

AGREEMENT FOR REPRESENTATIVE PURCHASE AND DELIVERY OF A WATER SUPPLY

THIS AGREEMENT is made on 2021 by and between _____ (Buyer) and ORLAND-ARTOIS WATER DISTRICT (OAWD).

RECITALS

- 1. OAWD is a public agency of the State of California, which has a Water Service Contract with the United States Department of Interior, Bureau of Reclamation, Contract No. 14-06-200-8382A-LTR1 for diversion of Project Water from the Sacramento River and conveyed by the Tehama-Colusa Canal, and supplied by the Central Valley Project.
- 2. Due to the drought conditions persisting as of the date of this Agreement, the Buyers seek to purchase water supplies to supplement the sources of water upon which they normally rely.
- 3. Buyers have asked OAWD to arrange on Buyers' behalf for the purchase of a supplemental water supply and pursue regulatory approvals that may be necessary to accomplish the purchase. Buyers understand and agree that OAWD's performance of such services on behalf of Buyers should not expose OAWD to liability, obligations or costs to which OAWD would not otherwise be exposed.
- 4. On behalf of Buyers, OAWD will endeavor to do as the Buyers have requested in Recital 3.

AGREEMENT

1. Purchase Commitment

a. Buyers agree to bear all costs, risks, and liabilities associated with the efforts of OAWD to attempt to secure supplemental water for Buyers pursuant to Buyers' requests and in accordance with this Agreement. OAWD will attempt to secure supplemental water for purchase by Buyers in the following amounts ("Commitments"):

Buyer:		Commitment:	
	(1) _____ (Buyer)		_____ acre-feet

b. On behalf of Buyers, OAWD will seek to obtain from parties with contracts for water from the Central Valley Project ("Sellers") agreements to sell water to fulfill the requested Commitments ("Purchase Agreements"). If OAWD is unable to obtain Purchase Agreements sufficient to fulfill the total amount of the requested Commitments, OAWD will allocate the water that is available for purchase pursuant to the Purchase Agreements among Buyers in proportion to each Buyer's individual requested Commitment. In this event, OAWD will promptly notify each Buyer (i) that OAWD will not be able to deliver the full amount of the Buyer's Commitment and (ii) how much water, if any, OAWD was able to secure on behalf of

Buyer according to their pro rata share, which amount thereafter will be deemed each respective Buyer's Commitment.

c. Any Purchase Agreement whereby OAWD obtains water to fulfill the Commitments shall, upon the execution thereof, be deemed fully incorporated herein. OAWD will provide copies of such Purchase Agreements to Buyers promptly upon execution of the same. Buyers will have a take or pay obligation for their Commitment pursuant to this Agreement. This means that, as set forth in the Purchase Agreements, Buyers must pay for the water regardless of their ultimate ability to utilize or receive the water.

2. Purchase Price

a. The base price Buyers shall pay OAWD for water delivered pursuant to this Agreement shall be the subject of negotiation and ultimately be reflected in the executed Purchase Agreements. The current water price that OAWD has offered to Sellers is a maximum of **\$500.00 per acre-foot**. This amount represents the price paid to the Sellers for forbearing the use of their surface water, either by crop idling or groundwater substitution, or alternatively for forbearing the use of Project Water made available for transfer, in order that the United States Bureau of Reclamation ("USBR") can make it available for delivery to Buyers.

b. In addition to the base price of water, Buyers will be responsible for paying all of USBR's CVP costs assessed on the Commitment. Buyers acknowledge that USBR's actual final costs are uncertain at this time, because of factors that include, but are not limited to the following: the ratio of the Commitment between Project water versus base supply; the actual identity of the specific Sellers; the amount of USBR's associated transfer costs; and USBR's O&M deficit charges, if any. Buyers understand and agree that they will pay the actual final USBR charges associated with the Commitment.

c. Further, the Buyers will be responsible for their pro rata share, based on their respective Commitments, of the administrative expenses associated with the Sellers' costs to administer the transfers. This amount is currently uncertain because it depends on the number of Water Purchase Agreements necessary to meet the Buyers' requested Commitment amounts, and based on the actual reasonable out of pocket expenses that Sellers ultimately incur. These amounts will be determined as soon as possible after the end of the 2021 irrigation season, and these costs will then be proportionately allocated to all of the Buyers. Once determined, OAWD will invoice the Buyers for these additional costs, payment of which is due within 20 days thereafter.

d. In addition to the base price and other costs set forth above, each Buyer shall pay OAWD's administrative costs related to this Agreement and the costs for environmental, monitoring, mitigation, O&M Deficit, or any other costs incurred in the effort to secure water to meet the Buyers' requested Commitments. Costs for expenses in paragraphs 2a, b, and c are estimated at **\$140.00 per acre-foot** of purchased water.

e. Each Buyer will pay the costs set forth above in advance of the purchase by OAWD, the Purchase Price, maximum **\$500.00**, plus estimated additional costs of **\$140.00** per acre-foot. If the Buyer fails to timely remit payment results in any interest charges or penalties

from Sellers, the delinquent Buyer will be responsible for all of the costs for interest and/or penalty payments.

f. Notwithstanding termination of this Agreement, and regardless of whether or not a Buyer receives any water, each Buyer shall still be required to pay OAWD for any and all costs and liabilities as required by the Water Purchase Agreements that OAWD enters into on behalf of the respective Buyers. If a Buyer has paid OAWD in advance for expenses that ultimately are not incurred, OAWD will credit or refund such payments to the respective Buyer.

