to any Claim.

12. Dispute Resolution

- a. In the event that there are disputes and/or controversies relating to the interpretation, construction, performance, or breach of this Agreement, the Parties shall in good faith meet and confer amongst themselves in an attempt to informally resolve such matter(s) prior to initiating any litigation.
- b. In the event of any alleged default of this Agreement, the non-defaulting Party shall notify the defaulting Party in writing of said default and provide the defaulting Party with an opportunity to cure. If the Defaulting Party fails to cure the default within ten (10) days of receipt of the notice of default, the non-defaulting Party shall have as its exclusive remedies (i) injunctive relief, (ii) declaratory relief, (iii) specific performance of this Agreement, or (iv) termination of this Agreement. The Parties agree that there is no adequate monetary remedy available in the case of a default of this Agreement.
- c. Notwithstanding anything in the foregoing to the contrary, a Party may seek a preliminary injunction or other interlocutory judicial relief if necessary to avoid irreparable damages or to preserve the status quo.

13. Miscellaneous

- a. Further Assurances. Each Party will, from time to time as necessary to the fulfillment of this Agreement, perform, execute, and deliver all such further acts, agreements, and assurances as may be reasonably required to effectuate the terms and conditions hereof, including, without limitation, negotiating separate additional terms regarding the release of water from the Reservoir for the benefit of City.
- b. Force Majeure. Except as otherwise provided herein, all obligations of the Parties will be suspended so long as, and to the extent that, the performance thereof will be prevented by Force Majeure including without limitation earthquakes, fires, tornadoes, facility failures, floods, drowning, strikes, other casualties or acts of God, orders of court or governmental agencies having jurisdiction over the subject matter hereof, or other events or causes beyond the control of the Parties.
- c. Assignment. This Agreement is not subject to assignment by either Party hereto without the prior written consent of the other Party.
- d. Governing Law. This Agreement shall be governed and interpreted by and under the laws of the State of California.
- e. Entire Agreement. This Agreement supersedes all prior discussions and agreements between and among the Parties with respect to the subject matter hereof and contains the sole and entire agreement between and among the Parties with respect thereto. This Agreement shall not be amended except by a written instrument signed by all Parties.
- f. No Third-Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties hereto. No beneficial or legal interest is created in any other person or entity not a Party to this Agreement.
- g. Waiver. Any waiver, at any time, by a Party of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, will not be deemed to be a waiver with respect to any other breach, default or matter

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- h. Notices. All notices, requests and other communications hereunder shall be (i) in writing, (ii) deemed delivered upon receipt, and (iii) made by personal delivery, or Registered or Certified Mail, postage prepaid, to the Parties at the following addresses:

A. If to Del Puerto Attn: Anthea G. Hansen, General Manager
Post Office Box 1596
Patterson, CA 95363

B. If to Exchange Attn: Chris White, Executive Director
Contractors P.O. Box 2115
Los Banos, CA 93635

C. If to City Attn: Ken Irwin, City Manager
1 Plaza Cir
Patterson, CA 95363

- i. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, as of the Effective Date the Parties have accepted, made and executed this Agreement upon the terms, conditions, and provisions stated above.

DEL PUERTO WATER DISTRICT

EXCHANGE CONTRACTORS

By: _____
Anthea G. Hansen

By: _____

Attest:

Attest:

Secretary

Approved as to Form:

Approved as to Form:

General Counsel

General Counsel

CITY OF PATTERSON

By: _____
Ken Irwin, City Manager

Attest:

Maricela Vela, City Clerk

Approved as to Form:

General Counsel

EXHIBIT "A"
RELEASE SCHEDULE

Year Type (Sac Index)	Del Puerto Creek Flows (cfs)				Patterson Releases (AF)
	Average Annual Flows	Monthly Min (Aug)	Monthly Max (Feb)	Average Jan-Apr Flows	
1 - Wet	13	0	50	>29	1,700
2 - Above Normal	8	0	41	14.1-29	1,400
3 - Below Normal	2	0	19	5.1-14	800
4 - Dry	1	0	6	3-5	600
5 - Critical	1	0	5	<3	200

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