

**BOARD OF DIRECTORS
SAN BENITO COUNTY WATER DISTRICT**

Agenda for

December 9, 2024

Special Meeting – 5:00 p.m.

30 Mansfield Road, Hollister, CA 95023

Speakers will be limited to 5 minutes to address the Board

Assistance for those with disabilities:

If you have a disability and need accommodation to participate in the meeting, please call Barbara Mauro, Executive Assistant/Board Clerk, at (831) 637-8218, 48 hours prior to meeting for assistance so the necessary arrangements can be made.

Effective at the April 27, 2022, The Board of Directors is now allowing the public to attend in person at all meetings of the San Benito County Water District Board. We will also continue to offer the meeting via Zoom as well. Regarding virtual participation, members of the public are instructed to be on mute during the proceedings and to speak only when public comment is allowed, after requesting and receiving recognition from the Board President.

ZOOM LINK

<https://us06web.zoom.us/j/87443815287?pwd=GmtEf9yTW4WNpM5ilUMcJaJ3Czqm1F.1>

Meeting ID

874 4381 5287

Passcode:

534792

Dial Only:

Dial by your location

- +1 669 444 9171 US
- +1 719 359 4580 US
- +1 720 707 2699 US (Denver)
 - +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
 - +1 564 217 2000 US
- +1 646 558 8656 US (New York)
 - +1 646 931 3860 US
 - +1 689 278 1000 US

If you plan to participate in the meeting and need assistance, please call Barbara Mauro, Executive Assistant/Board Clerk, at (831) 637-8218, 48 hours prior to meeting.

CALL TO ORDER

- a. Pledge of Allegiance to the Flag
- b. Roll Call
- c. Approval of the Agenda
- d. Speakers will be limited to 5 minutes to address the Board

AGENDA ITEMS:

1. Consider Awarding a Contract to C. OVERAA & Co. for the West Hills Water Treatment Expansion Project Construction and Authorizing the General Manager to Execute all Documents Necessary
2. Consider Approving the Agreement for Water Transfer and Memorandum of Agreement for a Water Transfer with the Kern-Tulare Water District

ADJOURNMENT

All public records relating to an agenda item on this agenda are available for public inspection at the time the record is distributed to all, or a majority of all, members of the Board. Such records shall be available at the District office located at 30 Mansfield Road, Hollister, California.

**BOARD OF DIRECTORS
SAN BENITO COUNTY WATER DISTRICT**

**San Benito County Water District
Agenda Transmittal**

Agenda Item: /

Meeting Date: December 9, 2024

Submitted By: David Macdonald, P.E.

Presented By: David Macdonald, P.E.

Agenda Title: Consider Awarding a Contract to C. Overaa & Co. for the West Hills Water Treatment Expansion Project Construction and Authorizing the General Manager to Execute all Documents Necessary

Detailed Description: As part of the Hollister Urban Area Water and Wastewater Master Plan, The West Hills Water Treatment Plant was constructed in 2015 and 2016 as a 4.5 MGD potable water supply for the City of Hollister. With the growth occurring in the City of Hollister, the design of this plant was completed with an understanding that it would need to be expanded for additional capacity in the future. Due to continuing drought conditions at the time, San Benito County Water District, in coordination with the local retail water agencies, evaluated a number of water supply alternatives and ultimately determined to choose the Accelerated Drought Response Project (ADRoP) to increase water supply reliability for existing customers during subsequent droughts. This project includes expanding the current West Hills Treatment capacity to 6.75 MGD and installing injection and extraction wells in the Fallon Road Area.

This contract approves the West Hills Water Treatment Plant Expansion part of this project. It includes procurement and installation of:

- (1) 2.25 MGD raw water pump
- (1) 4.5 MGD automatic strainer
- (1) 4.5 MGD Actiflo-Carb Treatment train
- (1) 2.25 MGD dual media gravity filter
- (1) 6650-gallon sodium hydroxide storage tank
- (1) solids drying bed for 2.25 MGD expansion

The bidding period for the project ended on November 14th, 2024 with three contractors submitting bids. Of the three bids received, C. Overaa & Co. was the lowest responsive bidder at \$12,722,000. The complete list of bids is as follows:

1. C. Overaa & Co.	\$12,722,000
2. Mountain Cascade Inc.	\$13,056,000
3. Myers & Sons Construction, LLC	\$13,999,000

HDR, the design engineers for the project, prepared the plans and specifications for West Hills Treatment Plant Expansion, with an engineers' estimate for the work of \$15,700,000. All three bids came in below this estimate, giving the District confidence that the bids and engineers estimate were reasonable.

Following the bid opening, HDR and Kennedy Jenks reviewed the C. Overaa & Co. bid for completeness and relevant experience and determined C. Overaa & Co. to be the lowest competent bidder.

Considering the low bid was 19% less than the engineers estimate, staff recommends awarding a contract to C. Overaa & Co. in the amount of \$12,722,000 to construct the West Hills Water Treatment Plant Expansion and all related appurtenances.

In addition to the \$12,722,000 for the C. Overaa & Co. contract, staff requests that the Board authorize the General Manager to issue change orders to the contract in an amount not to exceed 5% (\$636,100) of the total contract. This would bring the total Board authorization for the project to not to exceed \$13,358,100.

Approximately 40% of the project will be funded by grants, including the SGMA Implementation Grant and the WaterSMARTS Small Storage Grant. Due to funding restrictions in these grants, this project must be completed by spring 2026.

Materials Included:

Construction Contract

List of Bids from all bidders

Financial Impact: Yes No

Funding Source/ Recap:

600-1351-C129-151-02 – SGMA Implementation Grant

600-1351-D129-151-02 – WaterSMART Small Storage Grant

Recommendation: Approve the project authorization in the amount of \$12,722,000 and authorize the General Manager to execute a contract with C. Overaa & Co. in the amount not to exceed \$13,358,100.

Action Required: Resolution Motion Review

Board Action

_____ Resolution No. _____ Motion By _____ Second By _____

Ayes _____ Abstained _____

Noes _____ Absent _____

Reagendized _____ Date _____ No Action Taken _____

SECTION 00 52 13

AGREEMENT

West Hills Water Treatment Plant Expansion Project

This Agreement is made this ____ day of _____, 20__, between the San Benito County Water District ("SBCWD") and _____ ("Contractor") for performance of the following public work of improvement West Hills Water Treatment Plant Expansion Project (the "Project" or the "Work"), which shall be performed in accordance with all plans, specifications and other contract documents attached to or incorporated into this Agreement.

