

**FIRST AMENDED AND RESTATED
AGREEMENT BETWEEN
ARVIN-EDISON WATER STORAGE DISTRICT
AND THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA FOR A
WATER MANAGEMENT PROGRAM**

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ARVIN-EDISON WATER STORAGE DISTRICT
AND THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA FOR A
WATER MANAGEMENT PROGRAM**

THIS AGREEMENT ("Agreement"), originally dated as of December 19, 1997, and now amended and restated as of October 9, 2007, is entered into by and between the **ARVIN-EDISON WATER STORAGE DISTRICT ("Arvin-Edison")**, and **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("Metropolitan")**. Metropolitan and Arvin-Edison may be referred to individually as Party or collectively as Parties. The December 19, 1997 Agreement is herein referred to at times as the "**Original Agreement.**"

PREAMBLE

This Agreement is in the furtherance of development of a water management Program by Arvin-Edison and Metropolitan, for the purpose of enhancing the water supply available to both entities, to enhance the conveyance facilities of Arvin-Edison, and to enhance the quality of Metropolitan's State Water Project ("SWP") supplies. It is agreed nothing in this Agreement or Program will in any way impair the integrity of the existing Arvin-Edison program and shall not adversely impact either physically, operationally or economically Arvin-Edison or its landowners. It is the intention of the Parties that through provisions of this Agreement actual or prospective adverse impacts of the Program will be avoided. The Program shall be operated in a manner so as to optimize available water supplies to both Parties and improve the quality of Metropolitan's SWP supplies. Arvin-Edison and Metropolitan recognize the importance of

processes involving the Friant Division of the Central Valley Project ("Friant Division") and intend to operate the Program in a manner that will not jeopardize such processes or water rights relating to the Friant Division. The Program will be operated in such a manner that does not result in a net decrease in the water supplies available for beneficial use within the Friant Division service area specifically and the San Joaquin Valley generally.

RECITALS

A. Arvin-Edison has contracted with the United States Bureau of Reclamation ("Bureau") under a contract dated August 30, 1962 (Contract No. 14-06-200-229-A), which contract was first renewed on an interim basis on February 27, 1995, and renewed for a term of 25 years on January 20, 2001, and for which Arvin-Edison is entitled to subsequent renewals thereof pursuant to the provisions of said contracts and Federal Reclamation Law. Said contract provides for delivery to Arvin-Edison of 40,000 acre-feet of firm Class 1 water and 311,675 acre-feet of non-firm Class 2 water. Arvin-Edison has, since implementing its project in 1966, operated a conjunctive use project whereby a portion of its Class 2 water is stored in the Arvin-Edison Basin when available, and in turn withdrawn during periods of insufficient surface water supplies. Additionally, Arvin-Edison exchanges a portion of its supplies, in order to increase its water supplies available during years of insufficient supply from the Friant-Kern Canal. Arvin-Edison has a surface water service area of approximately 52,000 acres, and the landowners within said area are in large part totally dependent on Arvin-Edison for the water supplies for agricultural, and to a minor degree, municipal and industrial purposes, and additionally enhances groundwater conditions for the remaining approximately 80,000 acres in Arvin-Edison. Arvin-Edison is a party to a Stipulation of Settlement in Natural Resources Defense Council, et al. v. Rodgers, et al., as approved by an order dated October 23, 2006,

which to an unknown extent will affect Arvin-Edison's water supply, among other things.

B. Metropolitan is a public agency formed under the Metropolitan Water District Act of 1927. Metropolitan provides imported water to 26 member public agencies to supplement local municipal water supplies within its six-county service area located in Southern California's coastal plain. Metropolitan obtains its water supplies from the Colorado Aqueduct, the SWP, and other sources. Metropolitan seeks to augment its dry year water supplies by arranging for Regulated Water to be delivered to Metropolitan during periods of insufficient supply from available sources and to improve water quality in the California Aqueduct.

C. Metropolitan and Arvin-Edison find that it will be mutually advantageous to enter into the Regulation Program as provided in this Agreement, whereby Arvin-Edison will regulate water on Metropolitan's behalf and deliver that water to Metropolitan upon request. The Regulated Water generally will be banked in the Arvin-Edison Basin, and upon demand of Metropolitan such water will be delivered to Metropolitan through either the Intertie Pipeline into the California Aqueduct or through an exchange of water in the California Aqueduct, or both.

D. In addition, Metropolitan shall have a Contract Priority Right to convey Transported Water through certain specified Arvin-Edison facilities to the California Aqueduct. Such Contract Priority Right shall give Metropolitan a priority for conveyance of Transported Water ahead of third parties that may also wish to convey water through Arvin-Edison's facilities. The term of such Contract Priority Right and fees for such right shall be as specified in this Agreement.

E. Pursuant to the Original Agreement, Arvin-Edison timely constructed new

facilities, which it owns and operates, including (i) approximately 550 acres of additional spreading ponds; (ii) approximately 17 additional wells; and (iii) a 4.3 mile bi-directional pipeline from the terminus of the Arvin-Edison South Canal to approximately Milepost 277.3 of the California Aqueduct and the related pumping facilities capable of conveying approximately 175 cubic feet per second ("cfs") of water to and approximately 127 cfs from the California Aqueduct ("Intertie Pipeline"). Pursuant to this Agreement, Arvin-Edison will timely construct the South Canal Improvement Project. Arvin-Edison will own, operate and have first priority to utilize its facilities, including such new facilities which will also be used for the Program to benefit Metropolitan as provided by this Agreement. Metropolitan has the right to benefit from facilities it assisted in financing through the Regulation Program such that Metropolitan shall retain a priority over third parties to regulate Delivered Water during the term of the Regulation Program, subject to the terms of this Agreement.

F. In furtherance of the Original Agreement, the following agreements have been entered into:

1. *“Agreement Among Department of Water Resources of the State of California, Kern County Water Agency, and Arvin-Edison Water Storage District for Introduction of Water Into the California Aqueduct”*, dated March 18, 2004.

2. *“Agreement Among The Department of Water Resources of the State of California, Kern County Water Agency And Arvin-Edison Water Storage District for Construction, Operation, and Maintenance of the Arvin-Edison Turnout, A Permanent Turnout Within the California Aqueduct Right-of-Way”*, dated January 26, 1999.

3. *“Point of Delivery Agreement Among the Department of Water Resources, of the State of California, Metropolitan Water District of Southern California and Kern County*

Water Agency for the Arvin-Edison Water Storage District Water Management Program", dated March 18, 2004.

G. Metropolitan and Friant Water Users Authority entered into a "*Memorandum of Understanding Regarding Feasibility Analysis of Developing Joint Water Supply and Quality Management Projects*," dated December 12, 2000, as subsequently amended. As part of implementing said MOU, the Proposition 13 grant funding referenced at Section 6.1.2 and 6.1.4 of this Agreement has been secured.

H. This Agreement is consistent with the goal of making optimum use of water and facilities and is consistent with conservation and water quality objectives of Metropolitan and Arvin-Edison. This Agreement, through regulation and conservation of water supplies, will provide Metropolitan with an additional dry-year supply of water, as well as improved water quality, and will provide Arvin-Edison with new facilities, improved reliability of supplies, and an improved ability to enhance groundwater conditions. Nothing in this Agreement is intended to restrict Arvin-Edison from entering into other agreements or arrangements which do not unreasonably interfere with Arvin-Edison's ability to provide Regulated Water or Transported Water to Metropolitan as herein provided.

I. Consistent with the California Environmental Quality Act ("CEQA"), Arvin-Edison, acting as lead agency, completed an Initial Study and Environmental Checklist entitled "*Arvin-Edison Water Management Project Negative Declaration*" with respect to the original Program and associated components/facilities. Arvin-Edison's Board of Directors, on July 8, 1996, considered and approved this Negative Declaration, as being in compliance with CEQA, and Metropolitan's Board of Directors on July 9, 1996, considered and approved this Negative Declaration as a responsible agency. In December 2002, Metropolitan, acting as lead agency

completed an “*Addendum to the Negative Declaration of Arvin-Edison Water Management Project*” of 1996.

Arvin-Edison, acting as lead agency, completed an Initial Study and Environmental Checklist entitled “*Negative Declaration for the Arvin-Edison South Canal Improvement Project*” concerning additional facilities and program modifications referenced herein. Arvin-Edison's Board of Directors, on January 9, 2007, considered and approved the Negative Declaration, as being in compliance with CEQA, and Metropolitan's Board of Directors on May 8, 2007, considered and approved the Negative Declaration as a responsible agency.

J. Arvin-Edison has also prepared and implemented a Groundwater Monitoring Program and Operating Criteria referenced at Section 4.2.3 to monitor all potential impacts of the Program and to insure that, among other things, adverse groundwater impacts which may be caused by this Program are avoided.