3. Delivery; Schedule

a. OAWD shall work with USBR to assure that the delivery of the water to fulfill the Commitments will occur on a schedule that meets the needs of Buyer. However, Buyers acknowledge and agree that the delivery schedule may have to meet the schedules provided by Sellers and fit within USBR's CVP operations. This is a risk that OAWD will work to minimize and mitigate, but Buyers further acknowledge and agree that USBR's operations could affect the availability of water to the Buyers. OAWD will deliver all Commitment water through the Tehama-Colusa Canal and the OAWD delivery system to each Buyer's customary turnouts, provided, however, that each Buyer must order delivery of such water in the same manner it normally orders water from OAWD.

b. Any and all conveyance or carriage losses of water associated with delivery of water pursuant to this Agreement will be charged against the Commitments.

c. All water delivered pursuant to this Agreement must be used by October 31, 2021.

4. Regulatory Compliance; Costs

a. Buyers will cooperate with OAWD regarding the preparation of any environmental documentation or analysis necessary to carry out this Agreement or OAWD's performance of this Agreement.

b. Buyers and OAWD will cooperate and assist each other in obtaining any necessary regulatory approvals and in meeting any requirements of regulatory agencies applicable to this Agreement or its performance.

c. Buyers shall be collectively responsible for all costs of environmental documentation or analysis or regulatory compliance made necessary by or required to perform this Agreement, in proportion to the amounts of their respective Commitments.

5. Indemnification; Assumption of Purchase Agreement Obligations

a. Buyers acknowledge and understand that Sellers will require the following provision in any Water Purchase Agreement: In the event of litigation or an administrative challenge related to this Agreement, Buyers shall have primary responsibility for defending against such litigation on behalf of both Buyer and Seller, and that Buyer shall bear its own costs of litigation and shall pay any monetary award, the costs of any remedial actions, and any award

of challenger's attorneys' fees associated therewith, whether levied against Buyer or Seller. If such litigation does occur, Buyers collectively will be wholly responsible for all of these costs proportionally based on upon their requested Commitment.

b. Buyers agree that that this Agreement shall not result in OAWD incurring any liability or costs that OAWD would not incur but for this Agreement or the performance hereof, and Buyers hereby assume any liability or costs OAWD incurs as a result of this Agreement or OAWD's performance of it.

c. Buyers will jointly and severally indemnify and hold harmless OAWD, and its employees, agents, and directors from all injuries, damages, losses, and/or claims of liability or violation of law of or from any other Buyer or any other person or entity, on any basis, attributable to any occurrence arising from this Agreement or the performance thereof, unless arising from the gross negligence or willful misconduct of OAWD, its employees, agents, or directors. OAWD's indemnity rights include, at OAWD's option but without limitation, its costs of defense against any such claims, demands, or liability, the right to be defended by counsel of its choice, and the right to control the defense and resolve the claim.

d. In addition to and without limiting the foregoing, Buyers will jointly and severally assume and hold harmless OAWD, its employees, agents, and directors from any and all liabilities, costs, or obligations OAWD now has or may incur by virtue of any Purchase Agreement under which OAWD obtains water to fulfill the Commitment.

e. The provisions of this section shall survive the termination of this Agreement.

6. Assumption of Risk; Release

a. Each Buyer assumes the risk that OAWD may be unable to obtain Purchase Agreements or deliver water in accordance with the terms of this Agreement, the risk that the final costs of the water is currently not certain, that costs could be incurred pursuant to the Water Purchase Agreements without some or all of the requested Commitment water being actually available or delivered, and the risk that the quality of water may be unacceptable for a Buyer's intended use.

b. Each Buyer releases OAWD from any liability of any kind that may arise from OAWD's inability to obtain Purchase Agreements or deliver water in accordance with the terms of this Agreement, or from the quality of water delivered pursuant to this Agreement, excepting only liability that may arise from gross negligence or willful misconduct on OAWD's part.

7. Term and Termination

a. The base term of this Agreement shall begin on the date first written above and end on December 31, 2021, subject to the rights of termination provided for herein.

b. If OAWD is unable to deliver any water to Buyers pursuant to this Agreement, or if OAWD ability to deliver water in accordance with this Agreement is interrupted for any reason and such interruption is expected to continue for the duration of the base term of this Agreement, OAWD may terminate this Agreement at its sole option

c. Any payment obligations arising at any time under this Agreement shall survive such termination.

ORLAND-ARTOIS WATER DISTRICT

(1) _____(BUYER)

By: _____

By: _____

Name/Title: Emil Cavagnolo, GM

Date: _____

Date: _____

Please do not send payment with the signed agreement, payment will be due when the transfer is approved by the District.