SECTION 2 - SCOPE

A. Contractor shall furnish all necessary management, supervision, labor, materials, tax, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the Project in accordance with the Contract Documents, for the expansion of the West Hills Water Treatment that generally consists of the following:

1. Raw Water Pump Station expansion
2. Auto Strainer expansion
3. ActifloCARB pretreatment expansion
4. Dual Media Gravity Filter expansion
5. Drying Bed Addition
6. Chemical System Improvements
7. Misc yard piping and site civil improvements
8. Associated Electrical and Instrumentation Improvements

B. The following documents are incorporated into and made part of this Agreement by reference:

- Notice Inviting Bids
- Instructions to and Information for Bidders
- Bid Forms and Addenda
- Qualifications Statement
- Bid Payment and Performance Bonds
- Bond Forms
- General Conditions
- Supplementary Conditions
- Special Conditions
- Wage Determination Schedule
- Standard Specifications for Public Works Construction (the "Green Book"), excluding Sections 1 through 9, most recent version (the Standard Specifications)
- Change Orders issued in accordance with the Contract Documents
- Contract Drawings (Plans)

C. These documents shall be referred to collectively as the "Contract Documents." The Contract Documents are intended to be complementary, and a requirement in one document is as effective as if it appeared in all of the Contract Documents.

D, Contractor shall comply with all requirements of the Contract Documents. Where there is a conflict between the requirements of the several Contract Documents, the more stringent requirements shall govern.

SECTION 3 - PRICE

A. SBCWD agrees to pay, and Contractor agrees to accept, the sum of _____ Dollars (\$_____) (the "Contract Price") subject to adjustments for changes in the work as may be directed in writing by SBCWD, as payment in full for the Work. Work to be done at unit prices will be paid based on actual quantities of work performed and accepted.

B. Contractor shall submit a payment application for the total work completed once each month and upon completion of the Project and satisfaction of all conditions of the Contract Documents. SBCWD shall make payment within thirty (30) days of receipt of a complete and undisputed application, less five percent retention. SBCWD shall release the retained funds (less any amounts in dispute, deducted for liquidated damages or as required by law, or other offsets) no less than thirty-five (35) days after the date SBCWD accepts the Work. Pursuant to Public Contract Code Section 22300, for monies earned by the Contractor and withheld by SBCWD to ensure the performance of the Contract, the Contractor may, at its option, choose to substitute securities meeting the requirements of Public Contract Code Section 22300.

If any of the Work is to be paid based on unit prices, Contractor shall submit a monthly itemized estimate of Work done for the purpose of making progress payments. Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by SBCWD, for unit price items listed, if any, in the Bid Form. Following SBCWD's acceptance of the Work, the Contractor shall submit to SBCWD a written statement of the final quantities of unit price items for inclusion in the final payment request. SBCWD shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

C. Contractor agrees to furnish, as a condition of payment, payroll affidavits, receipts, vouchers, certified payroll reports, and other documents, in form satisfactory to SBCWD, prior to receipt of any payment. Contractor shall submit Conditional and Unconditional waivers and release of lien upon (as provided in Civil Code Sections 8132, 8134, 8136 and 8138) on behalf of itself, subcontractors and suppliers that furnished labor, material, equipment or services to the Project.

SECTION 4 - ENTIRE AGREEMENT

This Agreement represents the entire agreement between SBCWD and Contractor and supersedes any prior written or oral representations. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.

SECTION 5 - TIME

A. The anticipated SBCWD's issuance of the Administrative Notice to Proceed (NTP) is December 23, 2024. Contractor shall verify with the owner that all environmental clearances have been received before groundbreaking. A full NTP will be given to the contractor upon receiving environmental clearance. The anticipated groundbreaking date will be March 24, 2025. Priority

submittals shall be processed during the Administrative NTP period. The priority submittals include long lead-time equipment such as Actiflo, MCCs, filter control, etc.

B. Substantial Completion: Contractor shall Substantially Complete the Work within four hundred and ninety three (493) calendar days following SBCWD's issuance of the Administrative Notice to Proceed (the "Substantial Complete Contract Time") that is by April 30, 2026 based on the anticipated Administrative NTP. The term Substantial Complete shall mean all bid items have been tested, and commissioned with Engineer's written approval.

C. Final Completion: Contractor shall Final Complete the Work within five hundred and eighty four (584) calendar days following SBCWD's issuance of the Notice to Proceed (the "Final Complete Contract Time") that is by July 30, 2026 based on the anticipated Administrative NTP. This Contract Time includes completion of Contract Bid Items and optional additive bid items. No additional time will be added to the contract if the optional additive bid items are accepted. The term Final Complete shall mean the Engineer accepts the Work in writing.

D. Contractor shall provide SBCWD with scheduling information in a form acceptable to SBCWD, including any changes made by SBCWD in the scheduling of work. Contractor shall coordinate its work with that of all other contractors, subcontractors and suppliers so as not to delay or damage their performance.

E. If Contractor fails to complete the Project within the Contract Time, SBCWD will sustain damage. It is and will be impracticable to determine the actual damage which SBCWD will sustain in the event of and by reason of such delay, therefore Contractor will pay to SBCWD the sum set forth in the Special Conditions for each and every calendar day's delay beyond the time prescribed to complete the Work; Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that SBCWD may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract.

F. It is further agreed that in case Contractor fails to complete the Project in all parts and requirements within the Contract Time, SBCWD shall have the right to extend the Contract Time or not, as may seem best to serve the interest of SBCWD; and if it decides to extend Contract Time, SBCWD shall further have the right to charge to the Contractor, his heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as it may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses directly chargeable to the Contract that accrue during the period of such extension.

G. The Contractor will not be assessed with liquidated damages or the cost of engineering and inspection during the delay in the completion of the Project caused solely by acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided, that the Contractor shall within three (3) days from the beginning of any such delay, notify the Engineer, in writing of the causes of delay. SBCWD shall ascertain the facts and the extent of delay, and his findings thereon shall be final and conclusive.

H. As an express condition of any adjustment of the Contract Time or Contract Price on account of delay, including delay caused by acts of SBCWD, Contractor must give SBCWD written notice of the commencement of delay within three (3) days of its occurrence.

SECTION 6 - LABOR

A. The Contract is subject to California Labor Code Sections 1720 and following, and Contractor and any subcontractor shall pay not less than the specified prevailing rates of wage to all workers employed in performance of the Work. Pursuant to the provisions of Section 1770 of the California Labor Code, SBCWD has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes in SBCWD, as determined by the Director of the Department of Industrial Relations, a copy of which is on file in the office of SBCWD, and shall be made available for viewing to any interested party upon request. The Contractor and each subcontractor shall forfeit as a penalty to SBCWD not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate in violation of the Labor Code. In addition, the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

B. Contractor's attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor. It shall be the responsibility of the Contractor to effectuate compliance on the part of itself and any subcontractors with the requirements for employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

C. Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to achieve compliance with this section. If Contractor or subcontractor does not comply after such ten (10)-day period, the Contractor shall, as a penalty to SBCWD, forfeit One Hundred Dollars (\$100) for each day, or portion thereof, for each worker until strict compliance is effectuated.

D. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

E. Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

F. Pursuant to the requirements of Division 4 of the Labor Code, the Contractor will be required to secure the payment of worker's compensation to its employees in accordance with

the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

G. If the Contract Price is greater than \$25,000, Contractor shall, in advance of excavation five feet or more in depth, submit to SBCWD a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations, and all costs therefor shall be included in the Contract Price. Nothing in this section shall be deemed to allow the use of a shoring, bracing, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this section shall be construed to impose a tort liability on SBCWD, any of its officers, officials, partners, employees, agents, Contractors or volunteers. SBCWD's review of the Contractor's excavation plan is only for general conformance to the Construction Safety Orders. Prior to commencing any excavation, the Contractor shall designate in writing to SBCWD the "competent person(s)" with the authority and responsibilities designated in the Construction Safety Orders.

H. Full compensation for conforming to the requirements of this section shall be considered as included in the Contract Price, and no additional compensation will be allowed therefore.

SECTION 7 - CHANGES IN WORK

A. Contractor shall make no changes in the Work without written direction from SBCWD. Contractor shall not be compensated for any change made without any SBCWD's written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

B. If SBCWD directs the Contractor in writing to make changes in the work that materially affect the cost of performing the work, the Contract Price will be adjusted based on one of the following:

- 1, Where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed Work;
2. By a combination of existing and new unit prices and related quantities for the changed work;
3. Time and Materials, calculated as set forth in Section 6(C), below; or
4. By mutual acceptance of a lump sum.

C. The cost for extra or changed work performed on a Time and Materials basis shall be determined as follows:

1. Labor: Contractor will be paid cost of labor for workers used in actual and direct performance of extra work, including only :
 - (a) Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
 - (b) Labor Surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined above, such as taxes and insurance. Labor surcharge shall be and shall not exceed that set forth in California Department of Transportation official labor surcharges schedule which is in effect on date upon which extra or changed work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein.
2. Material: Only materials furnished by Contractor and necessarily used in performance of extra Work will be paid for. Cost of such materials will be cost, including sales tax and delivery charges, to purchaser (Contractor, Subcontractor or other forces) from supplier thereof, except as the following are applicable: (a) If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to SBCWD notwithstanding fact that such discount may not have been taken. (b) For materials salvaged upon completion of extra Work, salvage value of materials shall be deducted from cost, less discounts, of materials. (c) If SBCWD determines that cost of a material is excessive, then cost of material shall be deemed to be lowest reasonably available wholesale price at which material is available in quantities concerned delivered to Site, less any discounts described in (a), above.
3. Equipment: For Contractor-owned equipment, payment will be made at rental rates listed for equipment in California Department of Transportation official equipment rental rate schedule which is in effect on date upon which extra Work is accomplished and which schedule is incorporated herein by reference as though fully set forth herein. If there is no applicable rate for an item of equipment, then payment shall be made for Contractor- or Subcontractor-owned equipment at rental rate listed in the most recent edition of the Association of Equipment Distributors (AED) book.
 - (a) For rented equipment, payment will be made based on actual rental invoices. Equipment used on extra Work shall be of proper size and type.
 - (b) Cost of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by SBCWD. Rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Rental time will not be allowed while equipment is inoperative due to breakdowns.

- (c) Individual pieces of equipment or tools having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools.

4. Work Performed by Special Forces or Other Special Services: When SBCWD and Contractor, by agreement, determine that special service or item of extra Work cannot be performed by forces of Contractor or those of any Subcontractors, service or extra Work item may be performed by specialist. Invoices for service or item of extra Work on basis of current market price thereof may be accepted without complete itemization of labor, material, and equipment rental costs when it is impracticable and not in accordance with established practice of special service industry to provide complete itemization. In those instances wherein Contractor is required to perform extra Work necessitating a fabrication or machining process in a fabrication or machine shop facility away from Site, charges for that portion of extra Work performed in such facility may, by agreement, be accepted as a specialist billing. In lieu of overhead and profit provided in paragraph 5(a), below, fifteen percent (15%) will be added to specialist invoice price, after deduction of any cash or trade discount offered or available, whether or not such discount may have been taken.

5. Overhead Defined:

- (a) The following constitutes charges that are deemed included in overhead for all Contract Modifications, including work performed on a Time and Materials basis. Contractor shall not invoice or receive payment for these costs separately: Drawings: field drawings, Shop Drawings, etc., including submissions of drawings; Routine field inspection; General Superintendence; General administration and preparation of cost proposals, schedule analysis, Change Orders, and other supporting documentation; Computer services; Reproduction services; Salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; Janitorial services; Small tools, incidentals and consumables; Temporary on-Site facilities (Offices, Telephones, Plumbing, Electrical Power, lighting; Platforms, Fencing, Water, Home office expenses; vehicles and fuel used for work otherwise included in the Contract Documents; Surveying; Estimating; Protection of Work; Handling and disposal fees; Final cleanup; Other incidental Work; Related warranties.

6. Overhead and Profit for Time and Materials:

For work Contractor performs on Time and Materials at SBCWD's direction, the following markups will be added to the cost of labor, materials and equipment, calculated as described above.

- (b) Overhead and profit on labor shall be fifteen percent (15%).
- (c) Overhead and profit on materials shall be fifteen percent (15%).
- (d) Overhead and profit on equipment rental shall be ten percent (10%).

- (e) When work is performed by a first tier Subcontractor, Contractor shall receive a five percent (5%) markup on Subcontractor's total costs of extra work. First tier Subcontractor's markup on its Work shall not exceed fifteen percent (15%).
- (f) When extra Work is performed by a lower tier Subcontractor, Contractor shall receive a total of five percent (5%) markup on the lower tier Subcontractor's total costs of extra work. Contractor and first tier Subcontractors and lower tier Subcontractors shall divide the fifteen percent (15%) markup as mutually agreed.
- (g) Notwithstanding the foregoing, in no case shall the total markup on any extra work exceed twenty percent (20%) of the direct cost, notwithstanding the actual number of Contract tiers.
- (h) On proposals covering both increases and decreases in Contract Price, overhead and profit shall be allowed on the net increase only as determined in this paragraph. When the net difference is a deletion, no percentage for overhead or profit will be allowed, but rather a deduction shall apply.
- (i) The markup shall include profit, small tools, cleanup, supervision, warranties, cost of preparing the cost proposal, jobsite overhead, and home office overhead. No markup will be allowed on taxes, insurance, and bonds.

D. If SBCWD directs the Contractor in writing to make changes in the Work that materially affect the time required to perform the Work, SBCWD will make a reasonable adjustment to the Contract Time.

