

**AGREEMENT BETWEEN
THE CITY OF SACRAMENTO
AND
SACRAMENTO COUNTY WATER AGENCY
FOR A JOINT GROUNDWATER SUBSTITUTION TRANSFER**

This Agreement for a Joint Groundwater Substitution Transfer (“Agreement”) is made effective this June ____, 2022 between the Sacramento County Water Agency (hereinafter referred to as “SCWA”), a statutorily created district operating under the authority of and pursuant to the provisions of the Sacramento County Water Agency Act (California Water Code-Appendix, chapter 66, commencing at section 66-1 et seq.), and the City of Sacramento, a charter city (“City”). For purposes of this Agreement, SCWA and the City also will each be called a “Party” and collectively the “Parties.”

Recitals

A. City owns and operates a public water system for the provision of retail treated water service to its residents, including facilities on the Sacramento River and lower American River for diverting and treating surface water known respectively as the Sacramento River Water Treatment Plant (“Sacramento River WTP”) and the E.A. Fairbairn Water Treatment Plant (“Fairbairn WTP”). Collectively, these two facilities are hereafter defined as “City Diversion Facilities.” City diverts untreated surface water from the Lower American River and Sacramento River into City Diversion Facilities pursuant to water rights permits 11358 through 11361 issued by the California State Water Resources Control Board. The City also diverts surface water at Sacramento WTP pursuant to water right permit 992 and Pre-1914 water entitlements. City’s permitted appropriative water rights are supplemented by a water rights settlement contract (the “City Settlement Contract”) between City and the United States Bureau of Reclamation (“Reclamation”) dated June 28, 1957.

B. On April 4, 2000, City and SCWA entered into a Wheeling Agreement (“2000 Agreement”), and exercised subsequent actions within said Agreement, which provides firm wheeling capacity of 11 MGD of SCWA surface water to SCWA through SCWA’s Franklin Inter-tie located near the City and SCWA boundary on Franklin Boulevard.

C. SCWA operates a conjunctive use program, which allows SCWA to bank amounts of groundwater sufficient to induce stable-to-increasing groundwater levels in the aquifer it utilizes as a source of supply for its customers.

D. Between 1995 and 2000, SCWA had single year contracts to purchase surface water from Browns Valley Irrigation District. This surface water was diverted and treated at the City of Sacramento’s Sacramento River WTP and wheeled through City of Sacramento facilities and delivered to SCWA through the Franklin inter-tie.

E. SCWA has permanent surface water contracts with the USBR and a State Appropriative Water Right. Under the 2000 Agreement, SCWA has taken its surface water wheeled through the City's facilities to enhance its existing conjunctive use program, resulting in banked groundwater efforts.

F. As part of its conjunctive use program and for purposes of obtaining and using treated surface water, SCWA constructed the Franklin Inter-tie, located along Franklin Boulevard near the County/City boundary, capable of taking up to 11 MGD of surface water from the Sacramento River WTP. As groundwater banking and water transfers are becoming an important activity for regional reliability and helping meet SGMA goals, SCWA is modifying the Franklin inter-tie to allow for pumping water in either direction such that City surface water can be pumped to SCWA users and SCWA groundwater can be pumped to City users.

E. The State Water Contractors is a non-profit association of 27 public agencies from Northern, Central and Southern California that purchase water under contract from the California State Water Project ("SWP") and deliver that water to more than 25 million residents throughout the state and more than 750,000 acres of agricultural lands. One or more members of the State Water Contractors (the "Buyers") have offered to purchase water from willing sellers upstream of the Sacramento-San Joaquin Delta, including City, in order to supplement the Buyers' contractual entitlements from the SWP that have been reduced as a result of lower than average precipitation in the 2022-2023 water year.

F. In order to provide water supplies for the above purpose, City will forgo the use of a portion of its surface water supplies available under City's Water Right Permit 11358 through 11360, which City would otherwise divert, treat and provide to City water customers. To make this surface water available to Buyers, SCWA is willing to pump banked groundwater and deliver it through the Franklin Inter-tie for distribution to City customers in lieu of City delivering treated surface water from its Diversion Facilities. This substitution of groundwater for surface water will enable City to sell its forgone surface water supplies to the Buyers for use in their respective service areas to mitigate for the impacts of dry conditions during July through November of 2022.

G. City and SCWA are signatories to the Sacramento Water Forum Agreement, and this Agreement is consistent with the Water Forum Agreement.

Agreement

Based on the foregoing Recitals, the Parties agree as follows:

1. Transfer Using SCWA groundwater. SCWA shall pump and deliver to City groundwater either historically used or banked by SCWA under its conjunctive use program and accounted for in annual reports filed with the California State Water Resources Control Board ("SWRCB"). SCWA will pump up to 2,800 acre-feet of groundwater to the City through the Franklin inter-tie in order to permit City to forego use of surface water that it would

otherwise treat and deliver to its customers under Permits 11358-11360. By using this method of making surface water available, City will make available to Buyers a corresponding increment of surface water (hereafter referred to as the “Transfer Water”) that is not diverted from the American River by City for treatment and delivery to City customers during the 2022 calendar year as a result of such reduced use of treated surface water and corresponding increased pumping of groundwater by SCWA. The maximum amount of SCWA groundwater to be provided to the City under this joint transfer with SCWA shall be 2,800 acre-feet for the summer and fall months of the 2022 calendar year. Nothing in this Agreement affects City’s authority to conduct a separate water transfer to Buyers using surface water made available by substituting groundwater pumped from City’s wells to serve City customer demands that otherwise would be satisfied with surface water.

