

## LANDOWNER GROUNDWATER BANKING AND RECHARGE AGREEMENT

This Landowner Groundwater Banking and Recharge Agreement (“Agreement”) is entered into on \_\_\_\_\_ (the “Effective Date”), by and between (i) the North Kern Water Storage District (“District”), and (ii) \_\_\_\_\_ (“Landowner”). District and Landowner shall sometimes be referred to herein individually as a “Party” and jointly as the “Parties”.

### RECITALS

1. The District’s Board of Directors has adopted that certain *North Kern Water Storage District Landowner Groundwater Banking and Recharge Policy* (the “Policy”), which establishes the terms for Landowner participation in the District-Landowner Banking and Recharge Program (the “Program”).
2. The purpose of the Program is to expand groundwater recharge capacity within the District’s boundaries (which includes the Rosedale Ranch Improvement District of the District) to enhance groundwater resources for the benefit of the District, its landowners and water users.
3. The Policy requires that any Landowner wishing to participate in the Program enter into this Agreement.
4. Landowner is an owner of certain real property situated within the District’s boundaries, which property is more particularly identified in Exhibit “1”, attached hereto and incorporated herein (the “Property”).
5. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Policy.

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:

### ARTICLE I

#### LANDOWNER PARTICIPATION, FACILITIES QUALIFICATION, AND TERM

- 1.1 Landowner has constructed existing surface and/or subsurface recharge facilities (the “Facilities”) and/or intends to construct new Facilities on the Property, and desires for Landowner’s Facilities to be included in the Program.
- 1.2 Integral to the Program and this Agreement is the District’s right to share in the use of the Facilities in exchange for District’s Contribution (defined below) and other compensation

paid to Landowner under this Agreement. In connection therewith, Landowner hereby grants to District an easement in gross for the right to deliver water to the Facilities, to use the Facilities for the District's benefit in the manner provided for herein, and to fulfill its operation and maintenance obligations provided for herein (the "Easement"). The Easement shall be temporary, and District's rights thereto shall automatically terminate upon termination or expiration of this Agreement.

- 1.3 District has determined based on information furnished by Landowner that such Facilities will perform in a manner that renders such basins sufficient to serve as Qualified Facilities pursuant to the Policy.
- 1.4 District hereby confirms that as of the Effective Date, \_\_\_\_\_ cfs of the total 200 cfs of Program recharge capacity is available, and that \_\_\_\_\_ cfs will be used in connection with this Agreement.
- 1.5 District will evaluate Program participation and the performance of all Facilities that are subject to the Program, including Landowner's Facilities, on an annual basis to determine whether it will be necessary to revise the Policy relative to (i) the formulas set forth in the Policy and this Agreement for Contributions, (ii) allocation of groundwater credits, or (iii) other components of the Program. If such evaluation results in a change to the Policy, Landowner shall have the option to either amend this Agreement to the extent necessary to conform this Agreement to the updated Policy, or terminate this Agreement.
- 1.6 This Agreement shall become effective on the Effective Date, and unless earlier terminated pursuant to the terms and conditions of this Agreement, shall remain in full force and effect until the date that is ten (10) years after the Effective Date (the "Initial Term"); provided, that a Landowner that remains in good standing under this Agreement shall have the option to extend the Initial Term for up to five (5) additional five-year terms (each, an "Extension Term"), by providing written notice to the District of Landowner's intention to so extend at least 180 days prior to the expiration of the Initial Term or applicable Extension Term.

## ARTICLE II CONSTRUCTION CONTRIBUTION

- 2.1 District will contribute to the cost of constructing any new Facilities in the amount of \$14,000 per cubic feet per second (cfs) of Facility recharge capacity (the "Contribution").
  - 2.1.1 As to surface Facilities, to be eligible for the Contribution, prior to commencing construction Landowner shall provide District a copy of the plans for constructing the Facilities (the "Plans") and provide District the opportunity to collaborate on design and construction of the Facilities. Nothing herein shall obligate District to so collaborate; however, if District exercises its right to do so, District shall not be obligated to review such Plans for quality, design, compliance with applicable law or any other matters, and, District shall have no liability or responsibility

whatsoever in connection with the review of the Plans, including but not limited to any omissions or errors contained therein, and except for the Contribution, in connection with the construction or permitting of the Facilities.