SECTION 8 - CLAIMS AND DISPUTES

A. If any dispute shall arise between SBCWD and Contractor regarding performance of the work, or any alleged change in the work, Contractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work to SBCWD within three (3) days after commencement of the disputed work. Contractor's failure to give written notice within the three (3)-day period constitutes an agreement by Contractor that it will receive no extra compensation for the disputed work.

B. If a claim cannot be resolved through direct discussions between SBCWD and Contractor, disputes for \$375,000 or less shall be handled in accordance with Public Contract Code Sections 20104 et seq. SBCWD shall respond in writing within 60 Days of receipt, or, may request in writing within 30 Days of receipt of the claim, any additional documents supporting the claim or relating to defenses or claims SBCWD may have against the claimant. If additional information is needed thereafter, it shall be provided upon request. SBCWD's response shall be submitted within 30 Days after receipt of the further documents, or within the same period of time taken by the claimant to produce the additional information or documents, whichever is greater. The Contractor shall make these records and documents available at all reasonable times, without any direct charge.

C. If a claim is more than \$375,000, the parties agree to participate in mediation with a mutually agreeable mediator following an exchange of documents reasonably necessary for resolution of the issues in dispute.

D. If the claimant disputes SBCWD's response, or if SBCWD fails to respond within the statutory time period(s), the claimant may so notify SBCWD within 15 Days of the receipt of the response or the failure to respond, and demand an informal conference to meet and confer for settlement. Upon such demand, SBCWD shall schedule a meet and confer conference within 30 Days.

E. If following the meet and confer conference, the claim or any portion thereof remains in dispute, the claimant may file a claim pursuant to Government Code sections 900 et seq. and Government Code sections 910 et seq. For purposes of those provisions, the time within which a claim must be filed shall be tolled from the time the claimant submits the written claim until the time the claim is denied, including any time utilized for the meet and confer conference.

F. Submission of a claim, properly certified, with all required supporting documentation, and written rejection or denial of all or part of the claim by SBCWD, is a condition precedent to any action, proceeding, litigation, suit, or demand for arbitration by Contractor.

G. Venue for any litigation arising out of or relating to this Agreement shall be San Benito County, California.

H. Pursuant to Public Contract Code Section 9201, SBCWD shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract.

SECTION 9 - INSPECTION AND PROTECTION OF WORK

A. Responsibility for, and security of, all work and materials is the responsibility of the Contractor until final acceptance of the Project by SBCWD.

B. Contractor shall make the work accessible at all reasonable times for inspection by SBCWD. Contractor shall, at the first opportunity, inspect all material and equipment delivered to the jobsite by others to be used or incorporated in the Contractor's work and give prompt notice of any defect therein. Contractor assumes full responsibility to protect the work done hereunder until final acceptance by SBCWD.

C. When the Work is completed, Contractor shall request, in writing, a final inspection. Within ten (10) days of the receipt of such request, SBCWD shall make a final inspection. The Contractor or its representatives may be present at the final inspection. The purpose of such final inspection shall be to determine whether the Work has been completed in accordance with the Contract Documents, including all change orders and all interpretations and instructions previously issued.

D. SBCWD may reject materials or Work that does not meet the requirements of the Contract Documents. If SBCWD does so, Contractor shall promptly remove the rejected materials or work and replace it with materials or work that meet the requirements of the Contract Documents, at no additional cost to SBCWD.

SECTION 10 - ASSIGNMENT AND SUBCONTRACTING

- A. Contractor shall give personal attention to the performance of the Contract and shall keep the Work under its control.
- B. No subcontractors will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor, who will be held responsible for their work which shall be subject to the provisions of the Contract and specifications.
- C. No subcontractor who is ineligible to bid work on, or be awarded, a public works project under Labor Code Sections 1771.1 or 1777.7 can bid on, be awarded or perform work as a subcontractor on the Project. The Contractor is prohibited from performing work on the Project with a subcontractor who is ineligible to perform work on a public works project under these sections of the Labor Code.
- D. When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to SBCWD, the subcontractor shall be removed immediately on the requisition of SBCWD in the manner required by law and shall not again be employed on the work.
- E. Contractor may not assign any portion of the Contract except upon written consent of SBCWD.

SECTION 11 -TERMINATION

- A. Should Contractor fail within seven (7) calendar days from receipt of SBCWD's written notice to correct any default, including but not limited to failure perform the Work in accordance with the Contract Documents, failure to comply with the directions of SBCWD, or failure pay its creditors, SBCWD may terminate this Agreement and/or, in its sole discretion, make a demand on Contractor's performance bond surety. Following a termination for default, SBCWD shall have the right to take whatever steps it deems necessary to complete the Project and correct Contractor's deficiencies and charge the cost thereof to Contractor, who shall be liable for the full cost of SBCWD's corrective action, including reasonable overhead, profit and attorneys' fees.
- B. SBCWD may at any time terminate the Contract at SBCWD's convenience upon five (5) days written notice to Contractor; in the event of termination for convenience, Contractor shall recover only the actual cost of work completed to the date of termination, which costs are documented to SBCWD's satisfaction, calculated in accordance with Section 6, above. Contractor shall not be entitled to any claim or lien against SBCWD for any additional compensation or damages in the event of such termination.
- C. If SBCWD terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

SECTION 12 - HOLD HARMLESS AND INDEMNIFICATION

A. SBCWD and all officers and employees thereof connected with the Work, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence of SBCWD's officers or employees.

B. Contractor shall indemnify, defend with legal counsel approved by SBCWD, and hold harmless SBCWD, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or related to the Work or the Project, except such loss or damage which is caused by the sole or active negligence or willful misconduct of SBCWD. Should conflict of interest principles preclude a single attorney from representing both SBCWD and Contractor, or should SBCWD otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse SBCWD its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other cost and fees of litigation. The Contractor shall promptly pay any final judgment rendered against SBCWD (and its officers, officials, employees and volunteers) except for claims determined by a trier of fact to have been the result of SBCWD's sole or active negligence or willful misconduct. The foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

C. Contractor's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of SBCWD under any provision of this agreement, Contractor shall not be required to indemnify and hold harmless SBCWD for liability attributable to the active negligence of SBCWD, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where SBCWD is shown to have been actively negligent and where SBCWD's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of SBCWD.

D. In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall be considered necessary by SBCWD, may be retained by SBCWD until disposition has been made of such suits or claims for damage.

SECTION 13 - BONDS AND INSURANCE

A. Bonds

1. Within ten (10) days after being notified of the award of the contract, and before SBCWD will execute the agreement for construction, the Contractor to whom the Contract is awarded shall furnish and file with SBCWD Performance and Payment Surety bonds as set forth below.
2. Contractor shall submit the bonds on the forms provided with the Contract Documents, duly executed by a responsible corporate surety listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as

Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to SBCWD conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. Each of the bonds shall be in a sum no less than one hundred percent (100%) of the Contract Price.

