

## COUNCIL AGENDA REPORT

February 2, 2010

TO: City Council

FROM: City Manager

Prepared by: Director of Utilities 

**SUBJECT: APPROVE A SUPPLEMENTAL WATER AGREEMENT TO SUPERSEDE THE AGREEMENTS TO THE ORCUTT COMMUNITY DEVELOPERS AND RATIFY AUTHORITY TO IMPLEMENT THE SANTA MARIA GROUNDWATER LITIGATION STIPULATION**

### RECOMMENDATION:

That the City Council:

1. Adopt a resolution to approve a supplemental water agreement to:
  - A. Supersede the agreement authorized in Resolutions No. 2003-150 and No. 2004-137 to provide up to 900 Acre Feet (AF) of supplemental water annually to satisfy the Orcutt Community Plan (OCP) per the Santa Maria Groundwater Litigation Stipulation (Litigation) and;
  - B. Pursuant to the Litigation Stipulation, increase the per AF cost of supplemental water by 20-percent from \$25,200 to \$30,240 for the Orcutt Community Plan water sales; and
  - C. Provide for water sales for New Urban Uses; and
  - D. Authorize the Director of Utilities and Director of Administrative Services to hold, in trust, deposits associated with the supplemental water agreements 20-percent increase per AF cost on behalf of Golden State Water Company (Golden State) to offset their costs for the court-mandated Twitchell Management Authority (TMA) per the Litigation Stipulation dated June 30, 2005; and
  - E. Authorize the Director of Utilities and Director of Administrative Services to release this portion of the supplemental water agreement deposits pertaining to the 20-percent increase per AF to Golden State to offset their financial obligations to the TMA per the Litigation Stipulation when the deposits become nonrefundable; and
2. Ratify the Director of Utilities with the authority to implement the terms of the Litigation Stipulation dated June 30, 2005, signed by the Mayor per Resolution No. 2005-112.

## **SUMMARY:**

In August 2003, the City began providing supplemental water to Orcutt community developers to meet the Orcutt Community Plan's requirement to fulfill the Santa Barbara County water policy. This policy required new development to offset its long-term water needs with supplemental water supplies. The City has an agreement with Golden State to provide supplemental water. During this time, the Santa Maria Groundwater Litigation, initiated in 1997, was moving toward a settlement between the City, Golden State Water Company, Guadalupe, and a large group of landowners. The settlement, known as the Stipulation, involved the determination of groundwater rights, a physical solution to protecting the Basin, and the development of a water authority. The Stipulation contained documents that describe how the water purveyors and landowners would work to manage the long-term health of the Santa Maria Valley Groundwater Basin (Basin). These efforts provide a collaborative approach to water management within the Basin for the benefit of the residents as well as the region. This Council Agenda Report provides mechanisms for the City to fulfill strategic obligations within the Stipulation such as:

- A twenty-percent increase in the per AF cost for supplemental water; and
- Providing supplemental water for New Urban Uses to offset water demand for new developments within the sphere of influence as defined in the Stipulation; and
- Ratification of the Director of Utilities authority to implement the terms of the Stipulation including the development and implementation of a water authority.

## **BACKGROUND:**

### *Supplemental Water Sales to the Orcutt Community*

Resolution No. 2003-150 and No. 2004-137 authorized the City's sale of up to 900 AF of supplemental water to meet the Orcutt Community Plan's (OCP) requirement to fulfill Water Policy (WAT-O2). WAT-O2 states that the water demand for a new discretionary development must be offset by long-term supplemental water supplies. The City of Santa Maria is under agreement with Golden State Water to supply supplemental water. According to the Litigation, "supplemental water" is defined as a portion of the yield of the State Water Project (SWP) entitlement held by the City, or a portion of the historic groundwater rights to the Basin held by the City in accordance with the final judgment entered in *Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*, Superior Court, County of Santa Clara, Lead Case No. CV 770214 ("Basin Adjudication"). The SWP yield is derived from two sources: water that is imported and delivered directly to customers and return flows from that water, which is percolated into the ground at the Wastewater Treatment Plant. Santa Maria residents did not experience a reduction in the amount of SWP water received or a change in their water quality with the approval of these agreements. Orcutt Community supplemental water sales, as of June 30, 2009, total over \$6.8 million from projects in various stages. Some 166 AF of water has been sold and another 305 AF is committed.

### *Santa Maria Groundwater Litigation*

The Litigation began in July 1997 when the Santa Maria Valley Water Conservation District (District) filed a complaint against the Cities of Santa Maria, Guadalupe, Southern California Water Company (now Golden State), and unnamed defendants.

The District challenged the rights of the City, Guadalupe and Golden State to import SWP water into the Basin. In July 2004, the City and the District reached a tentative settlement agreement resulting in the creation and signing of a June 30, 2005 Stipulation that settled the Litigation between the stipulating parties. Those refusing to sign continued to litigate. A final judgment was issued on January 25, 2008. An appeal occurred and lingers with inconsequential impacts to the terms of the Stipulation thus far.

The Stipulation contains language regarding the declaration of water rights and describes the physical solution to maintain the health of the groundwater basin through monitoring and management. The Stipulation outlines three management areas. They are named as the Santa Maria Valley, the Northern Cities, and the Nipomo Mesa management areas.

The physical solution provision for the Santa Maria Valley Management Area includes a determination of water rights to sources of supply. The water purveyors received 80-percent of the Twitchell Project yield along with the imported SWP water supply and associated return flows. The City's portion of Twitchell Project yield amounts to 14,300 AF per year. The stipulating landowners received rights to the remaining 20-percent of the Twitchell Project yield. The City also retained its historic groundwater rights, and the court awarded the City prescriptive rights that may be exercised against certain non-stipulating parties.

*Twitchell Management Authority*

The Stipulation outlines that the monitoring and management of the Santa Maria Valley Management Area is to occur through a court-approved committee known as the Twitchell Management Authority. The TMA is comprised of representatives from the cities of Santa Maria and Guadalupe, Golden State, the Conservation District, and the stipulating landowners. Santa Maria currently serves as the presiding chair and secretary/treasurer of the TMA. The TMA manages and administers all new projects to maintain and enhance the Twitchell Project yield. The District maintains their current practice of day-to-day operation of the Twitchell Project and is not obligated to pay an annual portion of the TMA budget. Each other entity with rights to the Twitchell yield is obligated to pay an annual portion of the TMA budget, consistent with the Stipulation. These obligations are outlined as follows:

<b>Participant</b>	<b>TMA Budget</b>	
<b>City of Santa Maria</b>		<b>\$ 290,468.75</b>
<b>Golden State Water</b>		<b>203,125.00</b>
<b>City of Guadalupe</b>		<b>26,406.25</b>
<b>Stipulating Landowners</b>		<b>130,000.00</b>
<b>TOTALS</b>		<b>\$ 650,000.00</b>

## *New Urban Uses*

"New Urban Uses" as defined by the Stipulation are municipal and industrial projects which may occur on land that, as of January 1, 2005, were located: 1) within the boundaries of the City's sphere of influence, or within the process of inclusion within the sphere of influence; or 2) within the certificated service area of a publicly regulated utility. Also, New Urban Uses may be on land adjacent to or within one quarter mile of the boundary of a water service area. A New Urban Use can also be located with the OCP. Pursuant to the Stipulation, New Urban Uses must provide a source of supplemental water to offset demand associated with that development from the local public water supplier to offset the water demand for the project. The New Urban Use areas are identified in Attachment "A". Golden State provides retail water service to the Orcutt community and to some areas defined under New Urban Uses.

### *Authority to Implement Stipulation*

Resolution No. 2005-112 authorized the Mayor to sign the Stipulation for Judgment in the Litigation. The Utilities Department's implementation of the Stipulation will be ratified with the proposed approval of the resolution with this Council Agenda Report.

### **DISCUSSION:**

Exhibit "F" of the Stipulation contains several attachments. Two of these attachments include the Water Management Agreement between the City and Golden State and the Santa Maria Valley Public Water Purveyor Water Management Agreement (Purveyor Agreement) between the City of Santa Maria, the City of Guadalupe, and Golden State. These documents outline how these water purveyors will do business for the health of the groundwater basin management area. Section 6 of the Purveyor Agreement outlines the requirement to implement the \$5,040 (20-percent) increase per AF for supplemental water and the establishment of water sales for New Urban Uses in tandem with the Stipulation.

