
ATTACHMENT B

Assignment Agreement Regarding Supplemental Water

ASSIGNMENT AGREEMENT
REGARDING SUPPLEMENTAL WATER

This Assignment Agreement Regarding Supplemental Water ("Assignment Agreement") is entered into and effective as of _____, 2015, by and between Golden State Water Company, a California corporation ("GSWC") and Santa Barbara County ("County") (GSWC and County are each singularly a "Party," and collectively, the "Parties").

BACKGROUND

GSWC is an investor-owned public utility within the meaning of Public Utilities Code section 2400, *et seq.* and operating pursuant to California Public Utilities Code section 200, *et seq.* GSWC produces, stores, transmits and distributes potable water to customers within its certificated service area generally referred to as the Santa Maria District, which includes parts of the unincorporated area of northern Santa Barbara County.

County is in the process of developing a project in the unincorporated area of Santa Barbara County, located on _____ ("Project").

The County, GSWC and a number of other entities and individuals are parties to a water rights judgment commonly referred to as the Santa Maria Basin adjudication (*Santa Maria Valley Water Conservation District v. City of Santa Maria* (Santa Clara County Superior Court Case No. CV 770214, and consolidated cases). The final judgment in the Santa Maria Basin adjudication incorporates a Settlement Stipulation, which GSWC and the County have both signed. The Settlement Stipulation establishes certain development approval requirements regarding the water supplies to be secured for new development projects in the Santa Maria Valley subarea of the Santa Maria Basin. In particular, the water demand associated with new development must be offset by "supplemental" water supplies ("Supplemental Water") that do not result in further overdraft of the Santa Maria Valley Groundwater Basin ("Basin").

GSWC largely relies on groundwater extracted from the Basin for its potable water supply within the Basin.

GSWC has issued a preliminary Can and Will Serve Letter (CWSL) for the Project which includes the requirement that the Project secure Supplemental Water.

The County has entered into a contract with the City of Santa Maria ("Santa Maria") to obtain Supplemental Water, entitled "Supplemental Water Purchase Agreement," dated XXXX XX, XXXX, which is attached hereto and incorporated herein Exhibit A ("Supplemental Water Purchase Agreement").

To facilitate water service to the Project in demonstrating compliance with the

Supplemental Water requirement, the County wishes to assign to GSWC its rights to the Supplemental Water obtained through the Supplemental Water Purchase Agreement ("Santa Maria Supplemental Water").

IN CONSIDERATION OF THE FORGOING FACTS AND THE MUTUAL COVENANTS AND CONDITIONS CONTAINED IN THIS AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

Section 1. Purpose. The purpose of this Agreement is to enable the County to satisfy the Supplemental Water requirement for the Project by assigning to GSWC the Santa Maria Supplemental Water.

Section 2. Assignment. Pursuant to the terms of this Assignment Agreement, County assigns to GSWC, and GSWC accepts assignment of, the Santa Maria Supplemental Water ("Assignment"). The Assignment shall be effective ("Effective Date") upon the County providing to GSWC written proof from Santa Maria that: (1) County has rendered any and all payment to Santa Maria required under the Supplemental Water Purchase Agreement, (2) Santa Maria and County have fulfilled all conditions precedent in the Supplemental Water Purchase Agreement, and (3) Santa Maria has granted approval for GSWC to take delivery of the Santa Maria Supplemental Water.

Section 3. Service of Supplemental Water.

3.1. For so long as the Santa Maria Supplemental Water is available from Santa Maria pursuant to the Supplemental Water Purchase Agreement, GSWC shall make all reasonable efforts to use the Santa Maria Supplemental Water within the Basin to offset the water demand associated with the Project.

3.2. Consistent with sections 8(b) through 8(c) of the Supplemental Water Purchase Agreement, GSWC shall: (a) assume sole responsibility for the physical delivery and use of Santa Maria Supplemental Water for the benefit of the Project, (b) keep in good operation a water meter at each of its wells to measure the volume of Santa Maria Supplemental Water delivered within the Basin and provide a report to Santa Maria of the associated well meter readings on an annual basis beginning twelve months from the Effective Date; (c) provide Santa Maria reasonable access to its wells and associated meters used to obtain Santa Maria Supplemental Water, to verify and assure meter accuracy; and (d) provide to Santa Maria any information needed so that all groundwater extraction notices associated with the use of Santa Maria Supplemental Water may be filed in the name of Santa Maria.