B. Insurance

1. Contractor shall obtain, at its sole cost and expense, all insurance required set forth in Article 6 of General Conditions and Supplementary Conditions. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to SBCWD within ten (10) days after being notified of the award of the contract, and before execution of the agreement for construction by SBCWD.

SECTION 14 - WARRANTY

A. Contractor warrants to SBCWD that all materials and equipment furnished shall be new, free from faults and defects and of good quality and conform to the requirements of the Contract Documents.

B. Contractor hereby warrants its work against all deficiencies and defects for the period required by the Contract Documents or the longest period permitted by California law, whichever is greater. Unless otherwise stated in the Contract Documents, warranty periods shall begin upon the filing of the Notice of Completion and shall be for one year.

C. This Article shall not limit SBCWD's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. SBCWD specifically reserves all rights related to defective work, including but not limited to defect claims pursuant to California Code of Civil Procedure Section 337.15.

SECTION 15 - LAWS TO BE OBSERVED

A. Contractor shall keep itself fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations that in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

B. Contractor shall at all times observe and comply with, and shall cause all of its agents and employees to observe and comply with all such existing and future Federal, State and local laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the Project; and shall protect and indemnify SBCWD, and all officers and employees thereof connected with the Project, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by SBCWD's representative or their employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order or decree, Contractor shall promptly report the same to SBCWD in writing.

C. This Contract shall be governed by and construed in accordance with the laws of the State of California.

SECTION 16 - MISCELLANEOUS

A. Existing Utilities

The location of known existing utilities and pipelines are shown on the Plans in their approximate locations. However, nothing herein shall be deemed to require SBCWD to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the site of the Project. Underground facilities not known to SBCWD may exist, or be in a location different from that which is shown in the Contract Documents.

Contractor shall take all steps reasonably necessary to ascertain the exact location of all underground facilities prior to doing work that may damage such facilities or interfere with their service, including but not limited to calling Underground Service Alert to locate utilities in accordance with the procedures described in Government Code 4215 et seq. Contractor shall protect from damage any utility facilities that are to remain in place, be installed, relocated or otherwise rearranged.

If the Contractor is required to locate, repair damage not due to the Contractor's failure to exercise reasonable care, and remove or relocate existing main or trunk line utility facilities, it shall be compensated under Section 6 of this Contract – Changes in the Work – including payment for equipment on the Project necessarily idled during such work.

The right is reserved by SBCWD and the owners of underground facilities or their authorized agents, to enter the job for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connection or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct his operations in such a manner as to avoid any delay or hindrance to the work being performed by such other forces.

SBCWD will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Project site if such utilities are not identified by SBCWD in the Contract Documents or which can reasonably be inferred from the presence of other visible facilities.

B. Utility Location

It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this section.

The locating of utilities shall be in conformance with Government Code Section 4216 except for SBCWD's utilities located on SBCWD's property and not on public right-of-way.

After the utility survey is complete, the Contractor shall commence "potholing" or hand digging to determine the actual location of the pipe, duct, or conduit. Contractor shall notify SBCWD before starting potholing operations.

The Contractor's attention is directed to the requirements of Government Code Section 4216.2 (a)(2) which provides: "When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation prior to the legal excavation start date and time, as such date and time are authorized pursuant to paragraph (1) of subdivision (a) of 4216.2. The excavator and the operator or its representative shall conduct an onsite meeting at a mutually-agreed-on time to determine actions or activities required to verify the location of the high priority subsurface installation prior to start time." The Contractor shall notify SBCWD in advance of this meeting.

C. Differing Site Conditions

1. The Contractor shall promptly, and before the following conditions are disturbed, notify SBCWD in writing of any:
 - (a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - (b) Subsurface or latent physical conditions at the site differing materially from those indicated by information about the site made available to bidders before the deadline for submitting bids, or
 - (c) Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
2. Contractor shall give Notice in accordance with the Change Order provisions above.
3. SBCWD shall promptly investigate the conditions, and if it finds that such conditions do materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, it shall issue a change order under the provisions described in the Contract Documents.
4. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in the Contract Documents.
5. In the event a dispute arises between SBCWD and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from completing the Work as provided in the Contract Documents. The Contractor shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by this Contract or by law, which pertain to the resolution of disputes and protests.

D. Records and Audits

1. Contractor and its subcontractors shall establish and maintain records pertaining to this contract. Contractor's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of all costs charged under this contract, including properly executed payrolls, time records, invoices and vouchers.
2. Contractor shall permit SBCWD and its authorized representatives to inspect, examine and make copies of Contractor's books, records, accounts, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this contract and shall provide such assistance as may be reasonably required in the course of such inspection. SBCWD further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3)-year period following the termination of this Contract; and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after the termination of this Contract.
3. Pursuant to California Government Code Section 8546.7, the parties to this Contract shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the contract. The examination and audit shall be confined to those matters connected with the performance of this contract including, but not limited to, the cost of administering the contract.

E. Clayton Act and Cartwright Act

Section 7103.5 of the Public Contract Code specifies that in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to the contract or subcontract. Pursuant to Public Contract Code Section 7103.5 the Contractor and all of its Subcontractors hereby offer and agree to assign to SBCWD all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Sec. 16700) of Part 2 of Division 7 of the Business Profession Code, arising from purchase of goods, services or materials pursuant to this Agreement. This assignment shall become effective when SBCWD tenders final payment to the Contractor without further acknowledgement by the parties.

F. Site Superintendent

The Contractor shall provide competent supervision and staffing of the Work as approved by SBCWD. The Contractor or designated representative shall be present at the site at all times while work is actually in progress. Superintendent must be able to proficiently speak, read and write in English.

G. Character of Workers

If any or person employed by the Contractor or any Subcontractor shall appear to SBCWD to be incompetent or to act in a disorderly or improper manner, he shall be discharged immediately on the request of SBCWD, and such person shall not again be employed on the Work.

H. Notices

All notices permitted or required under this Agreement shall be given at the following address, or at such other address as the parties may provide in writing for this purpose:

San Benito County Water District:

CONTRACTOR:

Email: JCattaneo@sbcwd.com

Email: _____

Attn: Jeff Cattaneo

Attn: _____

The parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by email, upon delivery; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

SECTION 17 - WAIVERS OF LIEN

Upon request the Contractor shall submit a complete list of major suppliers and/or subcontractors who will be providing material and/or labor for the performance of the Work, and shall submit with each payment request waivers of lien from each major supplier and/or subcontractor. Sample forms to be used will be furnished by SBCWD.

SECTION 18 - CLEAN-UP

Contractor will remove from the project site all debris resulting from performance of the Work no less often than daily. If Contractor fails to do so, SBCWD may, after twenty-four (24) hours' notice to Contractor, clean up the site and deduct the cost from the Contract Price.