Section 6.1 of the Santa Maria Valley Public Water Purveyor Water Management Agreement (Attachment "B") discusses New Urban Uses stating:

*All new customers of SCWC, or existing customers proposing to increase their water use through a change in land use requiring a discretionary land use permit or other form of land use entitlement, as specified in Section X(D) (2) of the Stipulation shall provide Supplemental Water to offset the demand associated with that prospective use, through the protocol provided in the 2004 agreement are deemed to have satisfied the requirements of this Section and are exempt from the requirements of Section 6.2.*

Section 6.2 of the Santa Maria Valley Public Water Purveyor Water Management Agreement reads:

*"In addition to the fee paid to secure Supplemental Water pursuant to the 2004 Agreement, an additional 20% shall be charged to the SCWC (now Golden State) Project Proponent by Santa Maria and shall be placed into either the Twitchell operational fund or the Twitchell capital fund. That incremental charge deposited in the applicable fund, shall be deemed a SCWC contribution to offset any SCWC TMA funding requirements."*

The cost of the supplemental water sold for both the OCP and New Urban Uses is \$30,240 per AF and in both scenarios \$5,040 per AF is designated to Golden State to offset their fiscal obligations to the TMA. The monies from this increase will be used at the TMA's discretion for projects that will maintain and enhance Twitchell yield to benefit the Basin and uphold the obligations outlined in the Stipulation.

Specific milestones within the Supplemental Water Agreements (Attachment "C") outline payment requirements for the water. A ten-percent deposit toward the total purchase price of the water is due within five business days from the signing of the agreement. This deposit is refundable until discretionary approval of the development is achieved from Santa Barbara County Planning. Discretionary approval is considered County Planning Commission and Board of Supervisor's approval of discretionary permits necessary for the project, including any tentative tract map, use permit, development plan, if applicable, zoning changes, and General Plan amendments. When discretionary approval occurs, Golden State's portion of the deposit will be released to the TMA Fund, which is maintained under the auspices of the City. Final payment for the total purchase price of the water for the supplemental water agreements is due prior to recordation of the project final map. All remaining funds associated with the 20-percent increase will be released to the TMA on behalf of Golden State at that time. An accounting of these transactions will be outlined within the TMA financial reports shared at each TMA meeting.

#### Fiscal Considerations

Implementing Section 6 of the Purveyor Agreement has no fiscal impacts on City residents nor does it change the City's financial obligation to the TMA, which is paid from the Water Resources Fund. The City's General Fund will continue to receive the \$25,200 per AF of supplemental water sold. As with the original OCP water sales agreements, all regulatory requirements will be met by the City for permits, consents, entitlements and California Environmental Quality Act requirements at the cost of the developer.

#### Impact to the Community

Implementation of the Litigation Stipulation meets the City's court-mandated requirements and protects the health of the Basin. Protecting the health of the Basin assists in sustaining the City's water resource supplies while maintaining water quality for the residents. The City has sufficient supplemental water to serve the demands for the OCP as well as New Urban Uses from the original 900 AF of water allocated by Resolutions No. 2003-150, No. 2004-137. Further, the City has sufficient water resources to continue these efforts while fulfilling the commitments authorized in Resolution No. 2010-05 for water sales to the Nipomo Community Services District.



#### Other Agency Review:

Santa Barbara County Planning  
Golden State Water Company

  
RICHARD G. SWEET, P.E.  
Director of Utilities

CITY OF SANTA MARIA

CURRENT PLANNED CITY SERVICE AREA

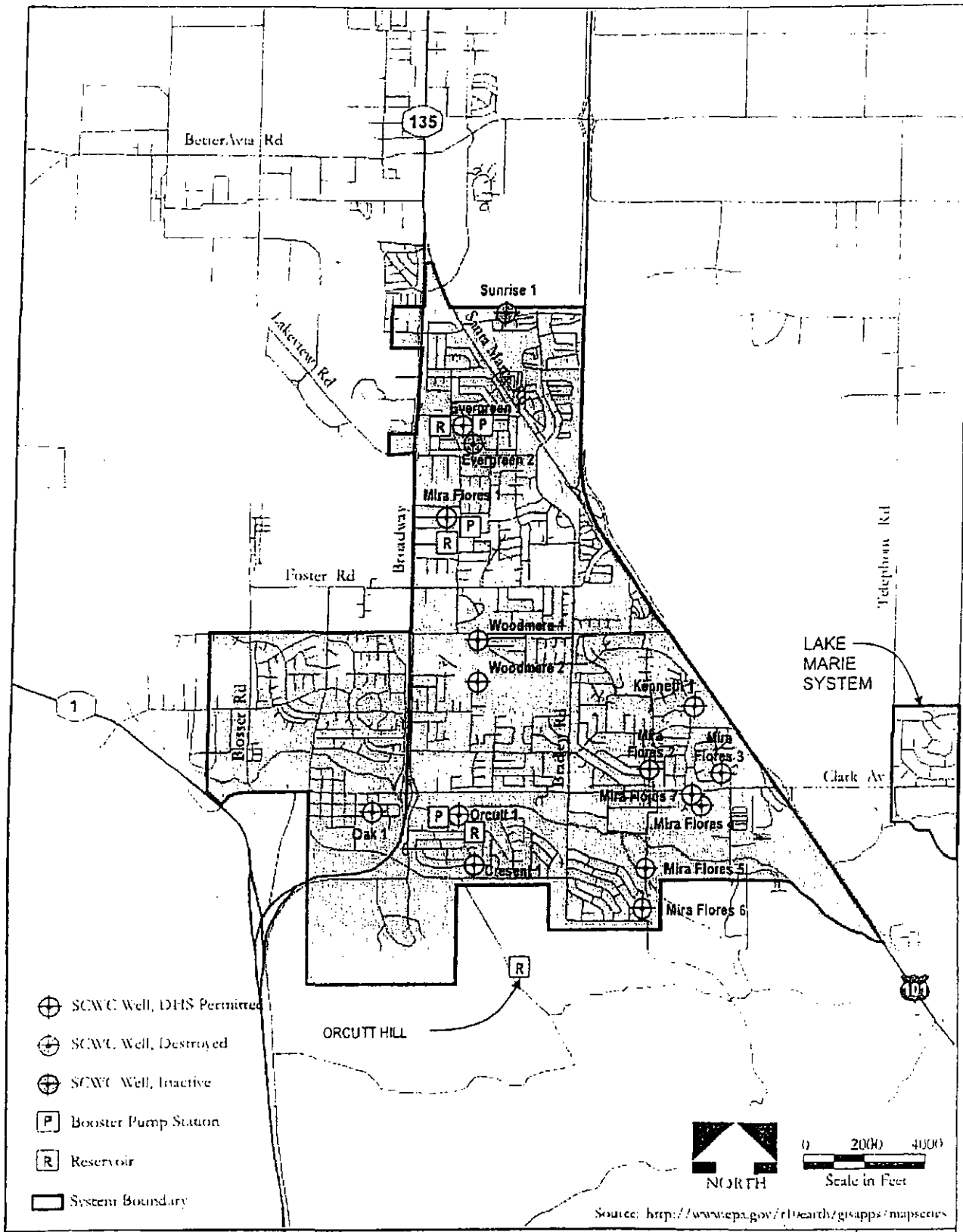
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 = CURRENT PLANNED CITY SERVICE AREA

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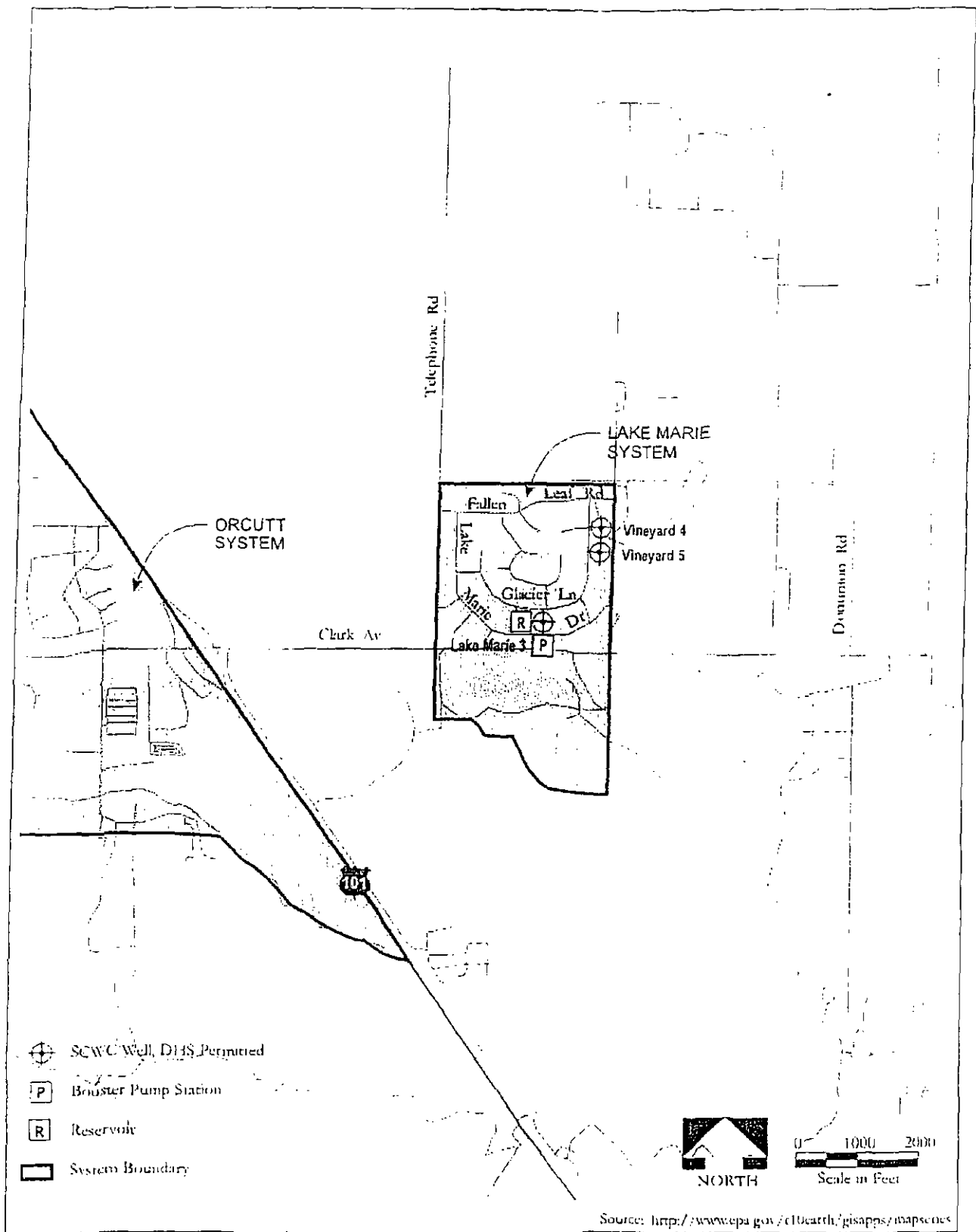
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8/2004

