

**CAWELO WATER DISTRICT  
LANDOWNER BANKING & RECHARGE AGREEMENT**

This Landowner Banking and Recharge Agreement (“Agreement”) is entered into effective as of \_\_\_\_\_, 20\_\_, by and between the **CAWELO WATER DISTRICT** (“District”) and \_\_\_\_\_, a [type of business entity] (“Landowner”), each of which may individually be referred to herein as a “Party”, and together as “Parties”.

**RECITALS**

WHEREAS, District and its landowners understand the importance of maximizing the importation of surface water into the District’s area for beneficial use, including but not limited to agricultural irrigation and groundwater sustainability; and

WHEREAS, during wet years or years when surplus surface water is available, the District endeavors to acquire as much water as reasonably possible and deliver such water for direct irrigation within the District, or to groundwater banking and/or recharge facilities; and

WHEREAS, District and District landowners are concerned about the impact the Sustainable Groundwater Management Act (SGMA) and Groundwater Sustainability Plans (GSPs) will have on industries that rely on groundwater, especially agriculture, and desire to establish a groundwater banking and recharge program that will benefit both District and District landowners; and

WHEREAS, District has existing groundwater banking and recharge facilities (District Banking Facilities) and existing groundwater banking programs and also desires to expand its groundwater banking and recharge capacity by constructing additional facilities and/or by gaining access to non-District owned land or facilities for banking and recharge purposes; and

WHEREAS, various District landowners desire to have a direct groundwater banking and recharge program available to them within the District, with the intent that such program provides them the capability to bring surplus water into the District for in-ground storage and later extraction; and

WHEREAS, both District and Landowner desire to set forth the terms and conditions by which District may use Landowner’s banking and recharge facilities (Landowner Banking Facilities) and by which Landowner may use District Banking Facilities for the storage of surface water supplies within the District (the “District Landowner Banking Program” or “Program”).

NOW, THEREFORE, based upon the foregoing recitals, and in consideration of the mutual promises, terms, and conditions contained herein, the Parties do hereby agree to the following.

## AGREEMENT

### I. Recharge Facilities:

- A. Landowner owns and designates the real property as described and depicted on Exhibit “A” as lands that Landowner shall use and make available for use in the District Landowner Banking Program (“Landowner Land”). Landowner shall construct facilities and/or berms on Landowner Land, so that such land will retain and percolate water and act as “Landowner Banking Facilities”.
- i. District has considered various characteristics of Landowner Land, including size, location in relationship to District transportation facilities, soil type and preliminary anticipated percolation rates, and has approved such characteristics as being acceptable for the receipt and storage of surface water, provided improvements made by Landowner to create Landowner Banking Facilities are otherwise in accordance with this agreement.
  - ii. District will have the right to further inspect any Landowner Banking Facility for size, location, soil type, construction, and any other relevant matters. Landowner shall be responsible to design, construct, maintain, and operate its banking facilities to effectively and safely retain water within its recharge basin or percolation system. District may from time to time, as it deems appropriate or necessary, inspect and/or require additional testing regarding percolation rates or other matters pertaining to Landowner Banking Facility.
  - iii. Landowner Banking Facilities will be constructed for the sole purpose of percolating imported surface water and except as may be specifically agreed upon by District, Landowner Land shall not be actively farmed or have any agricultural operations. Essentially, Landowner Banking Facilities must be unfarmed land, except as may otherwise be approved by District under special circumstances.
  - iv. Landowner shall, at Landowner’s sole cost and expense, design and construct the improvements to Landowner Land in accordance with the specifications attached hereto as Exhibit “B” to create Landowner Banking Facilities.
  - v. Landowner shall, in the design, construction, maintenance, repair, and operation of the Landowner Banking Facilities and appurtenances, consider, follow, and comply with all applicable state, federal, and local laws and regulations, including but not limited to those pertaining to environmental protection and the protection of endangered and threatened species and their habitat, and obtain any necessary approvals or permits.

- B. District hereby designates the real property as depicted on Exhibit “C” as District Banking Facilities that District shall use and make available for use in the District Landowner Banking Program; provided however that District may at anytime revise, modify, or expand upon its Banking Facilities.
- C. The Landowner may modify its designated Landowner Banking Facilities from time to time, upon the Parties’ express mutual agreement in writing.
- D. Each Party is responsible and liable for the design, construction, operation, maintenance, and repair of their respective banking facilities, and the costs associated therewith. District inspection or approval of Landowner Banking Facilities shall not relieve Landowner of its obligations to safely construct, operate, and maintain its facilities, and District has no liability with respect to Landowner Banking Facilities, or their design, construction, maintenance, or operations.
- E. Either Party may curtail or suspend delivery of water under this program at any time for any cause, at their sole discretion. The Party curtailing or suspending delivery shall endeavor to provide 24-hour notice to the other Party prior to suspension or curtailment of delivery.