SECTION 19 - LICENSE REQUIREMENT

Contractor's attention is directed to Business and Professions Code Sections 7000 et seq. concerning the licensing of contractors. At the time Contractor enters into this Contract and all times Contractor is performing the Work, Contractor shall have a valid license issued by the Contractors State License Board in the classification stated in the Special Conditions. All bidders and subcontractors shall be licensed in accordance with the laws of this State and any contractor or subcontractor not so licensed is subject to penalties imposed by such laws.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be

referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

SECTION 20 - COMPLIANCE WITH STATE STORM WATER PERMIT

Contractor shall be required to comply with all aspects of the State Water Resources Control Board (State Water Board) Water Quality Order No. 2009-0009-DWQ, including any and all subsequent amendments. National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity (Permit) for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.

SAN BENITO COUNTY WATER DISTRICT:

CONTRACTOR:

By: _____

By: _____
(Authorized Representative of Contractor)

Dated: _____

Printed Name: _____

ATTEST:

Title: _____
(Attach Notary Acknowledgment for
Authorized Representative of Contractor)

Board Secretary

License No. _____

Dated: _____

(Contractor Signature must be Notarized)

This page intentionally left blank.

**San Benito County Water District
Agenda Transmittal**

Agenda Item: 2

Meeting Date: December 9, 2024

Submitted By: Dana Jacobson

Presented By: Dana Jacobson

Agenda Title: Consider Approving the Agreement for Water Transfer and Memorandum of Agreement for a Water Transfer with the Kern-Tulare Water District

Detailed Description: Due to lower-than-expected water demands, the District anticipates having surplus Central Valley Project (CVP) supplies in 2024. According to U.S. Bureau of Reclamation (Reclamation) rules, any amount not delivered to San Benito County or rescheduled in San Luis Reservoir would be turned back to the CVP. The District would only be entitled to a small fraction of this water as part of its 2025 allocation. Staff therefore recommends executing the Agreement for Water Transfer of CVP Water between San Benito County Water District and Kern-Tulare Water District (Agreement) and the Memorandum of Agreement for Water Transfer of CVP Water between San Benito County Water District and Kern-Tulare Water District (MOA) to receive compensation for this surplus CVP water.

After filling San Justo Reservoir, maximizing local recharge, and rescheduling the maximum allowable amount in San Luis Reservoir, the District anticipates a surplus of approximately 2,000 acre-feet (AF) of CVP water. However, the Agreement provides for a total transfer to the Kern-Tulare Water District (Kern-Tulare) of up to 3,000 AF to give the parties flexibility to adjust as needed depending on operating conditions between December 2024 and the end of February 2025. The District would only make water available to Kern-Tulare after satisfying its own internal needs.

Kern-Tulare would pay to the District a purchase price of \$150/AF for each AF of water transferred. The District would be responsible for paying its normal CVP rates and charges while Kern-Tulare would be responsible for paying applicable O&M rates directly to the San Luis & Delta-Mendota Water Authority for the conveyance of water to its service area. Net revenue to the District would be approximately \$110/AF, for a total potential maximum of \$330,000.

The Agreement describes the rights and obligations of the parties, including the relevant business terms of the water transfer. The purpose of the MOA is to satisfy Reclamation requirements as part of its approval process, which is a condition precedent to the Agreement. However, the MOA does not need to include the same level of detail as the Agreement itself.

Environmental compliance is already in place for the water transfer. Compliance under the National Environmental Protection Act is achieved under Reclamation's South of Delta Accelerated Water Transfer Program, and the transfer is exempt under Section 15301 of the California Environmental Quality Act.

Prior Committee or Board Action:

Financial Impact: _____ Yes X No

Funding Source/ Recap: N/A

Materials included:

- 1. Administration Committee Recommendation
- 2. Agreement
- 3. MOA

Recommendation: Approve the Agreement for Water Transfer and Memorandum of Agreement for a Water Transfer with the Kern-Tulare Water District

Action Required: ___ Resolution X Motion _____ Review

Board Action

Resolution No. _____ Motion By _____ Second By _____

Ayes _____ Abstained _____

Noes _____ Absent _____

Reagendized _____ Date _____ No Action Taken _____

BOARD AGENDA MEMO

DATE: December 5, 2024

TO: Board of Directors

FROM: Administration Committee
(Flores/Williams*)

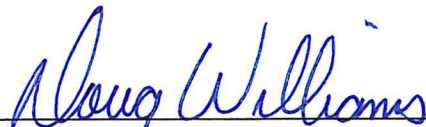
SUBJECT: Board Recommendation to approve the Agreement for Water Transfer and Memorandum of Agreement for a Water Transfer with the Kern-Tulare Water District

The Administration Committee met on December 5, 2024 and discussed the Agreement for Water Transfer and Memorandum of Agreement for a Water Transfer with the Kern-Tulare Water District.

The Administration Committee agreed to recommend the Board approve the Agreement for Water Transfer and Memorandum of Agreement for a Water Transfer with the Kern-Tulare Water District



Director Flores



Director Williams*

**AGREEMENT FOR WATER TRANSFER
OF CVP WATER BETWEEN
SAN BENITO COUNTY WATER DISTRICT AND
KERN-TULARE WATER DISTRICT**

This AGREEMENT FOR WATER TRANSFER OF CVP WATER BETWEEN SAN BENITO COUNTY WATER DISTRICT AND KERN-TULARE WATER DISTRICT (“**Agreement**”) is made this 9th day of December 2024 (“**Effective Date**”), by and between the San Benito County Water District (“**SBCWD**”) and Kern-Tulare Water District (“**KTWD**”).

RECITALS:

A. Both parties to the Agreement are public agencies of the State of California, duly formed and operating under the laws of the state, and are empowered to enter into contracts to manage the water supply available to them for the benefit of their constituents.

B. SBCWD is a contractor with the United States Department of the Interior, Bureau of Reclamation (“**USBR**”) and is entitled to receive Central Valley Project (“**CVP**”) water (“**Project Water**”) from Contract No. 8-07-20-W130A-P (“**SBCWD Contract**”) between USBR and SBCWD.

C. KTWD is a contractor with USBR and is entitled to receive Project Water pursuant to Contracts No. 14-06-200-8601A-IR5-P and 14-06-200-8367A-IR5-P between USBR and KTWD and has agreements to bank water in Kern County with several entities.

D. SBCWD has found and determined that it can make available from its 2024-25 supply of Project Water up to 3,000 acre-feet (“**AF**”) of water temporarily surplus to the needs of SBCWD’s customers within its boundaries.