2. Consideration for SCWA’s Pumping of Banked Groundwater.

A. City and SCWA shall split on an equal basis all net revenues from the sale of the Transfer Water to Buyers. The net amount of revenues shall be determined by deducting all third-party costs of the transfer, including engineering and technical expenses, attorneys’ fees, and other expenses (“Third-Party Costs”) incurred by City and SCWA in the performance of this Agreement. City and SCWA shall track all costs of the transfer and retain all documentation supporting their Third-Party Cost expenditures. City and SCWA shall each provide the other party with an accounting of those expenses and, upon request, the supporting documentation for those expenses prior to distribution of the net revenues from sale of the Transfer Water in accordance with subsection 2.C., below. All Third -Party costs associated with transferring the Transfer Water, other than the costs of the groundwater substitution supply provided by SCWA, shall be shared equally by City and SCWA. Any cost reimbursements paid by Buyers to City under the Buyer-Seller Agreement’s administrative cost payment provision shall be distributed equally between City and SCWA.

B. City will not pay SCWA for the groundwater pumped into the City to facilitate the Transfer. For purposes of this Agreement only, the Parties agree that the cost of each acre-foot of groundwater provided by SCWA to enable City to make the Transfer Water Available is equivalent to the cost of each acre-foot of treated surface water that City will make available to SCWA under the its Pre-1914 water entitlements or SCWA’s entitlements. As a result of the Parties’ sources of supply having an equivalent value, City will deliver an equal amount of treated surface water to SCWA to reimburse SCWA’s costs of supplying the pumped groundwater when surface water is available to SCWA in the future.

C. To demonstrate a benefit to the groundwater basin above and beyond existing conjunctive use programs, City, in addition to compensating SCWA on an AF-for-AF basis pursuant to Paragraph B, will also return to SCWA an additional 5% per year (up to 25%) of the volume received by City. SCWA and the City consider this a program expense to benefit the basin and jointly share the expense based on the marginal cost to produce an acre-foot of water at the time of return delivery. The City’s current FY21 marginal cost for an acre-foot of water is valued at \$111 per acre-ft.

D. City, as seller of the Transfer Water, shall administer this Agreement on behalf of both Parties. City shall be responsible for submitting all invoices for Transfer Water sold and administrative expenses incurred that are subject to payment or reimbursement under the Buyer-Seller Agreement. City shall pay SCWA its share of net revenues within 30 days of receipt by City of each payment from the Buyers for the invoiced amount of Transfer Water. City will provide SCWA with copies of its Transfer Water invoices, Buyers' payment accounting and City's accounting of costs for the Transfer Water at the time it makes each payment of net revenues to SCWA.

E. If the Buyers terminate the Buyer-Seller Agreement in accordance with its terms or California DWR does not credit any portion of Transfer Water as sold by City, City shall not have any obligation to pay SCWA any net revenues or reimburse any costs attributable to unsold Transfer Water. Notwithstanding the foregoing, City shall be obligated to pay SCWA for all Transfer Water delivered at the time of termination of the Buyer-Seller Agreement and to reimburse SCWA for its share of any costs to the extent any portion of the administrative costs provided by Buyers remains available and is allocated to City for payment of costs for City's and SCWA's agreement to provide Transfer Water.

3. Term of Agreement. This Agreement shall apply only to City's transfer of surface water to the Buyers and SCWA's pumping of groundwater to make that supply available for transfer during the 2022 calendar year and will automatically terminate upon the earlier of: (a) completion of City's sale of the Transfer Water to Buyers and satisfaction of all of its other obligations under this Agreement; (b) Buyer's termination of the Buyer-Seller Agreement or the Transfer; or (c) SCWA's receipt of City's notice of withdrawal from pursuing State Water Resources Control Board ("State Water Board") or any other governmental approval pursuant to Section 4(D) below and City's payment of all sums due SCWA under Section 2 of this Agreement.

3.5 Termination. Either Party may terminate this Agreement immediately upon the material breach of any term by the other Party, within reasonable time to cure.

4. Cooperation; Approvals. City and SCWA will cooperate as necessary for City to secure the approvals necessary to implement City's sale of Transfer Water to the Buyers for the 2022 calendar year, subject to the following conditions:

A. SCWA and City will be jointly responsible for all costs of obtaining any governmental approval(s) and compliance with applicable laws, including but not limited to obtaining the State Water Board approval required for the temporary transfer of the Transfer Water pursuant to Water Code sections 1725 through 1732 and any required approvals from DWR and Reclamation. The City will file a temporary change petition in its name, with SCWA as co-petitioner if necessary, to obtain the above-referenced State Water Board

approval required for the sale of the Transfer Water.

