

## **TRANSFER AGREEMENT**

This Transfer Agreement (“Agreement”) is made and entered into as of March \_\_\_\_, 2023, by and between the CITY OF YUBA CITY (“CITY”) and the SAN GORGONIO PASS WATER AGENCY (“SGPWA”). CITY and SGPWA are sometimes individually referred to herein as a “Party” and collectively as the “Parties.”

### **RECITALS**

A. CITY is a retail water agency that provides water service to its customers. SGPWA is a regional water agency that provides water on a wholesale basis to retail water providers and other public agencies within its service area.

B. CITY has a long-term water supply contract (“Water Supply Contract”) with the Department of Water Resources of the State of California (“DWR”) that permits CITY to receive water supply, storage and conveyance services from the State Water Project (“SWP”). CITY has a contractual right to the delivery of 9,600 acre-feet (“AF”) per year (“AFY”) of water from the SWP in its Water Supply Contract.

C. SGPWA has a long-term water supply contract (“Water Supply Contract”) with the Department of Water Resources of the State of California (“DWR”) that permits SGPWA to receive water supply, storage and conveyance services from the State Water Project (“SWP”). SGPWA has a contractual right to the delivery of 17,300 acre-feet (“AF”) per year (“AFY”) of water from the SWP in its Water Supply Contract.

D. The CITY’s and SGPWA’s respective Water Supply Contracts allow for the transfer of SWP water under certain conditions and subject to DWR approval. Specifically, Article 56(c) provides for the transfer of Article 56 Carryover Water from the CITY to another SWP contractor such as SGPWA, in accordance with Article 56(c)(4).

E. On March 28, 2022, Governor Newsom issued Executive Order N-7-22 in response to ongoing drought conditions in the state. The Executive Order provides, among other things, that local water suppliers shall move to Level 2 of their Water Shortage Contingency Plans, which require locally appropriate actions that will conserve water across all sectors. In addition, on August 11, 2022, Governor Newsom issued a strategy document called “California’s Water Supply Strategy; Adapting to a Hotter, Drier Future” (Strategy) which calls for investing in new sources of water supply, accelerating projects and modernizing how the state manages water.

F. In 2022, DWR approved an allocation of water to the CITY of 10% of the “Table A Amount,” as that term is defined by the State Water Contract. CITY has Article 56 Carryover Water available to it after its 2022 water use and has agreed to transfer up to 3,900 AF of this water (“Transfer Water”) to SGPWA in 2023, subject to the terms and conditions hereinafter set forth (“Transfer”).

G. The Parties wish to enter into this Agreement to address water supply needs for

this current year. The Parties desire to work collaboratively to provide for the efficient use of water supplies, in areas of the state where water supplies are needed.

## **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. Term. This Agreement shall become effective upon execution by all Parties (the "Effective Date") and shall terminate on June 30, 2023, or upon satisfaction of the Parties' respective obligations pursuant to this Agreement, whichever is sooner.

2. Transfer of CITY Water in 2023. CITY shall transfer up to 3,900 AF of Transfer Water to SGPWA at the Point of Delivery, as defined in Paragraph 3, prior to June 30, 2023. SGPWA shall take as much Transfer Water as is available, based upon operations of San Luis Reservoir and before any spill of San Luis Reservoir, up to 3,900 AF.

3. Point of Delivery

(a) Both Parties have access to water supplies and conveyance capacity in the California Aqueduct and San Luis Reservoir facilities, which are part of the SWP. For accounting and operational purposes, it is hereby acknowledged that the Transfer to be made under this Agreement will be made in San Luis Reservoir, which shall be the Point of Delivery of the Transfer Water.

(b) Neither Party is making any representation or warranty concerning the quality of the water transferred under this Agreement at the Point of Delivery.

4. Cooperation

(a) The Parties will take the necessary actions to fulfill their respective obligations, including but not limited to coordinating with DWR to obtain DWR's approval to facilitate the Transfer.

(b) As soon as practicable, CITY will submit a request to DWR that DWR deliver the Transfer Water to SGPWA pursuant to the delivery schedule agreed upon by the Parties. CITY will coordinate with DWR to confirm the quantity of Transfer Water available for delivery to SGPWA pursuant to this Agreement.

(c) The Parties will cooperate as follows:

(i) Coordination with DWR for processing and obtaining DWR approvals necessary for the approval and implementation of this Agreement.

(ii) Coordination with DWR for delivery of the Transfer Water.

(iii) CITY, in coordination with SGPWA, will submit the water delivery schedule to DWR for delivery of the Transfer Water.

5. Water Availability. SGPWA will coordinate with DWR to track Transfer Water availability before any spill occurs at San Luis Reservoir. SGPWA has no obligation to pay for any CITY water that is not available and released from San Luis Reservoir to SGPWA due to the operations of the SWP that cause San Luis Reservoir to spill. CITY has no obligation to provide SGPWA water to make up for any portion of the Transfer Water that is unavailable due to the operations of the SWP that cause San Luis Reservoir to spill.

6. Payment and Reconciliation

(a) For each AF of Transfer Water available at the Point of Delivery and released from San Luis Reservoir to SGPWA, SGPWA shall pay CITY one hundred and seventy-five dollars (\$175.00) to CITY.