K. Under the Regulation Program provided for under this Agreement, the maximum regulation capacity shall be set at 350,000 acre-feet of Regulated Water, and the Parties may operate the Regulation Program to cycle water through the Regulation Program within the 350,000 acre-feet limitation, all as more particularly described in Article 2. The Regulation Program shall not at any given time exceed 350,000 acre-feet of Regulated Water in the Account Balance absent written approval of the Parties. (That is, 350,000 acre-feet of Regulated Water after accounting for losses of ten percent (10%) as provided in Article 3.) The Parties have relied upon various studies to make the following assumptions upon which the Agreement is based: (i) that it will be possible to regulate and return sufficient water in the groundwater basin with the existing spreading basins and wells along with the additional facilities contemplated and constructed under this Agreement for the operation of the Regulation Program; and (ii) that an

estimated minimum of 40,000 acre-feet and an estimated maximum of 75,000 acre-feet of Regulated Water will be available to be conveyed to Metropolitan in any given Year as part of the Regulation Program in accordance with Section 4.1 and 4.6.

L. As a part of this Agreement, Arvin-Edison, as trustee, will hold in trust for Metropolitan, in accordance with the terms of this Agreement, the Regulated Water, or its equivalent, together with the right to withdraw it and to deliver it to the California Aqueduct. Arvin-Edison, as trustee, will also hold in a second trust for Metropolitan and Arvin-Edison as beneficiaries, in accordance with the terms of this Agreement, the Transportation Facilities Trust Property (as defined below). The Parties create these trust relationships for the purposes set forth below in the Declarations of Trusts.

Arvin-Edison's fiduciary duties are limited to Arvin-Edison's responsibilities as set forth in this Agreement. In addition, Arvin-Edison, in a non-fiduciary capacity, will provide such water resource management services as are necessary to implement and operate the Regulation and Transportation Programs. Arvin-Edison's non-fiduciary duties include, as defined herein, but are not limited to, taking such actions, as the construction and operation of Regulation Facilities, to return Regulated Water to Metropolitan, and to convey Metropolitan's Transported Water through Arvin-Edison's Transportation Facilities to the California Aqueduct in accordance with the terms of this Agreement. As used herein, the "Regulation Facilities" means facilities constructed by Arvin-Edison to support the Regulation Program, including, but not limited to, approximately 550 acres of additional spreading ponds, approximately 17 additional wells, the Intertie Pipeline and Pumping Plant, and the South Canal Improvement Project.

When such regulation and transportation services are provided by Arvin-Edison, Metropolitan will make payments to Arvin-Edison, as provided for in this Agreement, to

compensate Arvin-Edison for its services and expenses. These include: payments when water is regulated as provided in Sections 4.6.4, 6.2.1, 6.3.1 and 6.5; payments when water is returned from regulation, as provided in Sections 4.6.6, 6.2.2 and 6.3.2; payments with respect to power and energy used to convey water for regulation, retrieve water from the groundwater basin and to deliver such water to the California Aqueduct, as provided in Sections 4.6.6 and 6.6; payments for operation, maintenance, and replacement expenses under certain circumstances as provided in Sections 4.6.6 and 6.7; and payments with respect to conveyance of Transported Water through Arvin-Edison Transportation Facilities, as provided in Section 5.5.2.

For the first 277,778 acre-feet of Delivered Water under the Regulation Program, Metropolitan has made and will continue to make the regulation payments provided in Sections 4.6.6 and 6.2 below. After regulation of 277,778 acre-feet of Delivered Water, Metropolitan will make the regulation payments provided in Sections 4.6.6 and 6.3. In addition, Metropolitan will pay other costs to reimburse Arvin-Edison, all as specified in Article 6.

As further provided by this Agreement under the Transportation Program, Metropolitan acquires a Contract Priority Right, as defined herein, for the conveyance of Transported Water through certain Arvin-Edison facilities, in addition to conveyance of the Regulated Water. Conveyance of Transported Water pursuant to Metropolitan's Contract Priority Right shall be scheduled so as to deliver the Transported Water as approved by Arvin-Edison while improving Arvin-Edison's operational flexibility and shall be subject to (i) use of facilities for the needs of Arvin-Edison's water users, (ii) other Normal and Customary Uses, (iii) and the needs of the Regulation Program, all as set forth in Article 5. Metropolitan's use of Arvin-Edison Transportation Facilities pursuant to the exercise of Metropolitan's Contract Priority Right shall have priority as provided at Section 5.3.

DECLARATIONS OF TRUSTS

Declaration of Regulation Trust.

Metropolitan hereby appoints Arvin-Edison to hold, and Arvin-Edison hereby accepts such appointment and agrees to hold, in trust, for the use and benefit of Metropolitan, as beneficiary, Metropolitan's Regulated Water together with all of the other Regulation Trust Property (as defined below), upon the terms set forth in this Agreement. This trust shall be designated the "Regulation Trust."

Arvin-Edison acknowledges and agrees that all Regulated Water will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Arvin-Edison in its capacity as trustee for Metropolitan with respect to the Regulated Water and the easements and rights relating to the Regulated Water as set forth below. Metropolitan has herein authorized Arvin-Edison, as trustee, to commingle, exchange or otherwise dispose of the Regulated Water. In exchange for those rights and for the Regulated Water delivered under this Agreement, Arvin-Edison has granted, and does hereby grant, to Metropolitan: (i) the right to a quantity of water equal to Metropolitan's Regulated Water from the lands, facilities, rights and interests of Arvin-Edison in a manner consistent with this Agreement; and (ii) such easements and other rights in Arvin-Edison Transportation Facilities and Arvin-Edison's lands, facilities, rights and interests as are necessary to convey and return a quantity of water equivalent to Metropolitan's Regulated Water to the California Aqueduct for delivery to Metropolitan, subject to the provisions of this Agreement. The rights and interests described in the preceding sentence shall collectively be referred to herein as the "Regulation Trust Property."

Metropolitan has granted, and does hereby grant, to Arvin-Edison the Regulation Trust Property, in trust, for the use and benefit of Metropolitan.

The Regulation Trust created under this paragraph exists only for the purpose of protecting: (i) Metropolitan's interest in a quantity of water equivalent to the Regulated Water, if Arvin-Edison fails or refuses to return such water when required to do so by this Agreement, and only with respect to the return of such water; and (ii) Metropolitan's right, also held in trust by Arvin-Edison for Metropolitan, to recover from the Arvin-Edison Basin and return to Metropolitan, a quantity of water equal to the Regulated Water, such rights to be exercised by Arvin-Edison, as trustee, through the lands, facilities, rights and interests of Arvin-Edison, or by its successor in interest in and to the Regulation Trust Property, all in accordance with the terms of this Agreement.

The creation of the Regulation Trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Arvin-Edison performs its obligations as provided in this Agreement, Arvin-Edison will not be deemed or construed to have breached any fiduciary duty to Metropolitan arising out of the Regulation Trust. The trust relationship created by the Regulation Trust in this Agreement is not otherwise intended to apply to or affect the obligations of Arvin-Edison or Metropolitan hereunder, or the remedies in the event of default. Notwithstanding creation of this Regulation Trust under this Agreement, Arvin-Edison may benefit from the Regulation Program and Transportation Program set forth in this Agreement.

Declaration of Transportation Facilities Trust.

Metropolitan and Arvin-Edison hereby appoint Arvin-Edison to hold, and Arvin-Edison hereby accepts such appointment and agrees to hold, in trust, for the use and benefit of Arvin-Edison and Metropolitan, as beneficiaries, the Transportation Facilities Trust Property (as defined below), upon the terms set forth in this Agreement. This trust shall be designated the

"Transportation Facilities Trust."

Arvin-Edison does hereby grant and contribute to the Transportation Facilities Trust the Arvin-Edison Transportation Facilities and all appurtenant facilities and structures and any rights, easements, lands or facilities it acquires for the purpose of conveying Transported Water to the California Aqueduct. As used herein, the "Transportation Facilities Trust Property" means: (i) the funds provided by Metropolitan pursuant to Sections 6.1.2 and 6.1.4; (ii) the property contributed by Arvin-Edison to the Transportation Facilities Trust, as described above; (iii) the bi-directional Intertie Pipeline from the terminus of the Arvin-Edison South Canal as expanded by the South Canal Improvement Project pursuant to this Agreement to approximately Milepost 277.3 of the California Aqueduct and related facilities capable of conveying approximately 175 cfs of water to or approximately 127 cfs from the California Aqueduct, all to be constructed by the Transportation Facilities Trust with funds described in (i) above; and (iv) any additional rights, easements, lands or facilities needed to complete the construction of such South Canal Improvement Project and related facilities that come to be owned by Arvin-Edison or the Transportation Facilities Trust.