**Southern California Water Company**  
**Orcutt System**



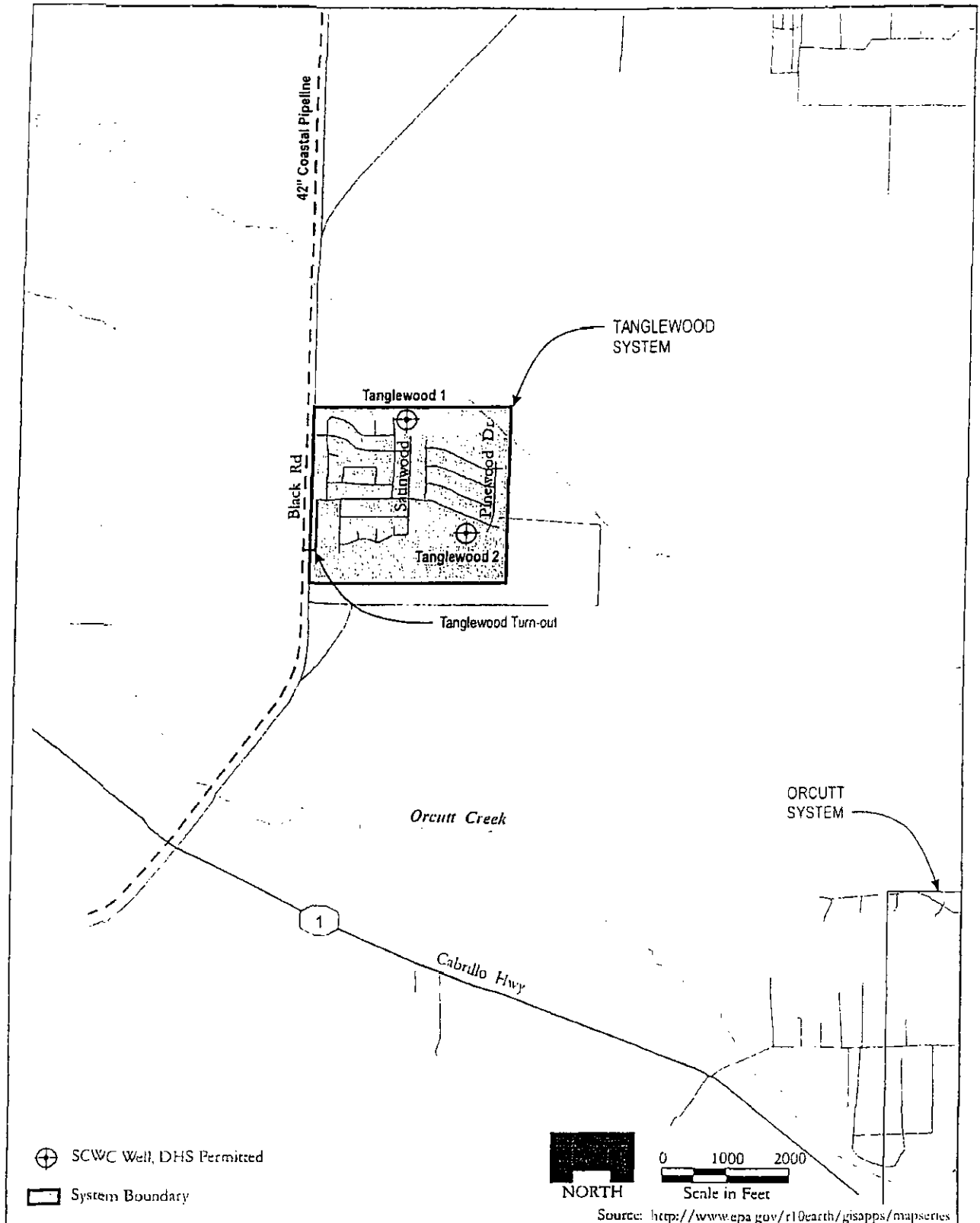
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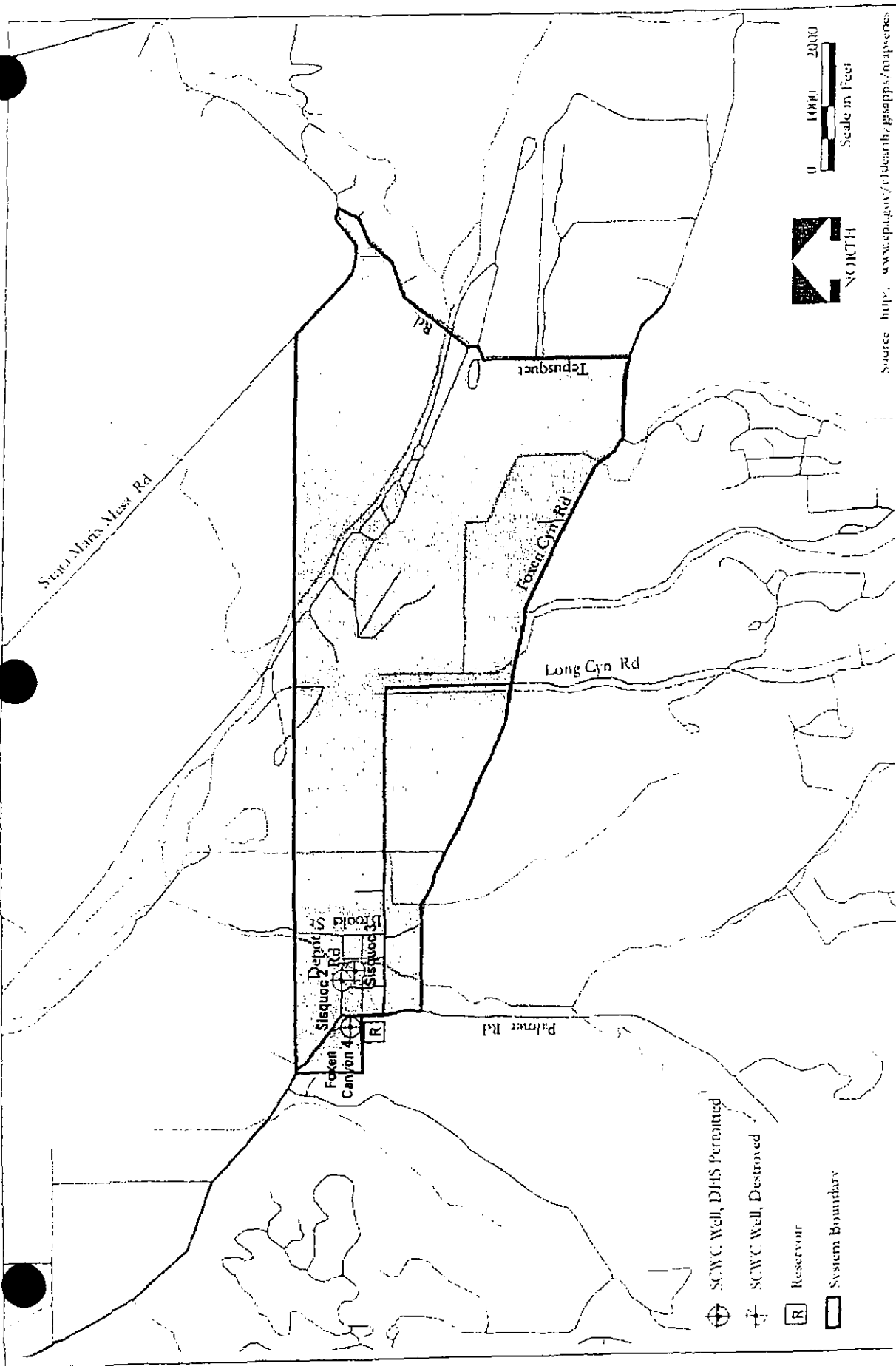
**Southern California Water Company**