II. Priority of Use of Recharge Facilities:

- A. Unused capacity in District Banking Facilities will be made available to Landowner for the purpose of banking District approved, Landowner owned surface water. District shall at all times maintain first priority use of all of its facilities and have sole discretion to make a final determination on Landowner’s access to District Recharge Facilities.
- B. Unused capacity in Landowner Banking Facilities will be made available to District for the purpose of recharging Landowner approved, District owned surface water. Landowner shall at all times maintain first priority use of all of Landowner facilities and have sole discretion to make a final determination on District’s access to Landowner Banking Facilities.

III. Water Supplies:

- A. Water supplies which Landowner may bank pursuant to this Agreement (“Landowner Water”) shall be any surface water supply which meets all criteria as set forth in this Agreement and to which Landowner has legal title and authority to transport and store, but shall not include any of District’s allocated surface water that may be provided to or made available to any District customers as part of District’s operations or supplies; nor shall the water provided under the District’s winter water program be used in this District Landowner Banking Program. Upon request, Landowner shall provide District with reasonable

documentation regarding Landowner's title and/or legal authority to transport and store such water.

- B. Water supplies which District may recharge pursuant to this Agreement shall be any surface water supply which meets all criteria as set forth in this Agreement and to which District has legal title and authority to transport and store.
- C. Water supplies delivered and stored pursuant to this Program must meet the water quality requirements contained within this Agreement.
- D. Water delivered by or to any Landowner pursuant to this Program will have no other purpose or intent than for percolation for groundwater banking, recharge, and/or later extraction for beneficial use within the District, and delivered water shall not be used to simultaneously irrigate crops or to provide for pre-irrigation of crops.
- E. Each Banking Facility owner may determine if the proposed banking surface water supply is of sufficient quality to be delivered into its Banking Facilities, and upon delivery of such water into the facilities, the Banking Facilities owner waives and holds the owner of such water free and harmless from any and all claims of any nature whatsoever regarding the quality of such delivered water. Generally, acceptable water quality is water quality, at a minimum, that is equivalent to water quality of agricultural irrigation supplies typically provided by the District.
- F. District shall at all times have sole discretion to determine if the proposed banking surface water supply is of sufficient quality to be delivered into and through the District's distribution system.

IV. Point of Delivery and Transportation:

- A. The Point of delivery to a Recharge Facility is the District-owned metered turnout located upon the Landowner Land or other agreed upon designated District meter(s). If one does not exist, District shall install a new metered turnout and any agreed upon appurtenance(s) in accordance with its standard practices, at the sole cost and expense of Landowner. If additional facilities are necessary to measure or deliver water to a Landowner Banking Facility, then Landowner shall be responsible for those associated costs. A description/depiction of the facilities to be built pursuant to this paragraph, if any, are as shown on Exhibit "D".
- B. It is the responsibility of the Landowner to deliver Landowner Water to a mutually agreeable location of the District's distribution system within the District's boundary. Landowner shall be responsible for all costs and losses associated with acquiring and transporting Landowner Water to District, including but not limited to obtaining any necessary environmental or other approvals or permits. All Landowner Water deliveries to District must first be

approved by, and scheduled with, the District. Although all aspects of delivery of Landowner Water is ultimately the responsibility of the Landowner, District will make reasonable efforts to assist with delivery of Landowner Water provided that such deliveries shall not interfere with District water supplies, its deliveries, its finances, or any of its water management program(s).

- C. Landowner is responsible for all transportation costs and losses associated with conveying Landowner Water through the District distribution system to any Banking Facility used within the District, as reasonably determined by the District. Transportation costs may include, but not limited to, pumping costs, proportional maintenance costs and District staff's time. Landowner is responsible for scheduling water for delivery through District's distribution system at a mutually agreeable time. District will make reasonable efforts to assist with delivery of Landowner Water provided that such deliveries shall not interfere with District's water supplies, its deliveries, its finances, or any water management program(s).
- D. District is responsible for all transportation costs and losses associated with delivering District Water to any Banking/Recharge Facility within the District.