The purposes for which the Transportation Facilities Trust is organized are: (1) to construct, pursuant to the terms of this Agreement, the South Canal Improvement Project in addition to the Intertie Pipeline which has been constructed as part of the Transportation Facilities Trust; (2) acquire any easements, lands, or facilities needed to complete the construction of such facilities; and (3) upon the completion of the South Canal Improvement Project and related facilities, together with the completed Intertie Pipeline, to convey to Arvin-Edison the Arvin-Edison Transportation Facilities and to convey to Metropolitan easements and other rights in the Arvin-Edison Transportation Facilities to the extent necessary to convey

Transported Water to the California Aqueduct for delivery to Metropolitan therein pursuant to the terms of this Agreement.

The creation of the Transportation Facilities Trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Arvin-Edison performs its obligations as provided in this Agreement, Arvin-Edison will not be deemed or construed to have breached any fiduciary duty to Metropolitan arising out of the Transportation Facilities Trust. The trust relationship created by the Transportation Facilities Trust in this Agreement is not otherwise intended to apply to or affect the obligations of Arvin-Edison or Metropolitan hereunder, or the remedies in the event of default. Notwithstanding creation of this Transportation Facilities Trust under this Agreement, Arvin-Edison may benefit from the Regulation Program and Transportation Program set forth in this Agreement.

ARTICLE 1.

DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used.

1.1 "Account Balance" means accumulated total Regulated Water held for Metropolitan less the accumulated returns of Regulated Water to Metropolitan. Records of these accounts shall be maintained by Arvin-Edison, and they shall be subject to audit, review and approval by Metropolitan, at Metropolitan's expense, on an annual basis.

1.2 "Agreement" means, as of any particular time, this First Amended and Restated Agreement for a Water Management Program, as amended or supplemented by the Parties through time.

1.3 "Arvin-Edison Basin" means that portion of the San Joaquin Valley groundwater basin underlying that portion of Arvin-Edison lying between the Edison and White Wolf Faults.

1.4 "Arvin-Edison Transportation Facilities" means Arvin-Edison's existing Intake Canal, Forrest Frick Pumping Plant, North and South Canals (including as expanded as part of the South Canal Improvement Project), the Intertie Pipeline and Pumping Plant, and all appurtenant facilities and structures.

1.5 "Contract Priority Right" means the right of Metropolitan to convey water as is provided for in Article 5.

1.6 "Delivered Water" means water which Metropolitan makes available to Arvin-Edison, as provided in Section 2.1.2 and 4.6, all as delivered and measured at the Points of Delivery.

1.7 "Intertie Capacity" means the capacity, measured in cubic feet per second

("CFS"), to transport Delivered Water, Regulated Water and Transported Water to and from the California Aqueduct. Upon completion of all necessary Program facilities, the estimated maximum Intertie Capacity is an instantaneous flow rate of approximately 175 cfs to, or approximately 127 cfs from, the California Aqueduct.

1.8 "Normal and Customary Uses" means (i) deliveries to meet demands of water users within Arvin-Edison's service area as provided at Section 4.2.2, (ii) historic transfers (including exchanges) and transfers similar to the type historically entered into by Arvin-Edison with other entities, and (iii) operational conditions and criteria which would exist and/or be employed with or without the Program (for example canal balancing, spreading programs, groundwater recovery programs, energy load management, aquatic pest control, and the like).

1.9 "Point(s) of Delivery" means the beginning of Arvin-Edison's Intake Canal, the Intertie Pipeline turnout at approximately Milepost 277.3 of the California Aqueduct, and or other mutually agreed to locations where Delivered Water is provided and measured.

1.10 "Program" means the Regulation Program and/or the Transportation Program provided for in this Agreement.

1.11 "Regulated Water" means Delivered Water less losses deducted in accordance with Article 3. Metropolitan acknowledges that Metropolitan's Regulated Water may be commingled with other water. At all times during the term of this Agreement, there shall be in the Arvin-Edison Basin an amount of water at least equal to the amount of water in the Metropolitan Account Balance, which shall be deemed to be Metropolitan's Regulated Water. Arvin-Edison, as trustee, shall be deemed to remove Metropolitan's Regulated Water from storage only when requested by Metropolitan pursuant to the terms of this Agreement, and any other removal of water by Arvin-Edison from the Arvin-Edison Basin shall be deemed to be the

removal of water that is not Metropolitan's Regulated Water.

1.12 "Regulation Program" means those facilities, agreements and operation activities, described in Recital K and elsewhere, necessary for Arvin-Edison to provide for the water delivery, regulation, management, return and exchange services specified in this Agreement.

1.12.5 "South Canal Improvement Project" or "SCIP" means expansion of Arvin-Edison's South Canal, generally between the Tejon Spreading Works and the Intertie Pumping Plant, as generally described in the March, 2006 "*South Canal Capacity Study*".

1.13 "Transportation Program" means those facilities, agreements and operational activities, as described in Article 5 and elsewhere, necessary to provide Metropolitan with a Contract Priority Right to convey Transported Water available to Metropolitan from transfers or water management programs with third parties through the Arvin-Edison Transportation Facilities to the California Aqueduct for ultimate delivery to Metropolitan, as specified in this Agreement.

1.14 "Transported Water" means water conveyed in Arvin-Edison's Transportation Facilities as is provided for in Article 5.

1.15 "Year" means Arvin-Edison's Water Year pursuant to its water supply contract with the Bureau which is presently March 1 through the last day of February.

ARTICLE 2.

REGULATION OF WATER

2.1 Sources of Water.

2.1.1 (Deleted).

2.1.2 Metropolitan Supplied Water. Metropolitan will provide supplies of Delivered Water for regulation under this Agreement from water transported through the California Aqueduct pursuant to Metropolitan's State Water Project Contract as well as water from other sources when such water is available. All such Delivered Water will be credited to Metropolitan's Account Balance. When Metropolitan notifies Arvin-Edison of its ability to provide supplies for regulation, and its preferred Points of Delivery, Arvin-Edison will accept a minimum annual volume as specified in Section 2.3 and at Arvin-Edison's discretion, additional quantities requested by Metropolitan to the extent Arvin-Edison has unused capacity available in its existing spreading ponds. Such supplies shall be scheduled consistent with Section 2.4 so as to maximize the quantities regulated under this Agreement and other water imported by Arvin-Edison for its own purposes. The Delivered Water Metropolitan provides for regulation shall be delivered to Arvin-Edison at the Points of Delivery and be of at least as good water quality as otherwise available from the California Aqueduct and as Arvin-Edison would otherwise accept for its own use. (For example, under Arvin-Edison's operational guidelines it does not accept water for spreading that exceeds its operational criteria for total suspended solids or turbidity; however, Arvin-Edison shall make reasonable efforts to accept Delivered Water by utilizing its operational flexibility to meet Arvin-Edison's water quality criteria for spreading.)

For all water delivered to Arvin-Edison, whether the Point of Delivery is the beginning of Arvin-Edison's Intake Canal or the Intertie Pipeline turnout, Metropolitan shall pay all the charges provided for in this Agreement as if the water had been delivered at the beginning of Arvin-Edison's Intake Canal.

2.2 Program Level.

2.2.1 (Deleted).

2.2.2 Maximum Program Level. At no time will Metropolitan's Account Balance exceed 350,000 acre-feet of Regulated Water absent written consent of the Parties. That is, Metropolitan may cycle unlimited amounts of water through the Regulation Program within the 350,000 acre-feet limitation, but Metropolitan's Account Balance cannot exceed 350,000 acre-feet at any one time absent written consent of the Parties.

2.3 Minimum Annual Regulation Amount. To the extent the Point of Delivery is Arvin-Edison's Intake Canal, Arvin-Edison will not be required to accept for regulation more than 45,000 acre-feet of Delivered Water in any Year. To the extent the Point of Delivery is the Intertie Pipeline turnout, Arvin-Edison will attempt to regulate Delivered Water, consistent with Normal and Customary Uses, but is not obligated to regulate any specific amount, nor to exceed a total cumulative of 45,000 acre-feet for all Points of Delivery.

2.4 Annual Scheduling. Metropolitan shall provide written notice to Arvin-Edison of its intent to provide water for regulation pursuant to Section 2.1.2 by May 15. Metropolitan may provide notice after May 15, however, for each month or portion thereof after March 1 that the notice is postponed or during which water is not provided for regulation, the total amount of water that can be delivered for regulation for that Year will be reduced proportionally one-twelfth of 45,000 acre-feet per month, or 3,750 acre-feet per month. Metropolitan and Arvin-Edison shall confer and develop a mutually agreeable schedule for delivery of water for regulation within 30 days of such notice. Arvin-Edison will assist Metropolitan in making arrangements for delivery of such water to the requested Point(s) of Delivery.