**Lake Marie System**





REVISION: 8/2004	<b>Southern California Water Company</b>	<b>Tanglewood System</b>	FIGURE



Source: <http://www.cpa.gov/rlssearch/gisapps/mapview>

**Southern California Water Company  
Sisquoc System**

- ⊕ SCWC Well, DHS Permitted
- ⊕ SCWC Well, Destroyed
- Ⓡ Reservoir
- ▭ System Boundary

REVISED 8/2004

# **Exhibit 1F**

## **Santa Maria Valley Public Water Purveyor Water Management Agreement**

*The original signature page of this agreement for Southern California Water Company was filed with the Court on or about September 1, 2005. The original signature page for the City of Guadalupe was filed on or about September 6, 2005. The original signature page for the City of Santa Maria was previously hand-delivered to the Court.*

**ATTACHMENT B**

**SANTA MARIA VALLEY PUBLIC WATER PURVEYOR WATER MANAGEMENT  
AGREEMENT**

The CITY OF SANTA MARIA ("Santa Maria"), the CITY OF GUADALUPE ("Guadalupe"), and SOUTHERN CALIFORNIA WATER COMPANY ("SCWC") enter into this SANTA MARIA VALLEY PUBLIC WATER PURVEYOR WATER MANAGEMENT AGREEMENT ("Agreement") on this \_\_\_ day of \_\_\_\_. Santa Maria, Guadalupe and SCWC are referred to individually as a "Party" and collectively as the "Parties".

**RECITALS**

A. Santa Maria is a Charter City, providing potable water service to customers within and adjacent to its municipal boundaries.

B. Guadalupe is a general law city, providing potable water service to customers.

C. SCWC is an investor-owned public utility within the meaning of Public Utilities Code section 2400 *et seq.* and operates pursuant to the California Public Utility Act, Public Utilities Code section 200 *et seq.* SCWC provides potable water service to customers within its certificated service area in Santa Barbara County, generally referred to as the "Santa Maria Customer Service Area," which includes four unincorporated areas of Santa Barbara County, commonly known as "Orcutt," "Tanglewood," "Lake Marie," and "Sisquoc," and one unincorporated area in San Luis Obispo County, commonly referred to as the "Nipomo Mesa."

D. On July 20, 2004, Santa Maria and SCWC entered into a Water Management Agreement ("2004 Agreement"), which formalized certain efforts to coordinate the provision of potable water service within their respective service areas. The 2004 Agreement is incorporated herein by reference and remains in full force and effect and is attached as Exhibit A.

E. The Parties have historically relied on local groundwater to provide potable water service to their respective customers and hold rights to pump groundwater ("Groundwater Rights") from the Santa Maria Groundwater Basin ("Basin").

F. The Parties also each hold contracts to receive water from the State Water Project ("SWP Entitlement," collectively, and "Santa Maria SWP Entitlement," "Guadalupe SWP Entitlement," or "SCWC SWP Entitlement," individually). Santa Maria's contract is for 17,800

acre feet, SCWC's contract is for 550 acre feet and Guadalupe's contract is for 610 acre feet. Collectively, the SWP Entitlement totals 18,960 acre-feet per year.

G. The Parties are also litigants in the Santa Maria groundwater basin (*Santa Maria Valley Water Conservation District v. City of Santa Maria, et al.*, Superior Court, County of Santa Clara, Lead Case No. CV 770214 ("Basin Adjudication").

H. The Parties, along with a large number of other litigants, intend to enter into a stipulation ("Stipulation") which will settle the Basin Adjudication among the stipulating parties.

I. This Agreement is that agreement described as Exhibit F in the Stipulation.

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

**Section 1. Definitions.** The terms used in this Agreement shall have the same definition as provided in the Stipulation, unless expressly provided otherwise in this Agreement.

**Section 2: Purpose.** The purpose of this Agreement is to provide the mechanism through which the Parties shall meet their obligations as intended in the Stipulation, through that certain agreement designated as Exhibit F.

**Section 3: Term.** This Agreement shall be effective concurrently with and on the same terms as the Stipulation, and shall remain in effect concurrent with the Stipulation.

**Section 4: Twitchell Yield.**

4.1 Division. The Parties agree that the 80% of the 32,000 acre-feet of Twitchell Yield shall be allocated as follows: Santa Maria 14,300 acre-feet; Guadalupe 1,300 acre-feet and SCWC 10,000 acre-feet. The Parties acknowledge that the remaining 20% of the Twitchell Yield (6,400 acre-feet) is allocated to the Overlying Owners within the District who are Stipulating Parties, subject to the terms of the Stipulation.

4.2 Transfer of Twitchell Yield. The Parties agree that any proposed transfer of Twitchell Yield to one of the Parties shall be made available to all Parties. Each Party shall be given 30 days advance notice to elect to participate in any proposed transfer. The amount of transferred Twitchell Yield shall be divided between the Parties participating in the transfer in proportion to those Parties' then existing Twitchell Yield. If only one Party participates in the transfer, that Party shall be entitled to the full amount of transferred Twitchell Yield.

**Section 5. Twitchell Management Authority.**

5.1 All decision making of the TMA shall be conducted, to the extent reasonably practical, on a consensus basis. Provided, however, if consensus cannot be achieved, TMA decisions shall be made by majority vote. Unless otherwise specified, the weight of each Party's voting rights shall be equivalent to its then-existing Twitchell Yield.

5.2 The Parties will work with the other Twitchell Participants to develop rules and regulations governing the TMA.

5.3 Budget. Each Stipulating Party holding Twitchell Yield shall be obligated to fund the TMA in proportion to that Party's then existing Twitchell Yield.

5.3.1 The TMA shall establish its members' funding obligations through a duly adopted budget, which shall project the TMA funding needs in 3-5 year increments, as it deems necessary to meet its obligations to preserve Twitchell Yield. Any TMA budget shall be adopted at least 18 months in advance of its intended implementation to provide adequate time for SCWC to secure PUC approval to fulfill its financial obligations as a member of the TMA. The Parties will to work cooperatively to achieve consensus on the TMA operating budget. If Santa Maria and SCWC are unable to agree on the operating budget, SCWC shall grant Santa Maria a proxy for purposes of the TMA vote on the operating budget. If SCWC grants such a proxy and an operating budget is subsequently approved, SCWC retains the right to challenge any such operating budget through the Court's reserved jurisdiction provided in the Stipulation. SCWC's obligations with respect to any such operating budget is subject to final approval by the PUC.

5.3.2 Consistent with Section V(D)(3)(c) of the Stipulation, the TMA's annual budget for the first five years following PUC approval of the Stipulation shall be as provided in Exhibit B to this Agreement. As provided in Exhibit B, the TMA budget shall include anticipated costs necessary to fund:

5.3.2.1 The Management Area Engineer activities for the Valley Management Area, including the implementation of the Valley Management Area Monitoring Program and the associated preparation of the Annual Report; and

5.3.2.2 The preparation and implementation of the Twitchell Project Manual; and

5.3.2.3 The funding of Twitchell Project operations and capital funds that the TMA determines are necessary to preserve the Twitchell Yield. The requirements for the Twitchell operational fund shall take into account the amount collected by the District from its current operation and maintenance assessment. The Twitchell capital fund shall consist of any unused revenues from the Twitchell operating fund, plus other funds necessary to implement approved Capital Improvement Projects.

5.4 **Capital Improvement Projects.**

5.4.1 The Parties agree that if one Party proposes a TMA Capital Improvement Project, that Party shall make available to the other Parties the opportunity to participate in the funding of the TMA Capital Improvement Project in proportion to the Parties' share of Twitchell Yield.

5.4.1.1 If a Party chooses not to participate in the funding of the TMA Capital Improvement Project, and that Party's participation is required to implement the Project, the Parties may petition the Court to resolve the issue on an expedited basis.

5.4.1.2 If a Party chooses not to participate in the funding of the TMA Capital Improvement Project, and that Party's participation is not required to implement the Project, the Party or Parties choosing not to participate in the Project shall grant the Party proposing the Project a proxy for purposes of the TMA vote to approve the Project, so long as the proposed Project will not adversely affect a Party's share of Twitchell Yield or otherwise cause material injury to a Party.

5.4.1.3 If fewer than all Parties participate in the funding of a TMA Capital Improvement Project, the Parties who participate in the funding of the Project shall be entitled to the benefits received from the Project in proportion to their financial contribution.

