

# PARTICIPATION AGREEMENT FCGMA WATER MARKET & AMI PILOT

This Agreement is entered into and effective on this \_\_\_\_\_ day of \_\_\_\_\_ 2017, by and between \_\_\_\_\_, representing FCGMA CombCode \_\_\_\_\_, and the Exchange Administrator. For the purposes of this Agreement, “Exchange Administrator” refers to the Center for Economic Research and Forecasting at California Lutheran University in its capacity operating a water market under authorization of Fox Canyon Groundwater Management Agency and *An Ordinance to Establish a Combined Water Market Pilot Program and Advanced Metering Infrastructure System Demonstration Project*; and “Participant” means I, \_\_\_\_\_, the undersigned. By signing this Agreement as specified below, the Participant agrees to all of the provisions contained herein.

## **Recitals**

On December 9, 2016, the Board of Directors of the Fox Canyon Groundwater Management Agency (hereafter referred to as “the Agency”) passed and adopted *An Ordinance to Establish a Combined Water Market Pilot Program and Advanced Metering Infrastructure System Demonstration Project* (hereafter referred to as “Authorizing Ordinance” and attached as Exhibit A). The Water Market Pilot Program and Advanced Metering Infrastructure System Demonstration Project (hereafter referred to as “the Pilot”) is set to run from approximately February 1 until July 31, 2017. GMA Staff selected the Center for Economic Research & Forecasting at California Lutheran University to serve as the Exchange Administrator for the Pilot and chose Ranch Systems LLC as the vendor for the Advanced Metering requirement. Subsequently, Agency staff determined that the Market Allocation of groundwater pumping for CombCode \_\_\_\_\_ during the Pilot is \_\_\_\_\_ acre feet.

## **Agreements**

The Participant agrees to comply with all applicable Agency regulations including the Authorizing Ordinance. The Participant agrees to follow all of the Rules, as outlined in *Rules and Regulations – Water Market Pilot & Advanced Metering Infrastructure System Demonstration Project* (hereafter referred to as “the Rules” and attached as Exhibit B).

## **Termination from Participation**

The Participant understands that the Participant may voluntarily withdraw from the Pilot at any time by providing written notice to the Exchange Administrator. No enrollment fees will be refunded upon termination of participation.

## **Liability for Compliance with Agency Regulations**

The Exchange Administrator is not responsible or liable for determining individual compliance with the terms of Agency regulations and any surcharges resulting from a violation of those regulations. The Exchange Administrator is responsible only for enrolling Participants in the water market, matching Bids and Offers, executing transfers of part of a Participant’s Market Allocation, reporting transfers to the Agency, and receiving and distributing funds to Participants.

## **Hold Harmless and Indemnification**

Except for damages resulting from willful misconduct, gross negligence, or breach of fiduciary obligation in connection with this agreement, the Exchange Administrator and its affiliates and each of its officers, directors, employees, agents, consultants, and participants (each a “disclaiming party”) shall not be liable to any person for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, and direct, indirect, incidental, consequential or punitive damages) arising from:

- Any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination, or any other cause, in connection with the furnishing,

operation, maintenance, use of or inability to use all or any part of any of the systems or services of the Water Market or services, equipment or facilities used to support such systems and services;

- Any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination, or any other event of the Exchange Administrator or the Water Market or services, equipment, or facilities used to support the Water Market caused by any third party including independent software vendors or network providers;
- Any errors or inaccuracies in information provided by the disclaiming party or in any of the disclaiming party's systems, services, equipment or facilities.

The foregoing limitation of liability:

- Shall apply whether a claim arises in contract, tort, negligence, strict liability, contribution or otherwise and whether the claim is brought directly or as a third party claim.

The Exchange Administrator and the participant shall each bear the responsibility for the consequences of its own willful misconduct, gross negligence and breach of fiduciary obligation in connection with this agreement. The Participant shall indemnify, defend and hold harmless the Exchange Administrator and its affiliates and each of their officers, directors, employees, agents, consultants, and participants, from the consequences of any such willful misconduct, gross negligence, and breach of fiduciary obligation, to the extent allowed by law.

## **No Warranties**

There are no express or implied warranties or representations (including warranties of merchantability and fitness for a particular purpose or use) provided by any disclaiming party relating to the Exchange, or any system or service of the disclaiming party or services, equipment, or facilities used to support the Exchange systems or services.

## **Amendments**

This agreement may be amended or modified only by a written instrument executed by the Exchange Administrator. The Participant will be given prior notice of any amendments to this agreement.

## **Partial Invalidity**

If, after the date of execution of this agreement, any provision of this agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

## **Choice of Laws**

This Agreement shall be interpreted according to the laws and regulations of the State of California (not including California's choice-of-laws rules) and any applicable Federal laws and regulations. Any action brought under this Agreement must be brought in Ventura County, California.

## **Compliance with Law**

In performing their respective obligations under this Agreement, the parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

## **Dispute Resolution**

If a dispute arises between the Participant and the Exchange Administrator with reference to the proper interpretation of the terms of this Agreement or the Rules of the Pilot, the Participant agrees to submit such a matter to the Review Committee for a decision before seeking other legal remedy and then to submit such a matter to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. The Participant and the Exchange Administrator agree to share equally the cost of the arbitration.

However, each party will be responsible for its own attorney's fees and costs of presentation in its respective case.

I understand that I have voluntarily entered into participation with this program and agree to abide by the terms and provisions of this program as outlined within this agreement. By signing this statement, I also certify that I am the rightful property owner or lessee of the property in question, or I am an authorized representative of the corporation, partnership or individual that owns or leases the property.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_