2.5 Regulation of Water. Arvin-Edison will take control and possession of

Delivered Water at the Point(s) of Delivery and will credit Metropolitan's Account Balance in an amount equal to the water so delivered less the deduction for losses provided for in Article 3. At the time Arvin-Edison takes control and possession of the Delivered Water, legal title to such water, together with the right to withdraw from the Arvin-Edison Basin an amount sufficient to return to Metropolitan the Regulated Water, shall vest in Arvin-Edison, as trustee for Metropolitan. Upon taking control and possession of water delivered hereunder for regulation for Metropolitan, Arvin-Edison will convey and cause to be regulated such Delivered Water. Arvin-Edison shall thereafter hold and return the Regulated Water as provided for in this Agreement.

ARTICLE 3.

OPERATIONAL LOSSES

Transportation, evaporation, metering discrepancies and any other losses of water, for purposes of this Agreement are collectively fixed to be ten percent (10%) of the amount of Delivered Water provided for the Regulation Program (pursuant to Article 2 and Section 4.6.4) and for the Transportation Program (pursuant to Article 5) as measured at the Point(s) of Delivery. These losses are subject to modification in the future based on further studies, with the concurrence of both Parties. In the event of such a modification, the modification would only apply prospectively to future deliveries.

ARTICLE 4.

RETURN OF WATER BY ARVIN-EDISON TO METROPOLITAN

4.1 Methods and Quantities of Return of Regulated Water. Metropolitan may only request return of Regulated Water to the extent there is water in its Account Balance. That is to say, water must be regulated before it can be returned to Metropolitan. In any Year, upon

request by Metropolitan, Arvin-Edison shall convey Regulated Water to Metropolitan by either of the following methods: (a) recovery of the Regulated Water from the Arvin-Edison Basin and conveying it to the California Aqueduct; (b) by exchange or; (c) other means mutually acceptable to the Parties. When Regulated Water is returned to the California Aqueduct, it shall be returned during off-peak and other periods which Arvin-Edison determines to be operationally feasible and which is acceptable to the Department of Water Resources (“DWR”) pursuant to Metropolitan's State Water Project Contract and any approval pursuant to Section 4.4.

For all water returned to Metropolitan, whether by recovery of Regulated Water from the Arvin-Edison Basin or surface water by exchange, Metropolitan shall pay all the charges provided for under Sections 6.2.2, 6.3.2, 6.6 and 6.7 as if the water had been returned by recovery of Regulated Water. Arvin-Edison, upon request of Metropolitan, and subject to Arvin-Edison's determination that the conditions at Sections 4.1 through 4.6 are met, shall return an estimated minimum of 40,000 acre-feet per Year and up to an estimated maximum of 75,000 acre-feet per Year of Regulated Water, which includes any Regulated Water returned pursuant to Section 4.6. The Parties may mutually agree to a return of greater than 75,000 acre-feet of Regulated Water.

More particularly, Regulated Water shall be returned as follows:

(a) If via the Intertie Pipeline, Arvin-Edison upon request of Metropolitan shall return Metropolitan's Regulated Water to Metropolitan by retrieving Regulated Water from the Arvin-Edison Basin and conveying it to the California Aqueduct for delivery to Metropolitan.

(b) If via exchange, Arvin-Edison may exchange Metropolitan's Regulated

Water for an equal amount of water from other sources which Arvin-Edison elects to make available in the California Aqueduct as return of Regulated Water to Metropolitan. Metropolitan hereby consents to such an exchange and Arvin-Edison will be deemed to have effected such an exchange by delivering a portion of such water to Metropolitan at the Tupman or Intertie Pipeline turnouts. Upon completion of such an exchange, Metropolitan's beneficial interest in the Regulated Water that was the subject of the exchange and the right to withdraw such water shall be vested in Arvin-Edison in its individual capacity.

(c) Alternatively, such Regulated Water may be conveyed to Metropolitan by other means mutually acceptable to Metropolitan and Arvin-Edison.

4.1.1 Extension of Term for Water not Returned. To the extent Metropolitan requests return of Regulated Water in accordance with Section 4.3, and after application of scaling factors if Metropolitan's request is not for the full Year, and unless Arvin-Edison cannot return such requested Regulated Water for reasons that are beyond its control (such as California Aqueduct water quality limitations), the term of the Regulation Program as otherwise provided in Section 10.1 shall be extended one month for every 1,000 acre-feet of Regulated Water, or portion thereof, Arvin-Edison does not return to the extent an extension is needed to allow for return of any Regulated Water then remaining in storage. Such period of extension to return Regulated Water will accumulate. However, the cumulative extension shall be reduced by one month for every 1,000 acre-feet of Regulated Water, or portion thereof, Arvin-Edison has returned in excess of its obligation, after application of scaling factors, under Section 4.3 and which Metropolitan was willing to accept, as well as by all Regulated Water returned to Metropolitan pursuant to a late notice received after May 15, provided however, the reduction in extension shall not reduce the term to earlier than November 4, 2035. The

provisions of this Section providing for extension of the term of the Agreement shall become applicable upon the South Canal Improvement Project being substantially completed.

4.2 Conditions on Return of Regulated Water. The return of Regulated Water by Arvin-Edison to Metropolitan shall be subject to the following terms and conditions:

4.2.1 Except as otherwise provided for in Section 10.1, and subject to the provisions of this Agreement, for each acre-foot of Regulated Water held by Arvin-Edison for Metropolitan, Arvin-Edison shall ultimately return one acre-foot of water to Metropolitan.

4.2.2 Return of Regulated Water by Arvin-Edison will not interfere with deliveries to Arvin-Edison's contract water users or other Normal and Customary Uses by Arvin-Edison of its available water supplies. Arvin-Edison may modify from time to time its service area; provided, however, that any modifications to Arvin-Edison's service area which interfere with Arvin-Edison's ability to convey Regulated Water to Metropolitan must be consented to by Metropolitan.

4.2.3 Notwithstanding any other provision of this Agreement, Arvin-Edison will temporarily reduce or terminate groundwater pumping for the purpose of returning Regulated Water to Metropolitan to the extent required pursuant to Arvin-Edison's Groundwater Monitoring Program and Operating Criteria referenced above in Recital J and attached as Exhibit B. However, to the extent practical, and without causing additional costs to Arvin-Edison, Arvin-Edison shall change the timing and location of pumping to avoid reduction in or termination of the return of Regulated Water pursuant to the Groundwater Monitoring Program and Operating Criteria or return other available supplies.

4.3 Scheduling. Metropolitan shall notify Arvin-Edison of its intent to take delivery of Regulated Water as early in the calendar year as possible, but no later than May 15

of the same calendar year; provided, however, for each month or portion thereof after March 1 that the notice to take delivery of Regulated Water is postponed, and/or for each month or portion thereof of the Year that Metropolitan requests the return period to be shortened, the amount of Regulated Water, may, at Arvin-Edison's discretion, be reduced by the applicable scaling factors as shown on attached Exhibit F. If such notification is provided after May 15, Arvin-Edison, at its sole discretion, may make reasonable efforts to comply with Metropolitan's request; provided, however, in the event of an emergency need for water by Metropolitan after May 15, Arvin-Edison shall endeavor to return Regulated Water to Metropolitan to the maximum extent feasible and consistent with this Agreement (in which case any extension of term as provided in Section 4.1.1 shall be correspondingly reduced).

4.4 Scheduling with DWR. Consistent with the agreements referenced in Recital F, Metropolitan shall be responsible for scheduling with DWR delivery of Regulated Water via the Intertie Pipeline to the California Aqueduct. Metropolitan shall be responsible for approvals, if any, and costs once the Regulated Water is returned to the California Aqueduct by either the Intertie Pipeline or by exchange.

4.5 Water Quality. Based on available data, the Parties concluded in 1996 that Arvin-Edison could supply water at the California Aqueduct which meets 1995 Safe Drinking Water Act primary and secondary standards. (The foregoing is only a reference to an existing standard and shall not be interpreted as causing Arvin-Edison to become subject to the Safe Drinking Water Act.)