B. City will be the lead agency for the purpose of compliance with CEQA for purposes of this Agreement. City represents that the transfer under this Agreement is a proposed temporary change under Article 1 of Chapter 10.5 of the Water Code, and therefore the City's sale of Transfer Water to the Buyers is exempt from CEQA under the provisions of Water Code section 1729.

C. Except as otherwise provided in Section 2(A) for Third Party Costs, each Party will bear its own costs for staff time, engineering and technical expenses, attorneys' fees, and other expenses related to performing their respective duties under this Agreement.

D. Notwithstanding any other provision of this Agreement, City may opt to withdraw from pursuing any governmental approval, including the State Water Board approval specified above, if City determines in its sole discretion that the approval process, or the conditions of compliance of the approval, are not acceptable. If City opts to withdraw, City shall promptly notify SCWA in writing of the withdrawal and this Agreement shall terminate as provided in Section 3 above.

5. Water Rights.

A. The only rights granted to the Parties as a result of this Agreement are those expressly set forth in this Agreement. City's reduced diversions of surface water pursuant to this Agreement will not confer any appropriative, public trust or other right to water on any person or entity.

B. Nothing in this Agreement will be construed to act as a forfeiture, diminution or impairment of any water right or contractual entitlement of City or SCWA. Consistent with the provisions of California Water Code sections 109, 475, 1011, 1014 through 1017, 1244 and 11961, SCWA's pumping of groundwater in lieu of City diverting surface water and its sale of Transfer Water to the Buyers pursuant to this Agreement, or this Agreement itself, will not be evidence of either the existence of surplus water after this Agreement expires, or of the lack of beneficial use of the water involved, and the Parties will not contend otherwise.

C. City and SCWA shall comply with Water Code Section 1732. In accordance with the provisions of Water Code section 1745.10, City and SCWA have each determined that the pumping of groundwater under this Agreement would neither create nor contribute to conditions of long-term overdraft in the affected groundwater basin.

6. Indemnification. To the extent permitted by State law, each Party will indemnify, defend and hold harmless the other Party and its officers, agents, and employees from any and all claims, lawsuits (including but not limited to CEQA lawsuits), judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees

and any other professional fees) that arise from or are related in any way to City's sale of the Transfer Water to the Buyers, SCWA's pumping of groundwater to serve City demands that otherwise would have been served by the transferred surface water, and any other activities under this Agreement, including but not limited to obtaining all approvals necessary to sell the Transfer Water, determining and accounting for the amount of Transfer Water made available for sale and the groundwater pumped in support of that sale, and the collection and proper payment of funds due to each Party under this Agreement for Transfer Water actually sold. The provisions of this section shall survive any termination of this Agreement.

7. Agreement Not a Precedent. The Parties intend that the provisions of this Agreement will not bind the Parties as to the provisions of any future agreement between them. This Agreement was developed specifically to facilitate City's sale of Transfer Water to the Buyers during the 2022 calendar year with the assistance of SCWA's pumping of groundwater to satisfy City customer demands.

8. Entire Agreement. This Agreement, including all agreements expressly incorporated by reference herein, represents the sole, final, complete, exclusive, and integrated expression and statement of the terms of agreement between the Parties concerning the subject matter of this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both Parties. There are no written or oral agreements, conditions, representations, warranties, or promises with respect to the subject matter of this Agreement except those contained in or referred to in this document.

9. Severability. If any term or provision of this Agreement is deemed invalid or unenforceable by any court of final jurisdiction, it is intended by the Parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the Parties.

10. Interpretation. City and SCWA each had a full and fair opportunity to consult independent counsel in the negotiation and execution of this Agreement. For the purposes of interpretation of this Agreement, neither Party will be deemed to have been its drafter.

11. Notices. Any notice, demand, or request made in connection with this Agreement will be in writing and will be deemed to have been duly given on the date of service, if (a) served personally on the person to whom notice is to be given, or (b) sent by electronic mail, and the recipient acknowledges receipt, or (c) on the third day after mailing, if mailed to the person to whom notice is to be given by first-class United States mail, postage-prepaid, and properly addressed to the following designated representatives of City and SCWA:

To City:	City of Sacramento
	Department of Utilities
	Attn: Brett Ewart
	1395 35 th Avenue

Sacramento, CA 95822
E-mail: bewart@cityofsacramento.org

To SCWA: Sacramento County Water Agency
Attn: Scott Hutcheson, Principal Engineer
10151 Florin Road
Sacramento, CA 95829
E-mail: hutchesons@saccounty.net

12. Governing Law. This Agreement is governed by and will be interpreted in accordance with the laws of the State of California. This Agreement is deemed to have been executed in Sacramento County and therefore, the state or federal court where the Parties' offices are located shall be venue for any litigation concerning the enforcement or construction of this Agreement.

13. Counterparts. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.

The foregoing is hereby agreed to by the Parties on the date first written above.

CITY OF SACRAMENTO:

SACRAMENTO COUNTY WATER AGENCY:

By: _____
Hector Barron
Assistant City Manager

By: _____
Michael Peterson
Director of Water Resources

Attest:

City Clerk

Approved as to form:

City Attorney