V. Program Banked Water Allocation:

- A. For any Landowner Water legally diverted and delivered into a Landowner Banking Facility on Landowner's behalf, the Landowner shall be credited with 90% of the volume of water that has percolated into the ground. The remaining 10% of percolated water will be credited to District. Percolation volumes will be based on meter volumes measured at the Point of Delivery less evaporation losses per the evaporation table, attached hereto as Exhibit "E".
- B. For any Landowner Water delivered into a District Banking Facility, the Landowner shall be credited with 75% of the volume of water that has percolated into the ground. The remaining 25% of percolated water will be credited to District. Percolation volumes will be based on the meter volumes measured at Point of Delivery less evaporation losses per the evaporation table.
- C. For any District surface water delivered into a Landowner Banking Facility, District shall be credited with 75% of the volume of water that has percolated into the ground. The remaining 25% of percolated water will be credited to the Landowner. Percolation volumes will be based on meter volumes measured at the Point of Delivery less evaporation losses per the evaporation table.

VI. Capacity constraints:

- A. In the event there is an insufficient District water supply, or the capacities of the District's delivery system to deliver water to all participating lands in the Landowner Banking Program is insufficient, determination of which Banking

Facilities the District shall use will be based on various factors, including but not limited to percolation efficiency, evaporation rates, water quality, recharge capacities, operational issues, and any other factor deemed appropriate by the District.

- B. In the event that multiple Landowners request to use the District's Recharge Facilities and such Banking Facility capacities are limited, available capacities beyond the District's own use will be apportioned by the District among the number of participating Landowners that desire to bank water, depending upon timing, quantity, and quality of supplies, and any other factor deemed appropriate by the District.

VII. Extraction, Use, and Transfer:

- A. This Program provides no rights to access another Party's water extraction or transportation facilities.
- B. Extracted Landowner Program water can only be used within District boundaries and exportation of actual water is prohibited.
- C. Each Party shall be responsible for any and all costs of extraction of such Party's water.
- D. Any costs and expenses associated with extraction and/or transportation operations conducted by District on behalf of the Landowner shall be the sole responsibility of the Landowner. District will maintain priority use of all of its facilities and, at its sole discretion, will determine any secondary use. The Parties have no obligation to extract or transport stored water on behalf of the other Party.
- E. Each Party agrees they will not make any claims against the other regarding any water delivered or banked pursuant to the Landowner Banking Program and this Agreement, other than as provided for under this Agreement. Additionally, the Parties agree they will not make any future claims to future use of the other Party's facilities.
- F. Landowner-owned stored surface water within this Program can only be used and transferred within District boundaries; provided however, up to 25% of the stored water "account" credit can be transferred outside of District boundaries to an adjacent District or to lands adjacent to District, but only if the transfer amount is in excess of the Landowner's then current anticipated annual unmet crop water requirements within District. Account credits transferred between District Landowners pursuant to Section VII, G or otherwise are prohibited from being transferred to locations outside of District boundaries. Account transferability under this Program may be subject to conditions of federal, state, or local laws, rules, or regulations, and one or more SGMA GSPs, and/or cooperating districts and landowners, as determined by District. Landowner must complete and submit

a Cawelo Water District Authorization to Transfer Water Form to transfer qualified stored water account credits. Credit transfer transactions are submitted to the District for accounting purposes only.

- G. Up to the entire stored water account credits in any particular account can be transferred to other landowners' lands within District provided both the transferring and receiving landowner(s) agree to the terms of water usage, transferability of the water, this Agreement, and any other relevant provisions of the Program. Landowner must complete and submit a Cawelo Water District Authorization to Transfer Water Form to transfer qualified stored water account credits. Subsequent to any in-district credit transfer, that particular account credit is prohibited from being transferred to outside District boundaries.

VIII. Liability and Indemnification:

- A. Landowners will be required to protect surrounding lands from adverse impacts related to its Banking Facilities and operations.
- B. The Banking Facility owner assumes all responsibility and liability for the delivered water after the Point of Delivery to its Banking Facility and will hold the other Party harmless for any damage or harm that occurs subsequent to such delivery.
- C. Each Party shall and hereby agrees to indemnify, defend, and save the other Party, their officers, directors, agents, employees, successors or assigns, harmless from and against all claims, losses, and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition, or management of the Party's Banking Facility(ies) or from any work or thing done by the Party, (ii) any breach or default on the part of the Party in the performance of any of the Party's obligations under this Agreement, (iii) any act of negligence of the Party or of any of its contractors, servants, employees or licensees with respect to the Program, (iv) any act of negligence of any assignee or sublessee of the Party, or of any agents, contractors, servants, employees or licensees of the assignee or sublessee of the Party with respect to the Program, to the fullest extent permitted by law.
- D. Each Party shall and hereby agrees to indemnify, defend, and save the other Party, their officers, directors, agents, employees, successors or assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of any claim, dispute, or demand of any type or character related to the Party's title to and/or ownership of such Party's water supply that is delivered or stored pursuant to the Program.
- E. Upon request by District, Landowner shall provide District with a certificate of insurance in a form and amount satisfactory to District, naming the District as an

additional insured, and indicating Landowner has sufficient insurance coverage to meet its indemnity and defense obligations hereunder.