Arvin-Edison shall take no direct action which would knowingly cause the quality of recovered groundwater to not meet the 1995 Safe Drinking Water Act primary and secondary long-term standards. Should Arvin-Edison knowingly take direct action which causes the

quality of water delivered into the California Aqueduct to not meet 1995 Safe Drinking Water Act primary and secondary standards, Arvin-Edison shall be responsible for taking additional steps, at Arvin-Edison's expense, to ensure that such water meets such standards. The preceding sentence shall not apply to delivery of water under Arvin-Edison's Normal and Customary Uses or water quality degraded as a result of operating under this Program. In the event that future water quality standards change, or the quality of groundwater from Arvin-Edison wells or surface water is such that Arvin-Edison cannot meet acceptable standards for direct pumpback into the California Aqueduct, Regulated Water shall be returned to Metropolitan to the extent practical as provided under Section 4.1.(b) or alternative methods satisfactory to Metropolitan. Such alternative methods may include, but are not necessarily limited to: purchases, exchanges with others, and/or monitoring and emphasizing the use of wells producing higher quality water so as to improve Regulated Water quality to acceptable standards for direct pumpback, with the additional costs of any such methods being paid by Metropolitan. Arvin-Edison's operations and financial situation shall not be adversely impacted as a result of these alternative methods or ongoing water quality testing. In this regard, Metropolitan agrees to pay for ongoing water quality testing necessary for administration of the Program.

Notwithstanding the provisions of this Section 4.5, it is recognized that the quality of water allowed to enter the California Aqueduct will be subject to the provisions of the Agreements with DWR cited in Recital F. Any conflict between such provisions and the other provisions of this Section 4.5 shall be Metropolitan's responsibility.

4.6 Water Quality Sub Account (WQSA). The Parties entered into the Original Agreement contemplating a limited scope of Program operations, whereby Metropolitan would bank water in wetter years and withdraw water in drier years. After operating the Program for

nearly ten (10) years, the Parties believe the Program can be improved by creating and administering a WQSA to facilitate mutually advantageous water management operations, generally within the calendar year, for limited or no cost. The WQSA is an intra-year accounting of the use of Delivered Water and Regulated Water so as to provide specific benefits. The overall objective of the WQSA is to provide Metropolitan additional water quality benefits, generally in the fall and winter, and provide Arvin-Edison increased surface water for peaking, generally in the summer. Accordingly, WQSA operations may be initiated by either party. The WQSA shall operate as follows and as illustrated in Exhibit G:

4.6.1 Maximum Annual WQSA Operations. The total amount of water that can be exchanged via the WQSA Sections 4.6.2, 4.6.3, and 4.6.4 will not exceed 30,000 acre-feet per calendar year without mutual agreement of the Parties. The 30,000 acre-feet per year maximum assumes that the South Canal Improvement Project is substantially completed and the Point of Delivery is Arvin-Edison's Intake Canal. To the extent the Point of Delivery is restricted to the Intertie Pipeline, the maximum annual amount may be reduced and will be subject to Metropolitan's delivery of Delivered Water under the WQSA that satisfies coincident irrigation demand within Arvin-Edison. Absent written consent of the Parties, WQSA operations will be counted towards and subject to the maximum Program level of 350,000 acre-feet of Regulated Water per Section 2.2.2.

4.6.2 Arvin-Edison Initiates Arvin-Edison Return of Regulated Water to Metropolitan. Starting January 1 and up to the date Metropolitan provides its written notice per Sections 2.4 or 4.3, Arvin-Edison may, upon Metropolitan's approval, initiate return of Regulated Water under the WQSA by providing groundwater or other mutually agreeable supplies for delivery to Metropolitan with the requirement that Metropolitan will return a like

amount of water to Arvin-Edison as Delivered Water, to be scheduled at Arvin-Edison's discretion within the calendar year, but generally between May 22 and September 30. The maximum return by Arvin-Edison under this Section 4.6.2 is 10,000 acre-feet of Regulated Water unless mutually agreed by both Parties. No Program costs, including all costs specified in Article 6, will be assessed to Metropolitan under this operation. In the event Arvin-Edison determines it subsequently does not need increased surface water for peaking, the Parties may, upon Metropolitan's approval, agree to account for the return of Regulated Water under this Section 4.6.2, as return of Regulated Water under Sections 4.1 through 4.5, including the applicable costs.

4.6.3 Arvin-Edison Initiates Metropolitan Delivery of Delivered Water to Arvin-Edison. If by May 15, Metropolitan does not request Arvin-Edison to return at least 30,000 acre-feet of Regulated Water per Section 4.1, Arvin-Edison by May 22 may initiate a Metropolitan delivery of Delivered Water to Arvin-Edison. Deliveries under this Section 4.6.3 will be scheduled at Arvin-Edison's discretion within the calendar year, but generally between May 22 and September 30. Metropolitan will be required to deliver the difference between Metropolitan's request to return Regulated Water pursuant to Section 4.3 and 30,000 acre-feet (e.g., if Metropolitan requests 10,000 acre-feet of Regulated Water per Section 4.1, Arvin-Edison may initiate a maximum Metropolitan delivery of Delivered Water of 20,000 acre-feet under this Section 4.6.3). Arvin-Edison will be required to return a like amount of water to Metropolitan as Regulated Water pursuant to Sections 4.6.5 and/or 4.6.6. No Program costs, including all costs specified in Article 6, will be assessed to Metropolitan under this operation.

4.6.4 Metropolitan Initiates Metropolitan Delivery of Delivered Water to Arvin-Edison. To the extent Arvin-Edison does not initiate and maximize WQSA deliveries

under Sections 4.6.2 and 4.6.3 above, and is, or expects to be, utilizing extraction wells for its own purposes, Metropolitan by June 1 may initiate delivery of Delivered Water to Arvin-Edison via the Intertie Pipeline under the WQSA, to the extent said deliveries offset well field pumping. Metropolitan shall pay the costs identified at Section 6.6.1 (iii) and Section 6.7.3 for use of the Intertie Pipeline and 20% of Section 6.6.1 (ii) towards wellfield pumping costs, all of which will be assessed on the basis of Regulated Water delivered under this Section 4.6.4 and payable when such Regulated Water is returned. Arvin-Edison will be required to return a like amount of water, less losses pursuant to Article 3, to Metropolitan as Regulated Water pursuant to Sections 4.6.5 and 4.6.6. If Metropolitan provides notification after June 1, Arvin-Edison, at its sole discretion, shall determine whether, and to what extent, it can comply with Metropolitan's request.

4.6.5 Metropolitan Scheduling Return of Regulated Water by Arvin-Edison. Metropolitan may schedule return of Regulated Water under the WQSA, whether the water has been delivered under Sections 4.6.3 or 4.6.4 above, by requesting Arvin-Edison to return water from the WQSA later in the year, but generally between October 1 and December 31. However, Metropolitan has the option to defer the return of all or a portion of Regulated Water from the WQSA up to March 1 of the following year, except those supplies already returned under Section 4.6.2 above, subject to conversion of WQSA water pursuant to Section 4.6.6. To the extent Arvin-Edison initiates deposits to the WQSA under Sections 4.6.2 and 4.6.3 above, losses provided at Article 3 shall not apply to Metropolitan. To the extent Metropolitan initiates deposits to the WQSA under Section 4.6.4 above, losses provided at Article 3 shall apply.

4.6.6 Conversion of Unreturned WQSA Regulated Water. The Parties

recognize that Arvin-Edison's ability to return Regulated Water under Section 4.6 is limited and corresponds to the maximum return capabilities and dates as shown in the attached Exhibit H. Accordingly, any Delivered Water stored pursuant to Section 4.6, and not scheduled and returned as of the dates in Exhibit H, and in excess of the cumulative return capacity corresponding to said dates, shall be converted and treated as Delivered Water that was not delivered under Section 4.6. For example, if 30,000 acre-feet of Regulated Water remained unreturned as of December 1, 28,500 acre-feet could still be returned under Section 4.6 and 1,500 acre-feet will then be converted. In addition, all water remaining in the WQSA after March 1 shall be treated as converted. All converted water shall be subject to the regulation fees applicable under Article 6 in lieu of any WQSA fees stated above, and such water will be subject to losses provided under Article 3. For billing purposes Regulated Water converted under this Section 4.6.6 shall be deemed returned in any year, and to the extent, Arvin-Edison returns Regulated Water: (i) exceeding the minimum quantities provided at Exhibit B, as modified by applicable scaling factors under Section 4.3, (ii) pursuant to a Metropolitan return request notification made after the May 15 notice deadline provided in Sections 2.4 or 4.3, and or (iii) if all other Regulated Water has been returned, and at that time both the then applicable fees for Delivered Water regulated for Metropolitan and for Regulated Water returned to Metropolitan, as provided at Sections 6.2.2, 6.3.1, 6.3.2, 6.6.1 (ii) and (iii), 6.7.2, and 6.7.3, respectively, shall be paid.

4.6.7 Reimbursement for Avoided SWP Costs. To the extent operation of the WQSA results in Metropolitan avoiding both a variable SWP cost (such as power costs at Buena Vista Pumping Plant) and CVC conveyance costs, Metropolitan will pay Arvin-Edison the avoided SWP costs. Arvin-Edison shall invoice Metropolitan for Metropolitan's avoided

SWP costs on or before the end of the Year following the avoidance of such costs when Arvin-Edison returns Regulated Water to Metropolitan via the Intertie Pipeline. Such costs shall be reconciled with final accountings by DWR.