Section 4. County Development Process. GSWC agrees to cooperate and collaborate with County in providing information and documentation to the County necessary: (a) to demonstrate that the Supplemental Water Purchase Agreement, combined with this Assignment Agreement, satisfies the Supplemental Water requirement, and (b) as County requests, in conjunction with the development approval process for the Project, provided such requests are consistent with the purpose of and commitments made in this

Assignment Agreement. County shall bear all the reasonable costs associated with such efforts that are incurred after the execution of this Assignment Agreement; provided, however, GSWC shall obtain written approval from County prior to incurring any reimbursable costs. GSWC shall submit an invoice to County for such costs and County shall provide payment within 30 days of receiving the invoice.

Section 5. Term and Termination. The term of this Assignment Agreement shall be the same as the term provided in the Supplemental Water Purchase Agreement. This Assignment Agreement shall automatically terminate upon the termination of the Santa Maria Supplemental Water Agreement. GSWC may terminate this Assignment Agreement should County fail to fulfill any obligation(s) required of County under the terms of this Assignment Agreement, provided GSWC provides written notice to County of the failure to fulfill such obligation(s). GSWC shall provide, and allows County a minimum of 14 days to cure any such non-compliance. If such non-compliance is curable within 14 days with the exercise of reasonable diligence, GSWC's termination shall be effective on the 15th day after said notice if County fails to remedy the non-compliance. If such non-compliance cannot be reasonably cured within 14 days with the exercise of reasonable diligence, County shall be given a reasonable period in which to cure the non-compliance, and GSWC's termination shall be effective on the 45th day after notice if County fails to remedy the non-compliance.

Section 6. Limited Right of Assignment. County shall not transfer, sell, lease, or otherwise assign this Assignment Agreement, in whole or in part, without the prior written consent of GSWC. Because this Assignment Agreement is specifically designed to accommodate the unique facts and circumstances pertaining to the Parties, GSWC shall have complete discretion to refuse consent to any proposed transfer, sale, lease, or assignment. However, GSWC shall provide assignment approval for purposes directly related to the development of the Project, provided the Santa Maria Supplemental Water will continue to be used for the benefit of the Project, as contemplated in this Assignment Agreement. In the event consent to assignment is given, the benefits and obligations of this Assignment Agreement shall inure to and be binding upon County's permitted successor(s) and/or assignee(s), provided the successor(s) or assignee(s) assume(s) all existing and future obligations under this Assignment Agreement.

Section 7. Other Facilities Necessary to Serve County. The Parties acknowledge and agree that this Assignment Agreement only establishes the respective rights and obligations of the Parties with respect to the Santa Maria Supplemental Water. The Parties agree that provisions for the financing and construction of other facilities needed or necessary to provide water service and fire flow protection for the Project will be the subject of other agreement(s) made by and between GSWC and the County.

Section 8. Potable Water Service.

8.1. This Assignment Agreement provides the County with a contractual right to provide the County with the necessary assurances that the net water demand associated with the Project will be offset by the use within the Basin of the Santa Maria Supplemental Water. Upon the Effective Date, this Assignment Agreement is not

intended to provide, nor shall it provide to the County, any right, title, or claim of ownership to all or any portion of the Santa Maria Supplemental Water, the return flows associated with the use of the Santa Maria Supplemental Water, or any other water rights possessed by GSWC. In the context of the ongoing usufructuary exercise of GSWC water rights, the reasonable and beneficial use of water at the Project, or any portion thereof, shall be attributed to the GSWC.

8.2. Nothing in this Assignment Agreement is intended to provide, and the Assignment Agreement shall not provide the County, or any customer of GSWC that is associated with the Project (residential or commercial/industrial customers located on the Project site), with a right to unique water service from GSWC, or an entitlement to receive water from any particular source. As a general matter, GSWC intends to provide similar water service to all of its customers, including those customers associated with the Project, pursuant to rates and charges, and other rules and regulations approved by the PUC. Further, irrespective of the availability of Santa Maria Supplemental Water pursuant to this Assignment Agreement, GSWC shall impose on all of its customers, including those associated with the Project, any and all restrictions or shortages in water availability consistent with those rules and regulations established pursuant to the statutory and regulatory authority vested in GSWC.