- 2.1.2 As to subsurface Facilities, to be eligible for the Contribution, prior to commencing construction Landowner shall provide District a copy of the Plans; however, District does not intend to review the Plans for any purpose other than to evaluate the recharge capacity of the Facilities. Without limiting any other term or condition of this Agreement, the Parties agree that except for the Contribution, Landowner shall be solely responsible for the Plans, and all other aspects of the design, construction, installation, maintenance and costs of the subsurface Facilities.
- 2.1.3 As to any existing Facilities, to be eligible for the Contribution, Landowner shall provide District a copy of the Plans for such Facilities

### **ARTICLE III COMPENSATION FOR USE OF FACILITIES**

- 3.1 As to surface Facilities only, provided the Property remains fallow for the duration of the term of the Agreement, the District will compensate Landowner for District's use of Facilities as follows:
  - 3.1.1 District will pay \$257 per acre per year for fallowed land occupied by a Facility, with an annual adjustment equal to the adjustment in the Consumer Price Index.
  - 3.1.2 For each acre of land that Landowner removes from agricultural production to construct and operate new Facilities, the District shall credit a Landowner's groundwater credit account (the "Account") a credit in the amount of 1.5 acre-feet of water per year ("Fallowed Land Credit").
- 3.2 As to surface Facilities only, District will waive collection of the annual Base Service Charge for the Property for so long as it has situated on it a surface Facility available for District's use under the Program.
- 3.3 For Landowner's participation in the Program, regardless of whether District actually uses Landowner's Facilities at any given time, for each cfs of recharge capacity of Landowner's Facilities, District will apply a groundwater recharge credit to Landowner's Account in the amount of 0.011% of District's annual groundwater recharge and banking activities credited to District ("District Recharge Credit"). In no event shall a District Recharge Credit be added to Landowner's Account for water recharged or banked in Landowner's name, for water rights that accrue to District pursuant to that certain *Agreement for Use of Water Rights* dated January 1, 1952, or any other water that is limited to use within District's boundaries

**ARTICLE IV  
LANDOWNER WATER IMPORTS AND MANAGEMENT**

- 4.1** As to any surface water that Landowner secures separate and apart from any District contract or project (“Non-District Water”) and imports into District’s boundaries for recharge in Landowner’s Facilities, Landowner will have 75% of such water credited to its Account and the remaining 25% will accrue to the District.
- 4.2** Landowner will be responsible for all costs and losses, including without limitation evaporative or seepage losses, associated with acquiring and conveying Non-District Water into the District’s boundaries.
- 4.3** District will endeavor, but shall not be required, to assist Landowner with conveyance of Non-District Water into the District’s boundaries. Such conveyance and District’s assistance therewith shall be at Landowner’s sole cost and expense, and shall be subordinate to District’s water management activities. No conveyance of Non-District Water to Landowner in one year shall guarantee conveyance of the same or similar supplies to Landowner in subsequent years, or to priority of conveyance over other obligations or accommodations of District.

**ARTICLE V  
ADMINISTRATION, OPERATIONS, AND MAINTENANCE**

- 5.1** All of Landowner’s groundwater banking, recharge, extraction, and transfer activities undertaken pursuant to this Agreement shall be coordinated with the District, and District shall maintain all Account records.
- 5.2** In consideration of groundwater migration losses, the balance in Landowner’s Account will be reduced by 5% on the first day of the 8<sup>th</sup> year of the Initial Term of this Agreement. At the conclusion of any Extension Term, Account balances will be reduced by 3%. Such reductions shall apply to the entire Account balance regardless of the source of water that contributed to the balance.
- 5.3** District shall be responsible for all operations and maintenance of surface Facilities, including all operations and maintenance (O&M) costs, and delivering District water other than Non-District Water to and into the Facilities. Landowner is responsible for any repairs or damage not related to routine O&M.
- 5.4** For subsurface Facilities, District shall be responsible for delivering water to be recharged/banked under this Agreement to Landowner’s turnout. District will operate and maintain turnouts and shall be responsible for District’s pro rata share of O&M costs

beyond District's turnout, which share shall be calculated based on District's actual use of Landowner's Facilities. Landowner shall be responsible for all O&M, and Landowner's share of O&M costs beyond District's turnout.