ARTICLE 5.

**CONTRACT PRIORITY RIGHT FOR TRANSPORTATION OF WATER
(TRANSPORTATION PROGRAM)**

5.1 Transportation Program - General. Metropolitan shall have a Contract Priority Right for the conveyance of Transported Water available to Metropolitan through Arvin-Edison Transportation Facilities to the California Aqueduct. Such Transported Water shall be conveyed through Arvin-Edison facilities in addition to the return of Regulated Water under the provisions of this Agreement. Such Contract Priority Right shall be used by Metropolitan solely for the benefit of Metropolitan and not for third parties.

5.2 Transported Water. The amount of Transported Water to be conveyed through Arvin-Edison's Transportation Facilities shall be dependent upon the capacity available for conveyance of Transported Water in Arvin-Edison's Transportation Facilities. Water conveyance capacity in Arvin-Edison facilities available for use by any party shall be determined by the priority system provided for in Section 5.3. Metropolitan's Contract Priority Right entitles it to use all water conveyance capacity available in Arvin-Edison's Transportation Facilities up to 100% of normal maximum operating capacity not being used by any superior priority as specified in Section 5.3. Such capacities shall be determined by Arvin-Edison.

5.3 Priorities. The priority of all water conveyed through Arvin-Edison Transportation Facilities during the term of the Contract Priority Right shall be determined as follows: (i) water deliveries to Arvin-Edison's water users and any other Normal and

Customary Uses by Arvin-Edison shall have first priority; (ii) water deliveries for the Regulation Program pursuant to this Agreement (including WQSA actions provided at Section 4.6) shall have second priority; (iii) to the extent all Regulated Water due Metropolitan under the Agreement has been provided, any future regulation program between Arvin-Edison and a third party which does not exceed a maximum conveyance of 75,000 acre-feet per Year through the Intertie Pipeline, shall have third priority; (iv) Transported Water conveyed through Arvin-Edison Transportation Facilities under this Article 5 shall have fourth priority; and (v) any other water transportation or conveyance use of Arvin-Edison Transportation Facilities by Arvin-Edison not already provided for shall have fifth priority. Except as otherwise provided by this Agreement, Arvin-Edison retains sole discretion to determine the availability of, and terms and conditions for, any use of Arvin-Edison Transportation Facilities.

5.4 Scheduling. Metropolitan shall schedule with Arvin-Edison the conveyance of Transported Water through Arvin-Edison Transportation Facilities by providing Arvin-Edison with a preliminary notice of Metropolitan's intent to convey Transported Water by March 15, which may thereafter be modified from time to time up until May 1. Such delivery schedule shall state the amount of Transported Water to be conveyed in the noticed Year as expressed in total acre-feet through Arvin-Edison Transportation Facilities. Arvin-Edison shall review the delivery schedule and, within 30 days, inform Metropolitan of any known difficulties in complying with the schedule for conveyance of Transported Water pursuant to the Contract Priority Right. Conveyance of such Transported Water will be scheduled so as to deliver the Transported Water as approved by Arvin-Edison while improving Arvin-Edison's operational flexibility and water supply reliability to the greatest extent practicable. The Parties may mutually agree to amend the delivery schedule at any time.

5.5 Other Terms. The following shall also apply with respect to Metropolitan's Contract Priority Right for the conveyance of Transported Water through Arvin-Edison Transportation Facilities.

5.5.1 Losses. Losses of Transported Water that occur due to conveyance of such water through Arvin-Edison facilities will be assessed on the same basis as losses for Regulated Water as discussed in Article 3.

5.5.2 Costs. Metropolitan shall compensate Arvin-Edison for the estimated actual costs to convey such Transported Water through Arvin-Edison's Transportation Facilities plus a \$5 per acre-foot water management charge on Transported Water, including losses, which charge shall be adjusted in the same manner as provided at Section 6.4. Such actual conveyance costs, in addition to the water management charge, shall be (i) energy costs as provided at Section 6.6.1 (i) and (iii), the same as then applicable for Regulated Water, and (ii) O, M, & R costs as provided at Section 6.7.4. Payments shall be timely made, as provided at Section 6.8.

5.5.3 Term. Metropolitan's Contract Priority Right shall remain in existence until November 4, 2035, regardless of the term of the regulation components of this Agreement, as provided further at Section 10.2.

5.5.4 Replacement of Transported Water. During years Metropolitan elects to use its Contract Priority Right pursuant to this Article 5, Arvin-Edison shall have the option to return Regulated Water as provided in Article 4 to meet all or a portion of Metropolitan's request to convey Transported Water. Arvin-Edison's option shall be limited to replacing Metropolitan's Transported Water with up to 75,000 acre-feet per year of Regulated Water, which includes Regulated Water returned pursuant to Section 4.6. In order to exercise such

option, Arvin-Edison must notify Metropolitan of its exercise of the option and the quantity for which the option is exercised, within the quantity limits specified above, within 30 days of receipt of a schedule (or any modification of the quantity of water to be transported in a schedule) pursuant to Section 5.4 from Metropolitan.

ARTICLE 6.

COMPENSATION

6.1 Construction Costs. Construction of facilities shall be financed as follows:

6.1.1 (Deleted).

6.1.2 Consistent with this Agreement, Arvin-Edison will timely construct an expansion of its South Canal between, generally, the Tejon Spreading Works and the Intertie Pumping Plant. Consistent with Section 6.1.4, Metropolitan will provide to Arvin-Edison, the funds necessary to construct the South Canal Improvement Project (SCIP) (Alternative F3-R3), as generally described in the March 2006 “South Canal Capacity Study”, together with related right-of-way, engineering and legal costs, from what ever source Metropolitan determines. All or a portion of such funds may be from a Proposition 13 Grant from DWR which Metropolitan has secured under an October 13, 2000 letter agreement with DWR, and Arvin-Edison has and will continue to cooperate in assisting Metropolitan obtain and utilize such grant funds in a timely manner. Metropolitan shall pay Arvin-Edison within forty-five (45) days after Metropolitan receives the invoice for such expenditures. The invoice shall include documentation of actual expenses incurred. The SCIP shall be constructed consistent with the applicable Proposition 13 Grant requirements as set forth in the contract attached hereto as Exhibit I, including completing the SCIP within the time frame provided in the Proposition 13 Grant requirements.

6.1.3. Arvin-Edison shall consult with Metropolitan in the selection of design and construction firms for construction of facilities under Section 6.1.2. Metropolitan and Arvin-Edison shall jointly review the estimated costs of right-of-way, engineering, construction management, appraisal, and legal costs related to construction of the SCIP. Disbursements in excess of the approved estimates shall require Metropolitan's prior approval. As Arvin-Edison makes disbursements, it shall provide Metropolitan with an accounting of such disbursements.

6.1.4. (a) Except as otherwise provided in this Section 6.1.4, Metropolitan's contribution to the SCIP will not exceed \$17,365,940, consisting of \$16,165,940 Proposition Grant funding and \$1,200,000 of direct Metropolitan funding. Metropolitan's \$17,365,940 maximum contribution to the SCIP includes payments from Proposition 13 Grant funding Metropolitan already made under the Friant Water Users Authority/Metropolitan Partnership. Such payments were initiated in June 2004 and as of October 2007 totaled \$1,113,398.

(b) If upon review of bids the SCIP cost exceeds \$17,365,940, Arvin-Edison will, at its option, (i) pay the portion of the SCIP costs exceeding \$17,365,940, up to an additional \$3,200,000, and/or (ii) construct a less expensive alternative with at least the capabilities of Alternative F3-R2, as generally described in the March 2006 "*South Canal Capacity Study*" in lieu of Alternative F3-R3 to reduce the SCIP cost.

(c) If Arvin-Edison does not complete the SCIP in the time required by the Proposition 13 Grant to receive grant funding of \$16,165,940, Arvin-Edison will, at its option (i) pay the additional amount necessary to make up for the loss of Proposition 13 funding, up to \$3,200,000, caused by the inability to complete the expansion in the required time and/or (ii) construct a less expensive alternative with at least the capabilities of Alternative F3-R2, as generally described in the March 2006 "*South Canal Capacity Study*" in lieu of Alternative F3-

R3 to make up for the loss of Proposition 13 funding.

(d) If Arvin-Edison elects to construct a less costly alternative, as provided in paragraphs (b) and (c), Metropolitan, at its option, may elect to pay the portion of the SCIP Alternative F3-R3 costs exceeding \$17,365,940 by contributing more Metropolitan funding, and Arvin-Edison will then construct Alternative F3-R3.