5.4.2 If an emergency situation exists such that a TMA Capital Improvement Project is necessary to abate the emergency, the Parties may petition the Court for an order approving the Project on an expedited basis.

**Section 6. New Urban Uses - SCWC.** The 2004 Agreement is expressed modified only as follows:

6.1 All new customers of SCWC, or existing customers proposing to increase their water use through a change in land use requiring a discretionary land use permit or other form of land use entitlement, as specified in Section X(D)(2) of the Stipulation ("SCWC Project

Proponents") shall provide Supplemental Water to offset the demand associated with that prospective use, through the protocol provided in the 2004 Agreement. The entities that have entered into the Reservation/Purchase Agreements identified on Exhibit C to this Agreement and Exhibit B to the 2004 Agreement are deemed to have satisfied the requirements of this Section and are exempt from the requirements of Section 6.2, below.

6.2 In addition to the fee paid to secure Supplemental Water pursuant to the 2004 Agreement, an additional 20% shall be charged to the SCWC Project Proponent by Santa Maria and shall be placed into either the Twitchell operational fund or the Twitchell capital fund. That incremental charge deposited in the applicable fund, shall be deemed a SCWC contribution to offset any SCWC TMA funding requirements.

**Section 7. New Urban Uses - Guadalupe.**

7.1 Guadalupe and Santa Maria agree that it is within their mutual interests to cooperate and coordinate their efforts to provide retail water service within their respective service areas.

7.2 Guadalupe and Santa Maria mutually acknowledge the benefits of importing SWP supplies to augment their use of local groundwater.

7.3 It is to the mutual advantage of Guadalupe and Santa Maria to have several alternatives for making use of their SWP Entitlements, Return Flows and Twitchell Yield to create flexibility, reliability, and cost effectiveness in their water supply systems. Santa Maria and Guadalupe shall each have the right to use the other's unused Twitchell Yield in any given year if needed.

7.4 Guadalupe and Santa Maria agree to work cooperatively to provide a reliable and cost effective mechanism through which Santa Maria and Guadalupe can maximize the use of their respective SWP supplies and Return Flows within the Basin. Santa Maria agrees not to oppose any effort by Guadalupe that is based on reliable data to increase the fixed percentage of Guadalupe's SWP Return Flow.

7.5 Santa Maria agrees to work cooperatively with Guadalupe to provide Guadalupe with additional SWP supplies. Guadalupe shall compensate Santa Maria through a specified dollar amount or through an exchange of water resources, as Guadalupe and Santa Maria deem appropriate. As further consideration, Santa Maria shall have a right of first refusal to purchase any SWP Return Flows that Guadalupe elects to sell from its existing SWP Entitle-



ment, and any future SWP Entitlement, that are not for use within or adjacent to Guadalupe's service area.

**Section 8. Representations or Warranties of Guadalupe.** Guadalupe makes the following representations, warranties and covenants to SCWC and Santa Maria:

8.1 **Power and Authority to Execute and Perform this Agreement.** Guadalupe has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

8.2 **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of Guadalupe, and is enforceable against Guadalupe in accordance with its terms.

**Section 9. Representations or Warranties of Santa Maria.** Santa Maria makes the following representations, warranties and covenants to SCWC and Guadalupe:

9.1 **Power and Authority to Execute and Perform this Agreement.** Santa Maria has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

9.2 **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of Santa Maria, and is enforceable against Santa Maria in accordance with its terms.

**Section 10. Representations or Warranties of SCWC.** SCWC makes the following representations, warranties and covenants to Santa Maria and Guadalupe:

10.1 **Power and Authority to Execute and Perform this Agreement.** SCWC is a corporation duly formed and in good standing in the State of California. Subject to California Public Utility Commission approval, expressly including the ability to recover the costs of implementing this agreement through its authorized regulated utility rates, SCWC has the corporate power and authority to enter into this Agreement and to perform its obligations and all necessary corporate approvals and authorizations have been obtained.

10.2 **Enforceability.** Subject to California Public Utility Commission approval as provided in section 10.1, this Agreement constitutes a legal, valid and binding obligation of SCWC, enforceable against SCWC in accordance with its terms.

**Section 11. Remedies Not Exclusive.** Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive any Party from also using any other remedies provided by this Agreement or by law.

**Section 12. Subject to Applicable Law.** The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing municipal corporations as they now exist and as they may be amended or codified by the Legislature of the State of California.

**Section 13. Integration.** This Agreement shall be integrated with, and interpreted in companion with the 2004 Agreement, the Stipulation, and the final judgment entered in the Basin Adjudication that is based upon the Stipulation. These set of agreements contain the entire understanding between SCWC, Santa Maria and Guadalupe with respect to the subject matter, and supersede all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between SCWC, Santa Maria and Guadalupe. This Agreement cannot be amended except in writing signed by all Parties.

**Section 14. No Waiver.** Any failure or delay on the part any Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

**Section 15. Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered, or mailed by certified mail, return receipt requested, or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered, or three (3) days after being mailed in any depository maintained by the United States Postal Service, with prepaid postage, certified, return receipt requested or one (1) day after being deposited for next day delivery with Federal Express or other reputable overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

**Section 16. Headings; Section References.** Captions and headings appearing in this Agreement are inserted solely as reference aids for the ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

**Section 17. Separability.** If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to

Santa Maria Valley Water Management Agreement

~~the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement.~~ The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

**Section 18. Binding Effect Assignment.** This Agreement shall only be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. No Party shall assign this Agreement except with the prior written approval of the other Parties. Any unauthorized attempt to assign this Agreement shall be null and void. Notwithstanding the foregoing, SCWC shall have the right to assign this Agreement to any affiliate.

**Section 19. Attorneys Fees.** In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If all Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the Court.

**Section 20. Force Majeure.** If by reason of acts of God, earthquakes, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, state, or local law, order, rule, or regulation, any Party is prevented from complying with any condition of this Agreement, then while so prevented the condition shall be suspended and the Party shall be relieved of the obligation of complying with such covenant and shall not be liable for damages for failure to comply with it. Any obligation of any Party shall be extended for as long as it is so prevented from complying with any condition or covenant in the Agreement.

**Section 21. Dispute Resolution, Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. The Parties agree that if any dispute arises with respect to any provision of this Agreement, the Parties shall meet and confer in an attempt to resolve any such disputes. If, after 90 days, the meet and confer process is unsuccessful, the dispute shall be presented for Court review and determination pursuant to the Court's reserved jurisdiction and judicial review provisions provided in the Stipulation.

**Section 22. Counterparts.** This Agreement may be signed in any number of counterparts, including counterparts by facsimile signature, each of which shall be deemed an original,

but all of which shall together constitute one and the same instrument. The original signature pages shall be filed with the Court as Exhibit P to the Stipulation.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

**CITY OF SANTA MARIA:**

City of Santa Maria  
a California municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Phone: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

**SCWC:**

Southern California Water Company,  
a California corporation

By: Denise L. Kruger  
Name: Denise L. Kruger  
Title: Senior Vice President of Operations  
Address: 3035 Prospect Park, Suite 60  
Rancho Cordova, CA 95670  
Fax: (916) 853-3674  
Phone: (916) 853-3606

APPROVED AS TO FORM:

By: Robert J. Saperstein  
Robert J. Saperstein,  
Hatch & Parent  
Attorneys for SCWC

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eric Garner,  
Best Best & Krieger  
Attorneys for City of Santa Maria

(Signatures continued on following page)

but all of which shall together constitute one and the same instrument. The original signature pages shall be filed with the Court as Exhibit F to the Stipulation.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

CITY OF SANTA MARIA:

SCWC:

City of Santa Maria  
a California municipal corporation

Southern California Water Company,  
a California corporation

By: *L. Lavagnino*  
Name: Larry Lavagnino  
Title: Mayor

By: \_\_\_\_\_  
Name: Denise L. Kruger  
Title: Senior Vice President of Operations

Address: 110 E. Cook St. Rm. 1  
Santa Maria, CA 93454

Address: 3035 Prospect Park, Suite 60  
Rancho Cordova, CA 95670

Fax: (805) 349-0567  
Phone: (805) 925-0951 x204

Fax: (916) 853-3674  
Phone: (916) 853-3606

Attest:

APPROVED AS TO FORM:

By: *Patricia A. Perez*  
*Patricia A. Perez*, City Clerk  
*Chief Deputy*

By: \_\_\_\_\_  
Robert J. Saperstein,  
Hatch & Parent  
Attorneys for SCWC

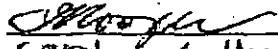
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eric Garner,  
Best Best & Krieger  
Attorneys for City of Santa Maria


(Signatures continued on following page)

CITY OF GUADALUPE


City of Guadalupe,  
a California municipal corporation

By:   
Name: Carolyn Galloway-Cooper  
Title: city Administrator  
Address: 919 Obispo street  
Guadalupe, CA 93434  
Fax: 805 343-512  
Phone: 805 343-1340

Attest:

By:   
BRENDA HOFF, City Clerk

APPROVED AS TO FORM:

By:   
Mark J. Mulkerin,  
Burke, Williams & Sorensen, LLP  
Attorneys for Guadalupe

## SUPPLEMENTAL WATER PURCHASE AGREEMENT

This Supplemental Water Purchase Agreement ("Agreement") is made and entered into as of \_\_\_\_\_, 2009, by and between the CITY OF SANTA MARIA ("City"), a California municipal corporation, and \_\_\_\_\_, a California \_\_\_\_\_ ("Developer"). The City and Developer are referred to individually as a "Party" and collectively as the "Parties".