- 5.5 The point at which District delivers water to a surface Facility or a subsurface Facility as described in Sections 5.3 and 5.4 above shall be referred to herein as a "Point of Delivery".
- 5.6 Notwithstanding District's Easement rights provided for above, nothing herein vests in District any ownership interest in the Facilities, in whole or in part, including District's Contribution.
- 5.7 In recognition of District's Contributions to Landowner's Facilities, District and Landowner will have equal priority to use of available capacity in Landowner's Facilities.

## **ARTICLE VI USE AND TRANSFER OF WATER CREDITS**

- 6.1 Landowner may draw on groundwater credits from its Account by recovering such water for beneficial use anywhere within District's boundaries and notifying District of same; provided that recovered water accruing to credits for Non-District Water shall be available for use outside of District's boundaries.
  - 6.1.1 Nothing herein obligates District to extract groundwater on Landowner's behalf.
- 6.2 Any potential conveyance of recovered Landowner groundwater through District facilities must be approved by District in advance and, as provided in the Policy and elsewhere in this Agreement, shall be subordinate to District's operations.
- 6.3 Landowner may transfer groundwater credits existing in its Account into any neighboring district whose boundary abuts the District's boundary, provided such transfers are in-ground transfers, are approved by the governing body of the neighboring district, are compliant with the Sustainable Groundwater Management Act (Water Code § 10720 *et seq.*) (SGMA) and any applicable Groundwater Sustainability Plan (GSP), and all other legal or regulatory requirements.
- 6.4 Landowner may request that District facilitate conveyance of Landowner's extracted groundwater accruing to credits for Non-District Water in Landowner's Account be conveyed out of the District boundaries. Transfer of any such water following its extraction shall be subject to available capacity after District satisfies all of its operational and water management obligations, and any laws, rules or regulations governing, facility capacities, compliance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA), SGMA, applicable GSPs, or all other legal or regulatory requirements. Landowner shall be responsible for all costs associated with such surface transfers, which costs may include, without limitation, conveyance charges, power

costs, permitting costs, and any evaporative, seepage, or other losses.

## **ARTICLE VII LIABILITY AND INDEMNIFICATION**

- 7.1** District 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 water up to the Point of Delivery.
- 7.2** Landowner shall be responsible for any and all Claims related to the control, carriage, handling, use, disposal, or distribution of water past the Point of Delivery.
- 7.3** Without limiting any other term of this Agreement, and except as provided in Section 7.1 above and 7.7 herein, Landowner shall indemnify, defend and hold District, its directors, officers, employees, agents, successors and assigns harmless from and against any damage or claim of damage of any nature whatsoever, including property damage, personal injury or death, or violation of any statutory or regulatory requirement related to Landowner’s activities provided for herein, and including attorneys’ fees and other costs of litigation (“Losses”), arising out of or connected with this Agreement, any costs incurred in connection with the activities authorized by this Agreement, use of any allegedly patented technology, and the control, carriage, handling, use, disposal, or distribution of water that is the subject of the Agreement past the Point of Delivery.
- 7.4** District shall indemnify, defend and hold Landowner, its directors, officers, employees, agents, successors and assigns harmless from and against any Losses, arising out of or connected with District’s exercise of its rights to the use of Landowner’s Facilities and its O&M obligations provided for herein.
- 7.5** The Parties acknowledge that the validity and enforceability of the Policy and this Agreement, including as they pertain to credits for imported water supplies recharged to the groundwater basin underlying the District’s boundaries, are subject to various regulatory, legal and other circumstances beyond District’s control. District makes no representation, warranty or guarantee concerning the same and shall not be liable for any consequential, incidental, or other special damages incurred by Landowner or any third-party in connection with the Policy or this Agreement or termination thereof for any reason (“Special Damages”). Consistent with the foregoing, the Parties agree that District’s rights of indemnification provided for herein shall extend to third-party Claims for Special Damages.
- 7.6** No rights of indemnity herein shall extend to an indemnified Party to the extent any Claim or Loss is caused by the acts or omissions of the indemnified Party.
- 7.7** The rights and responsibilities of the Parties set forth in this Article 7 shall survive the expiration or termination of this Agreement.