(e) If funding shortfalls described in paragraphs (b) and (c) exceed the Arvin-Edison's maximum cumulative contribution of \$3,200,000, Metropolitan and Arvin-Edison will discuss appropriate steps to complete the SCIP, including constructing a less expensive alternative that still meets the Parties objectives.

6.2 Regulation Program Payments - First 277,778 Acre-Feet. For the first 277,778 acre-feet of Delivered Water, the following charges shall apply:

6.2.1 For the first 277,778 acre-feet of Delivered Water regulated for Metropolitan, Metropolitan was required to pay Arvin-Edison a regulation fee of \$90.00 per acre-foot minus \$35.00 per acre-foot, in credit of Metropolitan's advance payments under Section 6.1.2 of the Original Agreement, subject to adjustments as provided in Section 6.4. The first 277,778 acre-feet of Delivered Water have been delivered and Metropolitan has paid for it as required under the Original Agreement.

6.2.2 For all Regulated Water returned pursuant to Section 6.2, Metropolitan shall pay Arvin-Edison a regulation fee of \$30.89 (\$40.00 per acre-foot minus \$9.11 based on the \$12,000,000 advance payment described in Section 6.1.2 of the Original Agreement). This regulation return fee paid to Arvin-Edison shall be adjusted at the beginning of each Year as provided in Section 6.4. If and to the extent Metropolitan does not schedule return of 250,000 acre-feet of Regulation Water, Arvin-Edison's obligation for repayment of advanced funds will

be correspondingly reduced. As of the effective date of this Agreement, a portion of the 277,778 acre-feet of Regulation Water remains in storage and continues to be subject to payment in accordance with this Section 6.2.2.

6.3 Regulation Program Payments for Volumes over 277,778 Acre-feet. For all Delivered Water beyond 277,778 acre-feet, the following charges shall apply:

6.3.1 For all Delivered Water regulated for Metropolitan, Metropolitan shall pay Arvin-Edison a regulation fee of \$70.00 per acre-foot of Delivered Water. The regulation fee paid to Arvin-Edison shall be adjusted at the beginning of each Year as provided in Section 6.4.

6.3.2 For all Regulated Water returned to Metropolitan, Metropolitan shall pay Arvin-Edison a regulation return fee of \$30.00 per acre-foot. The regulation return fee paid to Arvin-Edison shall be adjusted at the beginning of each Year as provided in Section 6.4. No water shall be deemed or construed to be subject to the charge provided in this Section 6.3.2 until all water which is subject to the charge provided in Section 6.2.1 has been returned, except as modified by Section 4.6.6.

6.4 Adjustment of Rates.

6.4.1 The adjusted amount under Sections 5.5.2, 6.2.1, 6.2.2, 6.3.1, 6.3.2 and 6.7 for any particular calendar year shall be the amount equal to the payment therein provided multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the calendar year immediately preceding the calendar year with respect to which the adjusted amount is being determined and the denominator of which shall be the CPI for December 1995 which the Parties agree, is 158.6 (based on the 1982-84 index).

6.4.2 If publication of the index referred to in Section 6.4.1 ceases or if the

basis for such indexes is substantially modified, the Parties shall negotiate and mutually agree on an alternate but equivalent index or, in the absence of agreement, the matter shall be resolved pursuant to Article 9. In that regard, the index referred to in Section 6.4.1 ceased to exist in January 1998 and by letter dated April 29, 1999 the Parties agreed on an alternate index which is the Consumer Price Index, All Urban Consumers, All Items Index, West Urban Size B/C - populations of 50,000 to 1,500,000.

6.5 Costs of Delivered Water. When Metropolitan provides Delivered Water as provided in Section 2.1.2 or Section 4.6, Metropolitan shall provide such water to Arvin-Edison (including water for losses as provided for in Article 3) at no cost to Arvin-Edison and shall reimburse Arvin-Edison for any costs Arvin-Edison may incur to deliver such water to the Points of Delivery. In this regard, and at Metropolitan's request, to the extent Arvin-Edison wheels such water in the Cross Valley Canal (CVC) in capacity it has a right to use and Metropolitan does not otherwise pay third party rates, Metropolitan shall pay a capital cost rate to, and as determined by, Arvin-Edison, not to exceed the then applicable third party CVC rate.

6.6 Power & Energy Costs.

6.6.1 In addition to payment under Sections 6.2.2, 6.3.1, 6.3.2, 6.5, and 6.7 when water is stored or returned, Metropolitan shall pay the average unit power and energy costs then actually incurred by Arvin-Edison to (i) convey Delivered Water from the beginning of Arvin-Edison's Intake Canal to Tejon pumped spreading ponds, regardless if the water is spread or which spreading ponds are used, and regardless of which Point of Delivery is used, (ii) pump Regulated Water from the groundwater basin for either direct delivery to the California Aqueduct or for entitlement exchange (which in either case will be as determined in accordance with Exhibit C attached hereto, note 2), and (iii) convey Regulated Water through

the distribution system and to deliver such water into the California Aqueduct; provided, however, such average cost paid by Metropolitan shall be increased to the extent the Regulation and/or Transportation Programs under this Agreement would otherwise cause Arvin-Edison's average cost of energy to increase above levels which would have been experienced absent such Programs. Said power costs shall be computed based on the amount of energy consumed to pump, withdraw, transport, and when applicable to convey to the California Aqueduct Metropolitan's Regulated Water in a given calendar year multiplied by Arvin-Edison's average actual unit power cost for that calendar year. For ease in billing, Arvin-Edison shall establish an estimated power rate for each calendar year with respect to which Metropolitan requests such information and shall provide Metropolitan with such estimate, including back-up documentation to justify the rate, within fourteen (14) days of the request. Such estimated rate shall be used for billing purposes for the calendar year, and billing will be adjusted to actual by June 1 of the following calendar year, or as soon as possible thereafter. Once the variance amount has been agreed to by the Parties, any amount due by either Party shall be billed immediately and paid in accordance with Section 6.8. The Parties agree that the initial calculation for the purpose of billing shall be consistent with the example of the calculation shown in Exhibit C. For all Regulated Water returned by Arvin-Edison by exchange pursuant to Section 4.1.2, Metropolitan shall pay applicable SWP costs beyond the Tupman turnout.

6.6.2 The methodology for calculating the estimated energy cost as provided in Exhibit C may be revised from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. The intent of Exhibit C is to provide Arvin-Edison with sufficient revenue to recover the power costs incurred by Arvin-Edison for transportation, regulation and withdrawal of Delivered and Regulated Water, and for conveyance of Transported

Water, and to allow Arvin-Edison flexibility to change the calculation based on experience and the changing electric utility industry and possible changes in its power supply and transmission contracts.

6.6.3 To the extent operation of the Program results in Metropolitan avoiding both a variable SWP cost (such as power costs at Buena Vista Pumping Plant) and CVC conveyance costs, Metropolitan will pay Arvin-Edison the avoided SWP costs. Arvin-Edison shall invoice Metropolitan for Metropolitan's avoided SWP costs on or before the end of the Year following the avoidance of such costs when Arvin-Edison returns Regulated Water to Metropolitan via the Intertie Pipeline. Such costs shall be reconciled consistent with final accountings by DWR.

6.7 OM&R Fees. Metropolitan shall pay to Arvin-Edison operation, maintenance and replacement fees ("OM&R fee") based on the following rates which are to approximate Arvin-Edison's actual OM&R and administrative costs to perform the functions listed. The methodology for determining such costs is set forth at Exhibit D attached hereto.

6.7.1 Spreading OM&R. \$6.63 per acre-foot of Delivered Water regulated for Metropolitan;

6.7.2 Extraction OM&R. \$6.63 per acre-foot of Regulated Water delivered to Metropolitan upon return of Regulated Water.

6.7.3 Intertie Pipeline OM&R. \$2.00 per acre-foot of Regulated Water delivered to Metropolitan upon return of Regulated Water. This charge does not apply to the delivery of Delivered Water using the Intertie Pipeline as a Point of Delivery as those deliveries are charged as though the Intake Canal was the Point of Delivery pursuant to Section 6.6.1.

6.7.4 Transported Water OM&R. \$10.95 per acre-foot for each acre-foot of

Delivered Water for transportation through Arvin-Edison pursuant to Article 5.

6.7.5 Adjustments of OM&R. Such rates provided for in Sections 6.7.1 through 6.7.4 shall be adjusted annually, in the same manner as provided at Section 6.4. If requested by either party, and with mutual consent, which consent shall not be unreasonably withheld, such rates shall be redetermined applying the methodology set forth at Exhibit D and thereafter adjusted annually in the same manner as provided at Section 6.4 and shall not be redetermined again for a minimum period of five years.

