

**AGREEMENT FOR THE EXCHANGE AND CONJUNCTIVE
USE OF GROUND WATER AND SURFACE WATER
WITHIN NATOMAS BASIN**

This Agreement for the Exchange and Conjunctive Use of the Ground Water and Surface Water within the Natomas Basin ("**Agreement**") is made and effective as of the Effective Date by and between Natomas Central Mutual Water Company, a California corporation ("**Natomas**"), and The Natomas Basin Conservancy ("**Landowner**"). Natomas and Landowner are referred to collectively herein as the "Parties."

RECITALS

A. Natomas is a mutual water company organized and existing under California law. Natomas owns appropriate water rights and contractual entitlements to divert and use water from the Sacramento River.

B. Landowner owns land within the service area of Natomas and is a shareholder of Natomas. The land owned by Landowner within the Natomas service area (collectively "**Subject Land**") is described in Exhibit A attached hereto and incorporated herein.

C. As of the Effective Date, Landowner owns one or more groundwater well (collectively "**Landowner Wells**") located on the Subject Land. The locations of the Landowner Wells are shown in Exhibit B attached hereto and incorporated herein. The Landowner Wells are identified in Exhibit B attached hereto.

D. Each of the Landowner Wells is fully operational as of the Effective Date. Collectively, the Landowner Wells are capable of producing approximately 1,200 acre-feet per month of groundwater.

E. Certain water authorities ("**Water Authorit(ies)**") desire to acquire forborne water as described in a forbearance agreement to be executed by Natomas, Water Authority and the Bureau of Reclamation ("**Reclamation**") ("**Forbearance Agreement**").

F. As a condition of the Forbearance Agreement, Landowner must agree to provide ground water substitution transfers to Natomas in a manner consistent with the Draft Technical Information for Preparing Water Transfer Proposals, dated November 3014, as updated ("**Water Transfer White Paper**").

G. On behalf of the Landowner, Natomas desires to enter into one or more agreements to transfer, on a temporary basis, a portion of its surface water supplies to the Water Authorities for use during calendar year 2020 to facilitate such temporary water transfers ("**Water Transfer Agreement(s)**"),

H. Natomas and Landowner desire to enter into this Agreement for the purpose of making groundwater from the Landowner Wells available to Natomas, for irrigation use by Agreement for Exchange and Conjunctive Use of Grand Water Between Natomas Central Mutual Water Company and Landowner

Natomas shareholders, on the terms and conditions specified in this Agreement. The Parties intend through this Agreement, together with the Forbearance Agreement, and Water Transfer Agreement(s) enhance the utilization of water resources within the Natomas Basin through the conjunctive use of groundwater and surface water consistent with state, federal, and local water conservation laws and policies, including but not limited to the Water Transfer White Paper.

In this context, the Parties agree as follows:

SECTION 1. DEFINITIONS.

For purposes of the Agreement, the following terms shall have the meanings stated below.

1.1 "Effective Date" means the date of May ___th 2020 when well monitoring commenced.

1.2 "Natomas-USBR Contract" means water right settlement contract no. 14-06-200-885A-R-1, dated May 10, 2005, by and between Natomas and the United States of America.

1.3 "Landowner Wells" means the groundwater wells identified in Exhibit B attached hereto and incorporated herein that are subject to the terms and conditions of this Agreement.

1.4 "Transaction" means the entirety of the agreements, activities and actions contemplated in this Agreement.

1.5 "USBR" means the Bureau of Reclamation, United States Department of the Interior.

SECTION 2. TERM.

This Agreement will automatically terminate on December 31, 2020, provided that all non-discharged payment obligations of Natomas under Section 4.3 of this Agreement will survive the termination of this Agreement.

SECTION 3. CONJUNCTIVE USE OPERATIONS

3.1 Season of Availability. Natomas may, in its sole and absolute discretion, elect to have Landowner operate any or all of the Landowner Wells between April 1 and October 31 of calendar year 2020, subject to the terms and conditions of this Agreement.

3.2 Notice of Commencement. Natomas may, in its sole and absolute discretion, elect to have Landowner operate any or all of the Landowner Wells for purposes of this Agreement by providing Landowner with a written Notice of Commencement of Conjunctive Use Operations. The Notice of Commencement shall identify the period for groundwater extraction and the total rate of production requested by Natomas.

3.3 Commencement of Groundwater Extraction. Landowner shall, within 72 hours following receipt of the Notice of Commencement, commence operation of the Landowner Wells, in accordance with said Notice.

3.4 Notice of Termination. Natomas, in its sole and absolute discretion, may terminate conjunctive use operations under this Agreement by providing Landowner with written Notice of Termination of Conjunctive Use Operations. Landowner shall, within 72 hours following receipt of said Notice, terminate operation of the Landowner Wells under this Agreement.

3.5 Use of Groundwater by Landowner. During any period in which conjunctive use operations have been commenced in accordance with Section 3.3, Landowner shall, to the maximum extent feasible, utilize groundwater produced from the Landowner Wells to meet the water supply needs of the Landowner Lands. If requested by Natomas, in its sole discretion, Landowner shall deliver groundwater produced from the Landowner Wells to the Natomas water delivery system. All water used or delivered by Landowner pursuant to this Section 3.5 shall be referred to as “**Substituted Water**”).

3.6 Insufficient Ground Water. To the extent Landowner has water supply needs that cannot be met by the Landowner Wells, Natomas shall provide Landowner with surface water in accordance with the rights and obligations of Landowner as a shareholder of Natomas.