### RECITALS

A. The City provides retail potable water service to customers within its service area in the Santa Maria Valley, in northern Santa Barbara County. The City holds contracts to receive water from the State Water Project ("SWP"). City also hold rights to pump groundwater from the Santa Maria Valley Groundwater Basin ("Basin").

B. In 1997, the County of Santa Barbara ("County") adopted the Orcutt Community Plan ("OCP"), which establishes, among other things, certain policies regarding water supplies to be secured for new development projects in Orcutt. The OCP was amended in 2001. In particular, the OCP requires that the water demand associated with projects be offset by "supplemental" water supplies that do not result in further overdraft of the Basin.

C. The City and Golden State Water Company ("Golden State") are parties to a certain groundwater adjudication lawsuit commonly referred to as the Santa Maria Groundwater Litigation (Santa Maria Valley Water Conservation District vs. City of Santa Maria, et al.; Superior Court of California, County of Santa Clara Case no. 1-97-CV-770214) ("Basin Litigation"). On August 3, 2005, the Court approved a Settlement Stipulation ("Stipulation") that was signed by the Parties, related to the Basin Litigation which, among other things, provides that "New Urban Uses" shall obtain water service from the local public water supplier and shall provide a source of supplemental water to offset the water demand associated with a development classified as a "New Urban Use." "New Urban Uses" are municipal and industrial uses that may occur on land that, as of January 1, 2005, was located within the boundaries of a municipality or its sphere of influence, or within the process of inclusion in its sphere of

influence, or within the certificated service area of a publicly regulated utility. New Urban Use areas are attached as Exhibit D to the Stipulation. The Stipulation was later incorporated into a Final Judgment in the Basin Litigation.

D. Developer is in the process of developing a project generally known as \_\_\_\_\_ (the "Project"), a description of which is attached hereto as Exhibit "A." The Project is a "New Urban Use," and may be located within the OCP. Developer must obtain a water supply that will satisfy the New Urban Use provisions of the Stipulation, and the OCP water policy requirements if applicable, and desires to purchase such water from the City.

E. Golden State provides retail water service to the Orcutt community and certain areas covered under the New Urban Use provisions. Developer intends to obtain retail water service for the Project from Golden State. Developer also intends to enter into an agreement with Golden State ("Service Agreement") to obtain delivery of the Supplemental Water (defined below), as contemplated in this Agreement.

F. On a long term basis, the City has water available for use in the Orcutt and New Urban Use areas, that is surplus to that needed to serve Santa Maria's current and long-term future anticipated demands. Accordingly, City is willing to provide Supplemental Water to Golden State pursuant to this Agreement (and the Service Agreement) to the benefit of the Developer and its Project.

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

1. **Purpose.** The Purpose of this Agreement is to enable Developer to satisfy OCP water policy requirements, if applicable, and the New Urban Use provisions of the Stipulation by providing Supplemental Water (defined in Section 2, below) to Golden State for the benefit of the Developer and to serve the Project, and in exchange, to provide payment to the City to offset the costs of its use of SWP water for the benefit of its customers and the Basin generally.



2. **Supplemental Water.** "Supplemental Water" shall mean a portion of the SWP entitlement held by the City, return flows associated with the City's SWP entitlement, or as otherwise defined in the Stipulation.

3. **Term and Effective Date.**

(a) **Effective Date.** This Agreement shall become effective upon payment of the Deposit required by Section 4(b) below (the "Effective Date"), provided, however, that the obligation to provide water shall not become effective until receipt by the City of the Purchase Price and the Expense Payment (the "Payment Date").

(b) **Performance Period.** Developer shall have three (3) years from the Effective Date to make payment of the Purchase Price and Expense Payment as provided in Section 4(d). If payment has not been made by the end of the Performance Period, then this Agreement shall terminate and City shall retain the Deposit.

(c) **Term.** The term of this Agreement shall commence on the Effective Date, and shall continue from the Payment Date for a period of One Hundred (100) years, and thereafter shall remain in effect for so long as the City remains a SWP contractor, or until the City permanently assigns to the Project a portion of any adjudicated right it obtains to the Basin equal to the net water demand of the Project ("Term").

4. **Right to Acquire Water.**

(a) **Acquisition of Supplemental Water.** Subject to the terms and conditions of this Agreement, the City shall sell to Developer and Developer shall purchase from the City the right to take delivery of \_\_\_\_\_ ( ) acre feet of Supplemental Water each year for the Term of the Agreement, subject to adjustment as described in Section 4(b).

(b) **Deposit.** Within five (5) business days of the approval of this Agreement by the City Manager of City, Developer shall provide payment to the City of a deposit

("Deposit") of 10% of the Purchase Price for the Supplemental Water associated with the request. The Deposit shall be applied as a credit against the payment of the Purchase Price, as defined in section 5. The Parties acknowledge that the County will determine the quantity of Supplemental Water required for the Project, and that that quantity may not be finally determined until the Project receives Discretionary Approval. The Parties acknowledge and agree that the Deposit provided for the Project will be based upon a good faith estimate of the quantity of Supplemental Water required. However, the Parties agree that the quantity of Supplemental Water for which the Purchase Price and Expense Payment is made for the Project will be that amount finally determined by the County as a part of the Discretionary Approval process, whether more or less than the amount set forth in Section 4(a).

(c) **Refundability of Deposit.** The Deposit shall be refunded to Developer within thirty (30) days of Developer's request, provided Developer provides proof that the Discretionary Approval for the associated Project was denied (whether by the County or as a result of legal challenge), or the Project is otherwise abandoned. The Deposit is nonrefundable once the Project receives Discretionary Approval. For the purpose of this Agreement, the term "Discretionary Approval" shall mean County Planning Commission and Board of Supervisors approval of the discretionary permits necessary for the Project, including without limitation, any tentative tract map, use permit, development plan, and if applicable, any zoning changes and general plan amendments, along with the exhaustion of any statute of limitations applicable to any legal challenge to the approval of the Project (including any applicable environmental review) or the final resolution of any legal challenge to the Project that affirms the approval of the Project in substantially the same form as originally proposed.

(d) **Payment of Purchase Price.** Developer shall pay to City the full remaining balance (Purchase Price plus Expense Payment minus the Deposit) for the Supplemental Water by one of the following methods:

(i) by cashier's check or wire transfer to an account designated by the City no less than one (1) business day prior to final recording of the final subdivision map for the Project; or

(ii) concurrent with the recording of a final subdivision map for the Project, provided, however, that the full remaining balance has been placed into an escrow account reasonably acceptable to City with instructions that escrow release such funds to the City upon completion of recording.

Notwithstanding the foregoing, the full remaining balance must be paid in any event within three (3) years of the Effective Date. The obligation of the City to supply water shall not become effective and no Supplemental Water shall be available to Developer for the Project until full payment for the Supplemental Water has been received by the City.

5. **Purchase Price.** Developer shall pay the City a purchase price of thirty thousand and two hundred and forty dollars (\$30,240) per acre-foot of Supplemental Water purchased (the "Purchase Price"). The Purchase Price shall constitute a one-time fee for the annual use of each acre-foot of Supplemental Water purchased for the duration of the Term of this Agreement. The Purchase Price constitutes a payment for the right to take delivery of the Supplemental Water and is due and payable as required in section 4(d) irrespective of whether Developer actually takes delivery of any Supplemental Water for the duration of the Term.

6. **City Expenses.** Developer shall also pay the City three percent (3%) of the Purchase Price as additional payment to compensate the City for its expenses related to the implementation of this Agreement (the "Expense Payment"). The Expense Payment shall be payable along with the Purchase Price in accordance with Section 4(d).

7. **Payment Terms.** All payments shall be made in immediate available funds via a cashier's check or by wire transfer to an account designated by the City. No Supplemental Water shall be delivered prior to the payment of the associated Purchase Price and Expense Payment.

8. **Delivery of Water.**

(a) **Assignment to Golden State.** Prior to the delivery of any Supplemental Water for the Project, Developer shall assign all of its rights to receipt of water under this Agreement to Golden State, which shall thereafter be responsible for taking delivery of

Supplemental Water and providing water service to the Project. Notwithstanding such assignment, Developer shall remain liable for all obligations of Developer which are set forth herein.