**ARTICLE VIII  
TERM AND TERMINATION**

**8.1** This Agreement shall be subject to termination as follows:

**8.1.1** By written notice of District to Landowner that Landowner is in breach of this Agreement, which termination shall be effective thirty (30) days following Landowner's receipt of said notice if Landowner has not by then cured its breach. If the breach is financial, Landowner's cure period shall be ten (10) days, District's remedies under this Section 8.1.1 shall include all rights and remedies available to it at law and equity, and shall not be limited to termination of this Agreement. Such remedies could include, without limitation, payment to District of all or any portion of a Contribution, or other compensation provided to Landowner pursuant to this Agreement.

**8.1.1** Without limiting Section 8.1.1, if this Agreement is terminated by District for Landowner's failure to adhere to Section 3.1 above, Landowner shall be responsible for reimbursing District for the Contribution in an amount that is proportional to the number of years remaining in the initial 10-year term.

**8.1.2**

**8.1.3** Upon termination of the Policy by the District's Board of Directors for any reason, in which case District shall not be entitled to any compensation for the Contribution, or other compensation provided to Landowner pursuant to this Agreement.

**8.1.4** Landowner shall have full responsibility for the Facilities following termination of this Agreement for any reason, including responsibility for maintenance, operation, or removal of the Facilities.

**ARTICLE IX  
MISCELLANEOUS**

**9.1** Disclaimer. Any credit to Landowner's Account that Landowner might derive from this Agreement and the activities undertaken in connection herewith shall be subject to the terms and conditions of this Agreement, the District's Rules and Regulations, the Policy, and other applicable laws, regulations and ordinances, including without limitation SGMA as interpreted, implement and enforced by (i) District and (ii) any public agency or court of competent jurisdiction. Consistent with the foregoing, any construction or application of this Agreement shall be subject to the general principle stated in the Policy that all activities undertaken in connection with this Agreement and the Policy shall be subordinate to the primary function for which District developed its recharge capacity; namely, the regulation of District's variable Kern River water supplies.

- 9.2 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.
- 9.3 Construction. The Policy is incorporated into this Agreement by reference, and in the event any term or condition of this Agreement directly conflicts with the Policy, the Policy shall control.
- 9.4 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.
- 9.5 Assignment. This Agreement is not subject to assignment by either Party hereto without the prior written consent of the other Party.
- 9.6 Governing Law. This Agreement shall be governed and interpreted by and under the laws of the State of California.
- 9.7 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 both Parties.
- 9.8 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.
- 9.9 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.
- 9.10 Attorneys' Fees. If legal action or other proceeding is commenced as a result of a dispute which arises under or relates to any provision of this Agreement, the losing Party will pay the prevailing Party's actual attorneys' fees, costs, expert witness fees and other expenses incurred in preparation for and conduct of that action or proceeding, appeal of judgment, and enforcement and collection of judgment or award.
- 9.11 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 District                      Attn: David Hampton, General Manager



Post Office Box 81435  
Bakersfield, CA 93380

B. If to Landowner Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- a. 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.

NORTH KERN WATER STORAGE DISTRICT

LANDOWNER

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
David Hampton, General Manager

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

**EXHIBIT “1”**