IX. Administration and Record Keeping:

- A. District staff will be responsible for monitoring and reading the turnout meters regarding delivery of Program water into Banking Facilities. District staff will record and document meter readings.
- B. Landowner extraction of banked physical water will be reported to and scheduled with District for accounting purposes only, and account balances will be adjusted accordingly. Such reporting by Landowner will occur on a monthly basis, or as otherwise reasonably required by District. Landowner hereby grants District personnel access to Landowner's well meters to confirm extraction amounts. Landowner and District shall mutually agree upon one or more extraction wells that Landowner shall designate for Landowner's (or Landowner's designee or assignee) extraction of banked water.
- C. The District will oversee, schedule, and maintain records of all Landowner Water delivered into the District for groundwater banking and recharge under the Program.
- D. District will provide to Landowner, in writing, no less than annually, updated banked water credit balance information.
- E. District shall periodically invoice Landowner for any and all amounts authorized pursuant to this Agreement, which shall be due and payable within thirty days of the invoice date.

X. Assignment:

- A. Neither Party may assign their interest in this Agreement without the prior written consent of the other Party and any assignment without such prior written consent shall be null and void; provided however, Landowner Water stored pursuant to the Program, and accounts thereof, may be transferred in accordance with the terms hereof.

XI. Discretion:

- A. Where the provisions of this Agreement provide for an action to be based upon opinion, judgment, approval, review, or determination of any person or entity, such provisions are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

XII. General Provisions:



- A. Authorization: Each of the undersigned hereby warrants and represents that he or she has been duly authorized and has the legal authority to bind the Party on whose behalf they are signing.
- B. No Partnership or Joint Venture: Each of the Parties acknowledges and agrees that this Agreement, and the obligations of the Parties hereunder, does not create, nor is intended to create, a partnership, joint venture, agency, unincorporated association, or similar organization, and neither Party is or shall be the agent of the other.
- C. Waiver: Waiver or non-enforcement of any provision of this Agreement by either Party shall not constitute a further or continuing waiver of such provision, nor will it affect the later enforceability of that provision or of the remainder of this Agreement.
- D. Article and Section Headings, Gender, and References: The headings or titles of the sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references to articles, sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subdivision or clause hereof, unless specifically required by the context.
- E. Partial Invalidity: If any one or more of the provisions contained herein shall be contrary to law and unenforceable, then such portions shall be null and void and shall be deemed separable from the remaining provisions of this Agreement, and shall in no way affect the validity of the remainder of this Agreement.
- F. No Third-Party Beneficiaries: This Agreement is solely for the benefit of Parties executing this Agreement and nothing in this Agreement shall create a third-party beneficiary or a contractual relationship with, or a cause of action in favor of, any third party.
- G. California Law and Venue: This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue for any legal action shall be the Superior Court of Kern County, California.
- H. Notices: All written notices to be given hereunder shall be given by prepaid first-class mail to the Party entitled thereto at its address set forth following their name on the execution page, below, or at such other address as such Party may provide to the other Party in writing from time to time.
- I. Term: This Agreement shall continue for ten (10) years from the effective date above, and may be extended from time to time by the Parties upon written mutual

agreement; provided however, either Party may terminate this Agreement upon material breach by the other, if the breaching Party has not cured the breach after first being given five (5) days written notice of such breach by the non-breaching Party. The following provisions will remain in full force and effect and survive termination of this Agreement: Article VII, Extraction, Use, and Transfer (in its entirety); Article VIII, Liability and Indemnity (sections A-D inclusive); and Article IX, Administration and Record Keeping (sections B-E inclusive).

J. Amendments: This Agreement may only be amended in writing, executed by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CAWELO WATER DISTRICT  
17207 Industrial Farm Road  
Bakersfield, CA 93308-6073

By: \_\_\_\_\_  
General Manager

LANDOWNER  
[ADDRESS]

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

December 10, 2020

**EXHIBIT “A”**

Designated Landowner Land (§ I A.)

**EXHIBIT “B”**

Specifications of Landowner Improvements to create Landowner Banking Facilities (§I A. iv)

**EXHIBIT “C”**

Designated District Banking Facilities (§I B.)

**EXHIBIT “D”**

Description of POD Facilities To Be Constructed, If Any (§IV A.)

**EXHIBIT “E”**

Evaporation Table (§V A.)