(b) **Point of Delivery**. Developer hereby acknowledges that City shall have no responsibility for physical delivery of Supplemental Water and that all such water shall be delivered pursuant to the Service Agreement with Golden State. The Service Agreement shall provide that Golden State is solely responsible for the physical delivery of Supplemental Water from the Basin into the delivery system serving the Projects. The amount of Supplemental Water taken by Golden State on Developer's behalf shall be measured on an annual basis commencing with the Effective Date. Any Supplemental Water that is not taken by Golden State on Developer's behalf during a given year shall be forfeited and shall not roll over to the next year.

(c) **Facilities**. The Service Agreement between Developer and Golden State shall provide for the following: (i) Golden State and/or Developer shall be solely responsible for the acquisition, construction, operation, and maintenance of wells and facilities necessary for the delivery of Supplemental Water pursuant to this Agreement, and all associated costs and expenses, including any applicable permits and approvals; (ii) Golden State shall further keep in good operation a water meter at each well to measure the volume of Supplemental Water delivered and shall provide a report to City of the meter readings on an annual basis beginning twelve months from the Effective Date; (iii) Golden State shall grant to the City the right, upon reasonable notice, to inspect such meters, wells and facilities to verify and assure meter accuracy and compliance with this Agreement; and (iv) All groundwater extraction notices with respect to the use of Supplemental Water shall be filed by and in the name of the City and Golden State shall provide City with all information necessary for to do so.

(d) **Obligations of City**. For the purposes of this Agreement, City shall have fulfilled its obligation to deliver water purchased by Developer so long as the amount of Supplemental Water purchased is available in the Basin for pumping by Golden State. This shall include the responsibility of the City, at its own expense, to import additional water supplies as required to ensure that no further overdraft in the Basin occurs, as a result of the net water

demand associated with the Project. Developer acknowledges and agrees that it shall bear all risk of loss with respect to extraction of the Supplemental Water subject to this Agreement, unless such loss is caused by the gross negligence or willful misconduct of the City.

(e) **Delivery Fees and Charges.** Except for the Purchase Price and the Expense Payment which are allocated to Developer under this Agreement, there shall not be any fee, surcharge or other assessment payable by Developer to the City for the delivery of the Supplemental Water.

(f) **Severe Water Shortage.** In the event of that the Supplemental Water delivered by City becomes subject to Severe Water Shortage Conditions as defined in the Stipulation, then the amount of Supplemental Water which the City is obligated to deliver to Developer while such Severe Water Shortage Conditions remain in effect shall be adjusted as provided in the Stipulation. The City shall have no liability to Developer for any reduction in Supplemental Water deliveries as a result of this Section 8(f).

9. **Water Quality.** The City makes no representation or warranty regarding the quality of the groundwater stored in the Basin and Developer acknowledges that it has made its own determination as to groundwater quality. Golden State shall be solely responsible for ensuring that all Supplemental Water delivered to Developer's customers has been properly treated in accordance with all applicable federal, state and local laws and regulations.

10. **Regulatory Requirements.**

(a) **Obligations of the City.** The implementation of this Agreement shall be subject to satisfaction by City of the regulatory requirements set forth herein. City shall, if necessary, undertake the following:

(i) obtaining all permits, consents, entitlements and approvals necessary to enable the City to sell and Developer to purchase the Supplemental Water that is the subject of this Agreement.

(ii) the County providing formal approval (evidenced by issuance of development entitlements) that the Supplemental Water subject to this Agreement may be relied on by the Project.

(iii) full and complete compliance with the requirements of the California Environmental Quality Act ("CEQA"), including, if it is determined that this transaction is subject to CEQA and not exempt from CEQA, the completion of an initial study, and (1) either (a) there shall have been adopted a negative declaration or a mitigated negative declaration, or (b) a final environmental impact report shall have been completed and approved, and (2) the time shall have expired within which a judicial proceeding may be instituted challenging the validity or completeness of any such determination of exemption, or adoption of a negative declaration or of a mitigated negative declaration, or approval of a final environmental impact report.

(iv) Developer shall reimburse the City for its actual expenses incurred in complying with the regulatory requirements described in sub-sections (i) through (iii) above within thirty (30) days of an itemized invoice setting forth each expense in detail. Reimbursable expenses shall include reasonable professional and consulting fees and costs incurred directly in connection with obtaining any regulatory approval for the Project, but shall not include litigation costs or expenses (which are allocated in Section 11) or any allocation or charge for time spent by City employees.

(b) **Obligations of Developer.** Developer shall be solely responsible for obtaining all regulatory approvals necessary in connection with the Project.

#### 11. **Legal Defense.**

(a) In the event of a legal action challenging the City's approval of this Agreement, and/or the ability of City to sell or deliver Supplemental Water pursuant to this Agreement arising *prior* to Discretionary Approval, then City and Developer shall meet and

confer on the appropriate response, the likelihood of success, and the cost of defending such challenge. Unless both parties agree on a common strategy and cost sharing arrangement within thirty (30) days notice of a challenge, this Agreement shall terminate;

(b) In the event of a legal action challenging the City's approval of this Agreement, and/or the ability of City to sell or deliver Supplemental Water pursuant to this Agreement arising *on or after* Discretionary Approval, then City shall defend the challenge. City shall have sole control and responsibility over the defense of such challenge, provided, however, that it shall keep Developer informed of the status of the defense on a regular basis. City shall further be responsible for all costs and expenses related to the challenge. If the challenge is not resolved within ninety (90) days of the filing of a claim, then City shall return the Purchase Price and the Expense Payment to Developer, less the Deposit, which shall be retained by the City. If the cost of the defense (including legal fees, discovery and expert costs, and court costs) exceeds the amount of the Deposit, then the City may request a meeting with Developer to discuss the adoption of a joint strategy and cost-sharing arrangement to continue the defense. If City and Developer are not able to agree on a mutually acceptable arrangement within thirty (30) days of the request, then City may terminate this Agreement. If the defense of the Agreement is successful, this Agreement shall remain in effect and if the Purchase Price is due pursuant to Section 4(d), then Developer shall pay City the Purchase Price (minus the Deposit) and the Expense Payment upon five (5) days written request from City (unless the Purchase Price and Expense Payment have already been paid to City and have not been refunded as provided above). If the defense is unsuccessful, then this Agreement shall terminate and City shall refund the balance of the Purchase Price (including the unused balance of the Deposit) and the Expense Payment (unless already refunded to Developer), and Developer shall have no further obligations hereunder. For purposes of this Agreement, a successful defense is one that affirms the City's approval of this Agreement, and/or the ability of City to sell or deliver Supplemental Water pursuant to this Agreement, either through settlement, dismissal or final court judgment. Notwithstanding the foregoing, in the event that the City obtains an opinion from counsel that the challenge has a substantial probability of success, then City may elect to terminate this Agreement, in which case the City shall return the entire Purchase Price and Expense Payment to Developer (including the unused portion of the Deposit, provided that the Deposit has not already

become non-fundable in accordance with Section 4(b)), provided, however, that City shall give Developer no less than thirty (30) days notice of such election, during which time City and Developer may discuss negotiation of a mutually acceptable agreement whereby Developer will undertake continuation of the defense.

(c) Notwithstanding any right of termination granted to City pursuant to Section 11(b), upon payment of the Purchase Price and Expense Payment in full and final recording of the subdivision map for the Project, the City shall not have the right to terminate this Agreement pursuant to Section 11(b) unless there is a successful legal challenge. For the purposes of this section, a "successful legal challenge" shall mean a final court judgment which prevents the City from selling or delivering Supplemental Water pursuant to this Agreement.

(d) City shall not be responsible for the legal defense of any challenge to the Project or physical delivery of the water by Golden State, and as between City and Developer, Developer shall bear the risk and expense of any such challenge, provided, however, that if such a challenge is successful in terminating the Project, then Developer shall have the right to terminate this Agreement and the City shall return the Purchase Price to Developer, provided that the City may retain the Deposit if it has become non-refundable in accordance with Section 4(b). City shall further have the right to retain the Expense Payment to compensate City for its professional fees and administrative expenses in negotiating and approving this Agreement.

12. **Service Area Integrity.** Nothing in this Agreement is intended nor shall it be interpreted to waive the right of City to provide water service to current or future areas within or adjacent to its existing service area.

13. **Representations or Warranties of City.** The City makes the following representations, warranties and covenants to Developer:

(a) **Power and Authority to Execute and Perform this Agreement.** The City has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.



(b) Enforceability. This Agreement constitutes a legal, valid and binding obligation of the City, and is enforceable against the City in accordance with its terms.

14. **Representations or Warranties of Developer**. Developer makes the following representations, warranties and covenants to City:

(a) Power and Authority to Execute and Perform this Agreement. Developer is a \_\_\_\_\_ duly formed and in good standing in the State of California. Developer has the \_\_\_\_\_ power and authority to enter into this Agreement and to perform its obligations and all necessary \_\_\_\_\_ approvals and authorizations have been obtained.