SECTION 4. OWNERSHIP, OPERATION AND MAINTENANCE AND PAYMENT TERMS

4.1 Ownership. All of the Landowner Wells will remain under the ownership of Landowner.

4.2 Operation and Maintenance. Landowner will operate, maintain and repair the Landowner Wells in accordance with this Agreement. Landowner will maintain and repair the Landowner Wells in accordance with applicable laws, rules, regulations, guidelines and prudent utility operator standards.

4.3 Landowner Opt Out. Landowner may in its discretion opt out of further participation in groundwater pumping for the water transfer contemplated in this Agreement after providing Natomas five (5) days prior written notice of Landowner’s intent to cease participation in the water transfer.

4.4 Adjustment for Assumed Depletion. The Parties recognize that USBR, in determining the amount of Natomas surface water that will be transferable as a result of groundwater substitution pursuant to this Agreement, will adjust downward the amount of groundwater deemed to have been made available by a factor of thirteen percent (13%). This adjustment (“**Depletion Adjustment**”) reflects a determination by USBR of the depletion of Sacramento River flow that will result from groundwater pumping under this Agreement. Natomas and Landowner accept the Depletion Adjustment for purposes of this Agreement but reserve all rights to challenge the Depletion Adjustment in connection with any future water transfer. The Parties further agree that, in determining payments for groundwater produced pursuant to this Agreement, Landowner shall bear the Depletion Adjustment in its entirety, as set forth in this Section 4.4.

4.5 Water Transfer Agreement(s).

(a) In exchange for the Substituted Water, Natomas shall enter into the Forbearance Agreement and the Water Transfer Agreement(s) by and for the benefit of Landowner.

(b) Landowner shall pay Natomas an amount equal to thirty five percent (35%) of Net Proceeds. For purposes of this Section 4.5, “Net Proceeds” means the funds received by Natomas pursuant to the terms of the Water Transfer Agreement(s) for the sale of surface water during 2020. Payment pursuant to this Section 4.5(b) shall be due upon receipt of the Net Proceeds. In the event that the Net Proceeds are submitted directly to Natomas, Natomas may retain the amount due to Natomas pursuant to this Section 4.5.(b).

(c) The balance of the Net Proceeds from the Water Transfer Agreement(s) shall be retained or paid directly to Landowner.

(d) Natomas will have no responsibility or financial obligation arising from or relating to operation of the Landowner Wells where conjunctive use operations have not been undertaken in accordance with Section 3 of this Agreement.

4.6 Metering and Monitoring Costs. Landowner shall be solely responsible for, and shall bear all expenses associated with, the installation and maintenance of all flow meters for the Landowner Wells. Natomas shall be solely responsible for, and shall bear all costs associated with, reading meters, measuring groundwater levels, and water quality monitoring for the Landowner Wells. Natomas will have the right to approve the meters, and the monitoring and metering protocols, for the Landowner Wells, which approval will not be unreasonably withheld. Natomas shall provide landowner with copies of any and all metering information and data as the information is collected.

4.7 Water Quality. Landowner reserves the right to resume diverting Natomas' surface water if any of the Landowner's Wells reaches the end of its useful life or begins to produce water Landowner reasonably determines to be of poor quality. Natomas reserves the

right to terminate conjunctive use of a well due to poor water quality or the potential of water quality issues.

SECTION 5. DISPUTE RESOLUTION.

5.1 Mediation. If either of the Parties reasonably determines that the other party has, or is about to, materially breach this Agreement, or if either of the Parties encounters difficulties in the working relationship that do not amount to a breach and that have not been resolved informally then the complaining party shall describe its concerns in writing and deliver same to the other party. The Parties shall meet and confer within ten (10) days following delivery of the notice and shall attempt in good faith to resolve the issues identified by the complaining party and any additional issues identified by the other party. If the Parties are unable to resolve the issues through the meet and confer process they shall jointly select a neutral mediator to provide mediation services. The costs of mediation shall be shared equally between the Parties.

5.2 Judicial Review. In the event of a dispute between the Parties relating to the Agreement that has not been resolved within ninety days (90) following the commencement of mediation in accordance with Section 5.1, either of the Parties may commence a civil action in a court of competent jurisdiction in order to resolve the dispute. Compliance with Section 6.1 shall be a prerequisite to the commencement of any civil action to interpret or enforce this Agreement.

SECTION 6. MISCELLANEOUS PROVISIONS.

6.1 Relationship of the Parties. It is understood, agreed and intended by the Parties that in performing this Agreement the Parties are each separately and independently carrying out their respective businesses and that this Agreement does not and shall not create or constitute a partnership or joint venture between the Parties. It is further understood, agreed and intended by the Parties that neither is the employee or agent of the other. This Agreement shall at all times be read, interpreted and applied in accordance with such intention.

6.2 Entire Transaction. This Agreement and documents expressly incorporated herein contain all of the Transaction of the Parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions hereof may be amended or modified in any manner whatsoever except by a written instrument signed by duly authorized representatives of each of the Parties hereto.

6.3 Successors; Assignments. The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the successors and assignees of the Parties.

6.4 Further Action. The Parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Agreement.

With a copy to: Kevin M. O'Brien
Downey Brand LLP
621 Capitol Mall, 18th Floor
Sacramento, CA 95814
Voice: 916-444-1000
Fax: 916-444-2100

Landowner: The Natomas Basin Conservancy
Attn: Executive Director
2150 River Plaza Drive, Suite 460
Sacramento, CA 95833
Voice: 916-649-3331

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Natomas Central Mutual Water Company:

Landowner:

By _____

By _____

Title _____

Title _____

Date _____

Date _____

ATTEST:

ATTEST:

By _____

By _____

Title _____

Title _____

Date _____

Date _____