(b) Within thirty (30) days after SGPWA has acquired all available Transfer Water, or at the conclusion of the Transfer, SGPWA shall pay CITY the total cost for all Transfer Water available and released from San Luis Reservoir to SGPWA. The total cost shall be calculated by multiplying the total acre-feet of Transfer Water available and released from San Luis Reservoir to SGPWA by \$175.

7. Costs and Expenses

(a) SGPWA will be responsible for the following costs and expenses:

(i) Costs and expenses in connection with taking delivery of the Transfer Water at the Point of Delivery.

(ii) DWR's Variable charges for conveying the Transfer Water from the Point of Delivery to SGPWA's service area.

(iii) SGPWA's internal and transaction costs in connection with SGPWA's activities under this Agreement including, but not limited to, costs for review and processing of required agreements, environmental documents, and other transaction costs.

(b) CITY will be responsible for the following costs and expenses:

(i) Costs and expenses in connection with delivering the Transfer Water to the Point of Delivery.

(ii) California Environmental Quality Act (CEQA) compliance costs per Paragraph 8(c).

(iii) CITY's internal and transaction costs in connection with CITY's activities under this Agreement including, but not limited to, costs for review and processing of required agreements, environmental documents, and other transaction costs.

8. Approvals and Requirements. The Transfer and Exchange provided for in this Agreement shall be subject to satisfaction of all applicable approvals and requirements and shall be governed by the terms and conditions of such approvals and any other applicable legal requirements. Each Party is responsible for satisfying their respective requirements, as applicable, including but not limited to the following:

- (a) complying with each Party's respective Water Supply Contract;
- (b) obtaining all permits, consents, entitlements, and approvals necessary to perform this Agreement; and
- (c) fully and completely complying with the California Environmental Quality Act ("CEQA"). The lead agency for the purposes of CEQA will be CITY. The Parties shall cooperate with each other and DWR in determining and completing any environmental reviews associated with the activities under this Agreement.

9. Conditions Precedent. This Agreement is subject to the following condition precedent:

- (a) DWR's written approval of the Transfer. CITY and SGPWA anticipate that DWR's approval will be provided in the form of a Change in Point of Delivery Agreement ("DWR Approval Agreement"). In the event of a conflict between the terms of this Agreement and the DWR Approval Agreement, the terms of the DWR Approval Agreement shall govern.

10. Termination.

- (a) This Agreement may be terminated in accordance with the following:
  - (i) Default. In the event a Party fails to perform any of its obligations under this Agreement ("Defaulting Party"), the other Party ("Non Defaulting Party") may demand in writing that the Defaulting Party cure such non-performance. The Defaulting Party shall have 90 days after receipt of such demand to cure the default. In the event the Defaulting Party fails to cure the default within the 90 day period, the Non Defaulting Party may terminate this Agreement and take any and all actions in law or in equity which may be available to enforce this Agreement.
  - (ii) Mutual consent. This Agreement may be terminated at any time by mutual written consent of both Parties.
  - (iii) Failure of One or More Conditions Precedent. In the event any condition precedent to this Agreement has not been satisfied by April 1, 2023, due to circumstances outside of the responsibility or control of the Parties, as applicable, the Parties will meet and confer to discuss whether to amend, suspend, or terminate this Agreement. If mutual agreement is not reached on or before April 15, 2023, then either Party may terminate this Agreement.

11. Force Majeure. The respective obligations of each party shall be suspended while it is prevented from complying by acts of God, war, riots, civil insurrection, acts of civil or military authority, fires, floods, earthquakes, labor accidents or incidents, rules and regulations of any governmental agency (other than the Parties themselves), or other cause of the same or other character any of which are beyond the reasonable control of either Party (collectively, "Force Majeure"). In the event of a suspension due to the Force Majeure, the Party whose obligations are suspended shall promptly notify the other Party in writing of such suspension and the cause and estimated duration of such suspension.

12. Defense. In the event of any legal action by a third party to challenge this Agreement and/or the Transfer described herein, the Parties agree to cooperate in the defense thereof and to share equally in the costs of such defense, utilizing counsel mutually acceptable to the Parties.

13. Power and Authority to Execute and Perform this Agreement. Each Party has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained for entering into this Agreement.

14. General Provisions

(a) Remedies Not Exclusive. Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

(b) Subject to Applicable Law. The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing public agencies as they now exist and as they may be amended or codified by the Legislature of the State of California.

(c) Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be amended except in writing signed by both Parties.

(d) No Waiver. Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

(e) Notices. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be delivered in person, by email, or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one day after being emailed or deposited for next day delivery with an overnight courier. Each such notice or

communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

(f) Headings; Section References. Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

(g) Severability. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

(h) Binding Effect on Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns.

(i) Attorneys' Fees. In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

(j) Governing Law and Venue. This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this Agreement shall be in a court of competent jurisdiction in the County of Sutter, California, and consent to the jurisdiction thereof.

(k) Counterparts; Delivery by Email; Electronic Signatures. 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 U.S. federal ESIGN Act of 2000, e.g., [www.docusign.com](http://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.

*[Signatures follow on the next page]*

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

**City of Yuba City**

**SAN GORGONIO PASS WATER AGENCY**

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

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

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

Diana Langley  
City Manager

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

Lance Eckhart, PG, CHG  
General Manager/Chief Hydrogeologist

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