Section 9. Indemnification.

9.1. Indemnification by County. The County shall indemnify, defend and hold harmless GSWC, its directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, or result from: (1) any legal or administrative challenge to this Assignment Agreement, the Supplemental Water Purchase Agreement, or any other document or representation made in association with said agreements; or (2) the performance of obligations incurred by County arising under this Assignment Agreement or the Supplemental Water Purchase Agreement ("Claim"), unless such Claim results from the sole negligence or wrongful act or omission of GSWC, its directors, officers, employees or agents.

9.2. Indemnification Procedures. GSWC shall promptly notify the County in writing of the details of the Claim; provided, however, that no delay on the part of GSWC in notifying County shall relieve County from any obligation unless, and then solely to the extent, County is prejudiced. Further, GSWC shall promptly notify County of the existence of any demand, or other matter to which the indemnification obligations would apply, and shall give County a reasonable opportunity to defend the same at its own expense and with counsel of its own selection; provided that GSWC shall, at all times, also have the right to fully participate in the disputed matter at its own expense. If County, within a reasonable time after receipt of this notice, fails to defend, GSWC shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the Claim or other matter on behalf or for the account, and at the risk, of County. If the Claim is one that cannot by its nature be

defended solely by GSWC, then County shall make available all information and assistance to GSWC that GSWC may reasonably request.

Section 10. Miscellaneous

10.1. Relationship of the Parties. It is understood, agreed and intended by the Parties that in performing this Assignment Agreement, the Parties are each separately and independently carrying out their respective businesses and that this Assignment 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 Assignment Agreement shall at all times be read, interpreted, and applied in accordance with such intention.

10.2. Severability. If any provision of this Assignment Agreement or the applicability thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Assignment Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

10.3. Waiver. The failure or delay by either Party to enforce any of the covenants, terms or conditions of this Assignment Agreement shall not be deemed a waiver thereof, unless such waiver shall have been made in writing.

10.4. Communications. All notices, demands, requests and other communications required or permitted by or provided for in this Assignment Agreement shall be given in writing to the Parties at their respective addresses set forth below, or at such address as a Party shall designate for itself in writing in accordance with this section.

To GSWC:

Golden State Water Company
Attn: Ms. Denise Kruger
630 East Foothill Blvd.
San Dimas, CA 91773
Telephone: (909) 394-3600
Facsimile: (909) 394-1382

With copy to:

Brownstein Hyatt Farber Schreck, LLP
Attn: Robert Saperstein
1020 State Street
Santa Barbara, CA 93101
Telephone: (805) 963-7000
Facsimile: (805) 965-4333

To County:

County of Santa Barbara
General Services Department
105 East Anapamu St, Room 108
Santa Barbara, CA 93101
Telephone: (805) 568-2625
Facsimile: (805) 568-2663

Communications may be transmitted (i) by personal delivery, (ii) by delivery by messenger, express or air courier or similar courier, or (iii) by facsimile. Except as otherwise provided in this Assignment Agreement, delivery or service of any communication shall be deemed effective only upon receipt. Receipt shall be deemed to have occurred on the date shown in the written proof of delivery obtained via confirmed personal service, written confirmation of the express mail or courier service, or electronic facsimile confirmation; provided, that, except as otherwise provided in this Assignment Agreement, any communication received after 5:00 p.m. local time of place of receipt, or on a day other than a business day, shall be deemed received on the next succeeding business day.

10.5. Further Assurances. From time to time and at any time after the execution and delivery of this Assignment Agreement, each of the Parties, to the extent consistent with all provisions of this Assignment Agreement, shall execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other Party, and shall take any other action consistent with the terms of this Assignment Agreement that may reasonably be requested by the other Party, to evidence or carry out the intent of this Assignment Agreement.

10.6. Modification. This Assignment Agreement may be modified or amended by mutual written consent of the Parties.

10.7. Counterparts. This Assignment Agreement may be executed in any number of counterparts, each of which shall be an original as against any Party whose signature appears thereon and all of which together shall constitute one and the same instrument.

10.8. Authority. Each of the undersigned individuals, by execution of this Assignment Agreement on behalf of GSWC and the County, as applicable, represents and warrants to the other that such individual has the legal power, right and actual authority to execute this Assignment Agreement.