AGREEMENT

1. The Recitals above are incorporated in full into this Agreement.
2. **TERM.** This Agreement shall begin on the Effective Date and continue until delivery of all the Transfer Water (defined herein) or February 28, 2025, whichever is earlier.
3. **AMOUNT OF WATER.** Pursuant to the terms and conditions of USBR’s approval, SBCWD will make available to KTWD up to 3,000 AF of Project Water for delivery between December 2024 and February 28, 2025, as measured by the California Department of Water Resources at the Point of Delivery, and pursuant to a schedule approved by the USBR in coordination with SBCWD and KTWD (“**Transfer Water**”).

4. **DELIVERY AND MEASUREMENT.** The point of delivery of Transfer Water to KTWD shall be O'Neill Forebay ("**Point of Delivery**") and shall be measured by the Department of Water Resources.

5. **SCHEDULING.** Concurrent with execution of this Agreement, SBCWD and KTWD will cooperatively establish and mutually agree upon the schedule for delivery of the Transfer Water.

6. **COST OF WATER.** KTWD agrees to pay SBCWD One Hundred Fifty and 00/100 Dollars (\$150.00) for each AF of Transfer Water that SBCWD makes available for transfer at the Point of Delivery pursuant to this Agreement, for a total of up to Four Hundred Fifty Thousand Dollars (\$450,000.00) ("**Purchase Price**").

- a) SBCWD shall be responsible to pay to USBR the following charges. If final transfer rate sheet provided by Reclamation contains differing rates, Parties shall meet and confer on this section prior to the execution of the transfer.
 - a. Effective Transfer Rate (\$22.15 per AF)
 - b. Project Use Energy Payment (\$3.98 per AF)
 - c. Restoration Fund charge (\$13.33 per AF)

SBCWD will absorb any additional customary USBR charges (i.e., excluding variable power or delivery charges) without additional charge to KTWD.

- b) KTWD shall pay when due, directly to the San Luis & Delta-Mendota Water Authority any and all rates, charges, and/or assessments of any kind applicable to delivery of the Transfer Water to O'Neill Forebay.

7. **PAYMENT.** After execution of this Agreement, and within thirty (30) days after receipt of USBR's approval of the transfer contemplated herein, KTWD will pay to SBCWD the full amount of the Purchase Price.

8. **APPROVALS.** SBCWD shall be responsible for the cost of obtaining any and all approvals legally required for the delivery of Transfer Water in accordance with this Agreement. However, in the event that it is impracticable for SBCWD to provide any Transfer Water to KTWD due to the cost of obtaining such approvals, SBCWD will be excused from performance under this Agreement.

9. **ENVIRONMENTAL REVIEW.** The parties acknowledge that they will complete any necessary reviews under the California Environmental Quality Act (CEQA) for the transfer that is proposed to be accomplished by this Agreement and that both are independently responsible for conducting any level of CEQA review required. Reclamation has already completed all applicable, necessary review under the National Environmental Policy Act.

10. **CONDITIONS PRECEDENT.** The performance by both parties to this Agreement is contingent upon approval of the USBR. Each party to this Agreement shall, in good faith, assist

the other in obtaining all such necessary approvals, and to cooperate and assist each other in good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of the Agreement.

11. **RESTRICTIONS ON USE.** KTWD agrees that all Transfer Water provided by SBCWD pursuant to this Agreement will be used within the boundaries of KTWD or banked with one of its banking partners for its later use within its boundaries. KTWD agrees that it will place all Transfer Water to an agricultural use that is reasonable and beneficial. KTWD will maintain books and records with regard to the use of any and all water provided pursuant to this Agreement sufficient to enable USBR to determine the reasonable and beneficial use of said Transfer Water. Consistent with the provisions of Water Code Sections 475 and 1244, the parties agree that neither this transfer nor this Agreement are evidence of the availability of surplus water beyond the terms of this Agreement or lack of beneficial use of the water involved in this Agreement, and the parties will not contend otherwise.

12. **NO ENTITLEMENT TO WATER.** KTWD and SBCWD agree that the delivery of the Transfer Water under this Agreement will not give KTWD any continued right to acquire SBCWD water beyond the term of this Agreement and/or any water right.

13. **LIMITING CONDITIONS.** SBCWD's obligation to deliver Transfer Water pursuant to the terms of this Agreement will, at all times, be subject and subordinate to any and all applicable federal and state laws and regulations now in existence and as modified from time to time ("Laws"), affecting SBCWD's rights or obligations only to the extent that the Laws make it impracticable for SBCWD to provide any Transfer Water.

14. **WATER SUPPLY REDUCTIONS.** Water supply to be delivered to KTWD under this Agreement may be reduced by SBCWD for any of the following reasons: the Limiting Conditions; failure of facilities; intervening acts, including litigation and stream adjudication brought by third parties, or actions of any state or federal agency exercising jurisdiction or claiming an interest and/or right to reduce and/or modify operations and/or quantities of Transfer Water otherwise available to SBCWD; and any action, legislation, ruling, or determination adverse to SBCWD preventing its ability to meet obligations under the Agreement and beyond the reasonable control of SBCWD. SBCWD will make a good faith effort to oppose such reductions, but KTWD agrees that SBCWD will not be liable for reductions of supply in this Agreement due to such causes. Water supply to be delivered by SBCWD under this Agreement may be reduced by KTWD if any Limiting Condition, failure of facilities or any action, legislation, ruling or determination adverse to KTWD preventing its ability to meet obligations under the Agreement and beyond the reasonable control of KTWD, or if the inability of SBCWD to make the Transfer Water available, causes the inability of KTWD to take delivery of the Transfer Water during the established schedule for delivery. KTWD will make a good faith effort to oppose such reductions and in the event of the inability of KTWD to take the Transfer Water available during the established schedule for delivery and will work cooperatively with SBCWD to accommodate any storage and delivery options available to the parties per the terms of SBCWD's CVP contract. In the event of a reduction of supply caused by factors listed in this Section, KTWD will pay only for water actually delivered. Each Party shall notify the other in writing as soon as practicable that a

condition necessitating a water supply reduction has occurred, and SBCWD shall refund to the KTWD within sixty (60) days after such notice any part of the Purchase Price paid for water not delivered.

15. **CAPACITY CONSTRAINTS AND FORCE MAJEURE:** Except as otherwise provided herein, all obligations of the parties hereto shall be suspended so long as, and to the extent that, the performance thereof or if any portion of the transfer water cannot be delivered or shall be prevented due to restrictions of availability of canals or banking facility capacity which are beyond the control of KTWD, 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 thereof or other events or causes beyond the control of the parties hereto. Furthermore, if water is not made available by SBCWD as a result of causes listed in Sections 13, 14 or 15, SBCWD shall refund to KTWD any amounts paid by KTWD to SBCWD for each AF of Transfer Water not made available for which KTWD had already paid.