(b) Enforceability. This Agreement constitutes a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

15. **Termination**. This Agreement shall terminate at the end of the Term. Furthermore, this Agreement may be terminated upon exercise of any express right of termination contained in this Agreement. If this Agreement is terminated prior to the expiration of the Payment Date in accordance with the terms of Section 3, or this Agreement is terminated as a result of a final court judgment invalidating either this Agreement or the Project in accordance with the terms of Section 11, then the obligations of the parties hereunder shall terminate and the parties shall have the rights and obligations set forth in those respective sections.

16. **Indemnity**.

(a) Developer, its successors and assigns, shall hold harmless, defend and indemnify the City, its officials, employees, agents, successors and assigns (all of which are herein referred to as the "City Indemnified Parties") from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, costs and expenses, including but not limited

to reasonable attorneys' fees (collectively, "Damages"), which may be imposed on, incurred by, or asserted against the City Indemnified Parties as a result of (i) a breach of Developer's obligations; and (ii) the conduct of Developer's operations associated with the extraction of Supplemental Water and its subsequent delivery to the Project. Notwithstanding the foregoing, in no event shall Developer be liable to indemnify a City Indemnified Party for (i) any Damages resulting from the negligence, gross negligence, intentional act or willful misconduct of City; or (ii) any third party claim challenging the City's approval of this Agreement and/or the ability of City to sell or deliver Supplemental Water pursuant to this Agreement which has been provided for in Section 11. This indemnification shall survive termination of the Agreement.

(b) Promptly following notice of any "Third Party Claim" for which the City is indemnified, the City shall notify Developer of such claim in writing. Developer shall thereafter defend against such Third Party Claim, in consultation with the City, in such manner as the Parties deem appropriate, including settlement on such terms as Developer and the City deem appropriate. Developer shall select counsel of its choice. The City may also elect to have separate representation at its sole discretion and cost. If Developer fails to promptly defend such Third Party Claim, the City may defend the Third Party Claim in any manner it deems appropriate and with counsel of its choice, including without limitation, settlement of the Third Party Claim on terms the City deems appropriate, and to pursue such remedies as may be available to the City against Developer.

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

18. **No Transfer of Rights.** The rights granted to Developer hereunder constitute the right to take delivery of Supplemental Water only and shall not be interpreted as a sale, transfer, or assignment of any of the City's water rights.

19. **Subject to Applicable Law.** The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing municipal corporations as they now exist and as they may be amended or codified by the Legislature of the State of California.

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

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

22. **Notices.** All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered, or mailed by certified mail, return receipt requested, or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered, or three (3) days after being mailed in any depository maintained by the United States Postal Service, with prepaid postage, certified, return receipt requested or one (1) day after being deposited for next day delivery with Federal Express or other courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

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

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

25. **Binding Effect Assignment.** This Agreement shall be binding on and insure to the benefit of the Parties, and their respective successors and permitted assigns. Developer shall have the right to assign its rights under this Agreement (except for those rights required to be assigned to Golden State pursuant to Section 8) with the written consent of City, provided, however, that the City shall not unreasonably withhold such consent and further provided that the assignee agrees to be bound by all of the obligations of Developer set forth herein. Notwithstanding the foregoing, no assignment permitted hereunder or pursuant to Section 8 shall permit the delivery of Supplemental Water to any property or development other than the Project without the written consent of the City, in its sole and absolute discretion.

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

27. **Force Majeure.** If by reason of acts of God, earthquakes, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, state, or local law, order, rule, or regulation, either Party is prevented from complying with any condition of this Agreement, then while so prevented the condition shall be suspended and the Party shall be relieved of the obligation of complying with such covenant and shall not be liable for damages for failure to comply with it. Any obligation of either Party shall be extended for as long as it is so prevented from complying with any condition or covenant in the Agreement.

28. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT SHALL BE IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SANTA BARBARA, CALIFORNIA, AND CONSENT TO THE JURISDICTION THEREOF.

[Signatures follow on the next page]

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

CITY:

DEVELOPER:

City of Santa Maria  
a California municipal corporation

\_\_\_\_\_ a California \_\_\_\_\_

By:

By:

Name: **Tim S. Ness**

Name: \_\_\_\_\_

Title: **City Manager**

Title: \_\_\_\_\_

Address: **110 East Cook Street, Room 1**

Address: \_\_\_\_\_

**Santa Maria, CA 93454**

Fax: **805.349.0657**

Fax: \_\_\_\_\_

Phone: **805.925.0951, x200**

Phone: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

Best Best & Krieger LLP

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

**Jill Willis, Special Counsel**

**EXHIBIT A**

DESCRIPTION OF PROJECT

## ADDENDUM TO SUPPLEMENTAL WATER PURCHASE AGREEMENT

This Addendum to Supplemental Water Purchase Agreement ("Addendum") is made and entered as of the \_\_\_ day of \_\_\_\_\_, \_\_\_\_ ("Effective Date"), by and between \_\_\_\_\_, a California \_\_\_\_\_ ("Developer") and the City of Santa Maria, California, a California Municipal Corporation ("City").

- A. \_\_\_\_\_ and City are parties to that certain Supplemental Water Purchase Agreement dated \_\_\_\_\_ ("Agreement").
- B. \_\_\_\_\_ and City have agreed to this Addendum to provide for a one (1)-year extension of time in the Performance Period for Developer to make payment of the Purchase Price and Expense Payment as provided in Section 4(d) of the Agreement. In exchange for the extension, the parties agree that the initial Deposit required by Section 4(b) of the Agreement be shall be deemed non-refundable to an amount equal to 10% of the deposit amount not to exceed twenty five thousand dollars, and Developer shall provide City with an additional Deposit, as provided herein. All other terms and conditions of the Agreement, except those expressly modified herein, shall remain the same.
- C. Defined terms which are not defined herein shall have the meaning set forth in the Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, \_\_\_\_\_ and City agree as follows:

1. Performance Period. Pursuant to Paragraph 3(b) of the Agreement, the Performance Period expires on \_\_\_\_\_, \_\_\_\_\_. Developer shall have a one (1)-year extension of the Performance Period, until \_\_\_\_\_, \_\_\_\_ ("Extended Performance Period"), to make payment of the Purchase Price and Expense Payment as provided in Section 4(d) of the Agreement. Prior to expiration of the extended performance period, developer may request an additional extension, which will be considered on a case by case basis.

2. Deposit. The initial Deposit paid by Developer pursuant to Paragraph 4(b) of the Agreement shall be deemed non-refundable to an amount equal to 10% of the deposit amount not to exceed twenty five thousand dollars upon expiration of the initial Performance Period, or \_\_\_\_\_, \_\_\_\_\_. The initial Deposit shall be applied as a credit against payment of the Purchase Price. Within five (5) business days of the expiration of the initial Performance Period, Developer shall provide payment to the City of an additional Deposit of 10% of the Purchase Price for the Supplemental Water. The additional Deposit shall be applied as a credit against payment of the Purchase Price and shall be subject to the terms and conditions of the Agreement. The additional Deposit shall be refundable as provided in Paragraph 4(c). If payment of the Purchase Price and Expense Payment has not been made by the end of the Extended Performance Period, the Agreement, including this Addendum, shall terminate and the City shall retain the additional Deposit.

3. Effect of Addendum. Except as specifically modified in this Addendum, all provisions of the Agreement shall continue in full force and effect, including without limitation, all pricing terms and other conditions, and nothing contained in this Addendum shall be construed as modifying, releasing, altering, or affecting the Agreement. Upon the effectiveness of this Addendum, each reference in the Agreement to "this Agreement", "hereunder", "herein", "hereof", or words of like import referring to the Agreement shall mean and be a reference to the Agreement as modified by this Addendum.



4. Governing Law. This Addendum shall be deemed to be a contract under and subject to and shall be construed for all purposes and in accordance with the laws of the State of California.

5. Entire Addendum. This Addendum contains the entire agreement of the parties hereto with respect to the modification of the Agreement described herein. Nothing contained in this Agreement shall be construed or interpreted to place any good faith or other obligation on either party to enter into or conclude a long term replacement for the Agreement.

6. Counterparts. This Addendum may be executed in two counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

DEVELOPER:

\_\_\_\_\_

a California \_\_\_\_\_

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

CITY:

City of Santa Maria, California,  
a California Municipal Corporation

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

## ADDENDUM TO SUPPLEMENTAL WATER PURCHASE AGREEMENT

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Agreement to "this Agreement", "hereunder", "herein", "hereof", or words of like import referring to the Agreement shall mean and be a reference to the Agreement as modified by this Addendum.

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6. Counterparts. This Addendum may be executed in two counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

DEVELOPER:

\_\_\_\_\_

a California \_\_\_\_\_

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

CITY:

City of Santa Maria, California,  
a California Municipal Corporation

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