16. **INDEMNITY.** Each party shall agree to protect, defend, indemnify, and hold harmless the other party and its directors, officers, agents, employees, and consultants from and against any and all third-party losses, claims, liens, demands and causes of action of every kind and character connected with or arising directly or indirectly out of the performance or non-performance by the indemnifying party hereunder to the Agreement, except as to any reckless or intentional misconduct.

17. **ATTORNEYS' FEES & COSTS.** The prevailing party in any litigation or other action to enforce or interpret the Agreement shall be entitled to reasonable attorneys' fees, expert witness fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.

18. **THIRD-PARTY BENEFICIARIES.** This Agreement shall not create any right or interest in any non-party or in any member of the public as a third-party beneficiary.

19. **PARTIAL INVALIDITY.** If after the date of execution of the Agreement, any provision of the Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of the Agreement, such provision shall be fully severable.

20. **AUTHORITY.** Each signatory shall represent that s/he is authorized to execute the Agreement on behalf of the party for which s/he signs. Each party shall represent that it has legal authority to enter into this Agreement and to perform all obligations under the Agreement.

21. **SPECIFIC PERFORMANCE.** It is agreed by the parties hereto that in this arid region the water delivered herein is of unique value and that, in the event of breach of this Agreement, specific performance of the Agreement in accordance with its terms and conditions may be proper injunctive relief, and that such injunctive relief may be sought at any time during the term of the Agreement.

22. **WAIVER OF RIGHTS.** Any waiver, at any time, by any 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.

23. **NOTICES.** Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service, or sent by certified or registered mail, postage prepaid, or sent by Electronic Transmission, including email (subject to confirmation of such transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) three (3) Business Days after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PST) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PST) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid, in each case, to the following address or email, or to such other address or addresses or email as such party may subsequently designate to the other parties by notice given hereunder:

SAN BENITO COUNTY WATER DISTRICT

Attention: Dana Jacobson
General Manager
30 Mansfield Road
Hollister, CA 95023
Phone: 831-637-8218
Email: djacobson@sbcwd.com

KERN-TULARE WATER DISTRICT

Attention: Skye B. Grass
General Manager
5001 California Avenue, Suite 102
Bakersfield, CA 93309
Phone: 661-327-3132
Email: skye@kern-tulare.com

As used herein, “**Business Day**” means any day other than a Saturday, Sunday, or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

24. **APPROVALS.** Where the terms of this Agreement provide for action to be based upon a judgment, approval, review, or determination of any party, such terms are not intended to be and will never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

25. **OTHER AGREEMENTS.** Nothing contained herein restricts SBCWD from entering into other water transfer or wheeling agreements, provided such agreements do not unreasonably interfere with SBCWD’s obligation to KTWD under this Agreement.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between SBCWD and KTWD and supersedes any oral agreement, statement, or promise between them relating to the subject matter of the Agreement. Any amendment, including oral modifications, must be reduced to writing and signed by all parties to be effective.

27. **COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely execute counterparts will be sufficient proof of this Agreement.

IN WITNESS WHEREOF, the parties execute this Agreement on this day and year first above mentioned.

SAN BENITO COUNTY WATER DISTRICT

By _____
Doug Williams, Vice President

KERN-TULARE WATER DISTRICT

By _____
Skye B. Grass, General Manager

**MEMORANDUM OF
AGREEMENT FOR WATER TRANSFER
OF CVP WATER BETWEEN
SAN BENITO COUNTY WATER DISTRICT AND
KERN-TULARE WATER DISTRICT**

This Memorandum of Agreement for Water Transfer of CVP Water Between San Benito County Water District and Kern-Tulare Water District (“**Memorandum**”) is made effective this 9th day of December 2024, by and between San Benito County Water District, hereinafter referred to as “**SBCWD**”, and Kern-Tulare Water District, hereinafter referred to as “**KTWD**.”

RECITALS:

- A. Both parties to the Agreement are public agencies duly organized and operating under the laws of the State of California and are empowered to enter into contracts to manage the water supply available to them for the benefit of their constituents, and
- B. SBCWD is a contractor with the Bureau of Reclamation (“**Bureau**”) and is entitled to receive Central Valley Project (“**CVP**”) water therefrom pursuant to Contract No. 8-07-20-W130A-P (“**SBCWD Contract**”) between the Bureau and SBCWD providing for water service.
- C. KTWD is a contractor with the Bureau and is entitled to receive CVP water pursuant to USBR Contract No. 14-06-200-8601A-IR5-P and 14-06-200-8367A-IR5-P between USBR and KTWD and has agreements to bank water in Kern County with several entities.
- D. On December 9,, 2024 SBCWD and KTWD entered into that Agreement for Water Transfer of CVP Water Between San Benito County Water District and Kern-Tulare Water District (“**CVP Agreement**”) pursuant to which SBCWD agreed to transfer up to 3,000 acre-feet (“**AF**”) of 2024-5 water from its CVP contract to KTWD (“**Water**”). Water will be delivered to KTWD during November 2024 through February 28. 2025.

AGREEMENT

- 1. **Term**. The CVP Agreement terminates on February 28, 2025.
- 2. **Provisions**. The CVP Agreement Provides:
 - A. Pursuant to the terms and conditions of the Bureau’s approval, SBCWD will make available to KTWD up to 3,000 AF of Water for delivery during the Term pursuant to a schedule approved by the Bureau in coordination with SBCWD.

B. The point of delivery of Water to KTWD shall be O'Neill Forebay ("Delivery Point"). Deliveries of Water from SBCWD to O'Neill Forebay shall be measured by the California Department of Water Resources ("DWR").

C. SBCWD agrees to pay its Bureau rates for CVP services required to effectuate the transfer. KTWD is responsible for paying the San Luis Delta Mendota Water Authority O&M charges to move the water from Jones Pumping Plant to O'Neill Forebay. Other internal fees of the SBCWD are not part of this purchase and transfer and therefore such fees, if any, are not included in this or any other agreement.

D. SBCWD shall be responsible for the cost of obtaining any and all approvals legally required for the delivery of Water to KTWD. Such approvals shall be identified and agreed to by the parties within fifteen (15) days from the execution of the Agreement. Should the SBCWD determine that any approvals so identified are unreasonable, in SBCWD's sole and absolute discretion, SBCWD shall have the right to terminate this Agreement by providing KTWD with written notice within thirty (30) days of execution of this Agreement. Should the SBCWD terminate this agreement, SBCWD's sole remaining obligation or liability will be to refund all payments made by KTWD.

E. The performance by both parties to this Agreement is contingent upon approval of the Bureau.

IN WITNESS WHEREOF, the parties execute this Memorandum on this day and year first above mentioned.

KERN-TULARE WATER DISTRICT

SAN BENITO COUNTY WATER DISTRICT

By _____

By _____

Skye Grass, General Manager

Doug Williams, Vice President