6.8 Payment Schedule. Arvin-Edison may bill Metropolitan no more frequently than monthly for payments under this Agreement which payments shall be due Arvin-Edison and shall become delinquent forty-five (45) days after Metropolitan receives the invoice under the terms of this Agreement. In addition to other remedies available, delinquent payments shall bear interest at the rate of one percent (1%) per month. Data supporting the amounts invoiced shall be provided upon the reasonable request of Metropolitan. Arvin-Edison shall correct any erroneous billing promptly upon discovery of the error. If Metropolitan has been underbilled, payment of the underbilled amount shall be due and become delinquent forty-five (45) days after Metropolitan receives the corrective invoice and data justifying the change. Overpayments by Metropolitan shall be refunded to Metropolitan within forty-five days of discovery, together with interest thereon at the average investment yield of Metropolitan's investments as reported monthly by Metropolitan's Treasurer.

6.9 (Deleted).

6.10 Annual Payments. For Years 2007 through 2030, inclusive, at the end of each Year (therefore commencing February 29, 2008 for Year 2007) Metropolitan shall make an initial annual payment towards regulation fees provided under Sections 6.2 and 6.3 of

\$1,000,000 (Annual Payment) which Annual Payment will not be escalated. However, the Annual Payment shall be reduced by the amount of the following credits, as applicable in the Year for which payment is made:

(a) A credit toward the 2007 Annual Payment of \$342,868 in recognition that this Agreement supersedes the August 24, 2006 Letter Agreement between the Parties and that Arvin-Edison may now invoice Metropolitan a like amount for outstanding Regulation fees for 2006.

(b) Any remaining credits from the previous Year's annual payment calculation;

(c) Regulation fees paid in the then current Year commencing in Year 2007;

(d) \$50.00 per acre-foot (not subject to escalation) for each acre-foot of Delivered Water converted as provided at Section 4.6.6;

(e) \$8.00 per acre-foot (not subject to escalation) for each acre-foot of water Arvin-Edison imports through the Intertie Pipeline from the California Aqueduct for its own purposes, unrelated to the Program in the then current Year;

(f) Regulation fees for Regulated Water as provided at Sections 6.2.2 and 6.3.2 to the extent Metropolitan requests return of Regulated Water up to 75,000 acre-feet per year, during the then current Year, which Arvin-Edison is not able to return, and such shortages qualify for an extension of term pursuant to Section 4.1.

(g) Regulation fees for Delivered Water as provided at Section 6.3.1 to the extent Metropolitan requests regulation of Delivered Water, up to Arvin-Edison's obligation to accept delivered water pursuant to Sections 2.3 and 2.4, during the then current Year, and which Arvin-Edison is unable to accept.

Any Annual Payments remaining on November 4, 2035 shall be retained by Arvin-Edison and Metropolitan shall have no claim to such funds; provided, however, for each acre-foot Metropolitan has in the storage account at end of the term of the Regulation Program, including any extensions pursuant to Section 4.1, Arvin-Edison shall reimburse Metropolitan at the then current regulation fee for return of Regulated Water pursuant to Section 6.3.2, for each acre-foot, up to 25,000 acre-feet, remaining in Metropolitan's Account Balance. Arvin-Edison will have one year for each 10,000 acre-feet remaining to make reimbursement. For example, Arvin-Edison shall pay Metropolitan for up to the first 10,000 acre-feet remaining in the storage account within one Year of the termination of the Regulation Program; for water remaining in the storage account between 10,001-20,000 acre-feet within two Years of the termination of the Regulation Program; and for any water remaining in the storage account between 20,000-25,000 acre-feet within three Years of the termination of the Regulation Program.

6.11 Water Quality Testing Fees. Metropolitan shall reimburse Arvin-Edison for any reasonable costs incurred by Arvin-Edison for any and all water quality testing required under Section 4.5, including any such costs incurred since January 1, 2003.

ARTICLE 7.

DIVISION OF RISK RESPONSIBILITIES

Arvin-Edison and Metropolitan agree to cooperate in reducing, to the greatest extent practicable, the risk from claims arising against any of the Parties from implementation of this Agreement. In the event of claims by third parties relating to this Agreement, the responsibilities of Arvin-Edison, whether acting in its individual and/or trustee capacity, and Metropolitan shall be divided as follows:

7.1 Arvin-Edison Responsibilities. Arvin-Edison shall defend, indemnify and hold

harmless Metropolitan and its directors, officers, agents, employees, and volunteers against any and all losses, claims, demands and causes of action (herein collectively referred to as "claims") and shall assume responsibility for payment of any settlements, judgments, costs and attorneys' fees arising from claims concerning the following:

(a) Control, carriage, transportation, handling, use, disposal, or distribution of Delivered, Regulated or Transported Water in Arvin-Edison's facilities;

(b) Any contest or dispute by any landowner or water user within the service area of, or otherwise served by, Arvin-Edison concerning the allocation of benefits among or the assessment of charges to Arvin-Edison landowners or water users;

(c) Construction, repair, modification, or replacement of any Arvin-Edison facilities, including, without limitation, expansion of the South Canal pursuant to this Agreement;

(d) Arvin-Edison's operation of the Program or Arvin-Edison facilities or the actions of its officers, employees or agents; and

(e) Any other activities under Arvin-Edison's exclusive control.

If Metropolitan is named in any such action, it may submit its defense to Arvin-Edison, which shall bear the full cost of defense, except to the extent that Metropolitan utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 7.3.

7.2 Metropolitan Responsibilities. Metropolitan shall defend, indemnify and hold harmless Arvin-Edison and its respective directors, officers, agents, employees and volunteers, against any and all claims and shall assume responsibility for payment of any settlements,

judgments, costs or attorneys' fees arising from claims concerning the following:

(a) Control, carriage, transportation, handling, use, disposal or distribution of Regulated and Transported Water in facilities of Metropolitan or in SWP facilities, to the extent that the claim relates to use of SWP facilities to implement this Agreement or any other facilities Metropolitan utilizes to provide Delivered Water to Arvin-Edison;

(b) Any claim by a landowner, resident, public agency or other entity within the service area of, or otherwise served by, Metropolitan challenging the appropriateness of Metropolitan entering into this Agreement;

(c) Construction, repair, modification or replacement of any of the facilities of Metropolitan, or the SWP, except as otherwise may be specified in the agreement referenced in Recital F.;

(d) Operation of the facilities or the actions of the officers, employees or agents of Metropolitan; and

(e) Any other activities under the exclusive control of Metropolitan.

If Arvin-Edison is named in any such action, it may submit its defense to Metropolitan, which Metropolitan shall bear the full cost of defense, except to the extent Arvin-Edison utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 7.3. Arvin-Edison shall not be entitled to any indemnification from Metropolitan except as set forth in this Article 7.

7.3 Other Claims. As for any claims by a third party with respect to the Program which are not otherwise provided for at Sections 7.1 or 7.2, including any claims challenging the underlying authority for or the validity or enforceability of the Program under this

Agreement, Metropolitan shall be responsible for payment of any settlements or judgments with respect to such claims. If Arvin-Edison is named in any action with respect to such a claim, it may submit its defense to Metropolitan and Metropolitan shall bear the full cost of defense, except to the extent Arvin-Edison utilizes its own counsel for such defense. At the request of Metropolitan, Arvin-Edison shall join in the defense of any claim which is not adverse to Arvin-Edison's water supply or financial interests, in which case Metropolitan shall reimburse Arvin-Edison for all of its costs of defense. However, with respect to claims in which one or more of the plaintiffs resides or does business in Kern County challenging the recovery of groundwater under this Agreement, Metropolitan may demand that Arvin-Edison join in the defense of claims. In such case, Arvin-Edison must comply with any such demand, the Parties shall jointly manage the litigation, and Arvin-Edison and Metropolitan shall each pay one-half of the defense costs. In other such cases, Metropolitan shall reimburse Arvin-Edison for all of its costs of defense.

7.4 Multiple Claims. In the event that payments are made in settlement of a claim, in satisfaction of a judgment or for defense costs where the claim arises from issues applying to both Arvin-Edison and Metropolitan, payments shall be divided in proportion to the relative liability of each arising from the common claim. If the Parties cannot agree on the proportion, then the share to be paid by each of Arvin-Edison and Metropolitan shall be submitted to arbitration as provided at Article 9 hereof.

ARTICLE 8.

CONDITIONS FOR IMPLEMENTATION

The conditions required for full implementation of the Original Agreement have been met.

ARTICLE 9.

DISPUTE RESOLUTION

9.1 Informal Mediation. In the event of a dispute regarding interpretation or implementation of this Agreement, or if the Parties are unable to agree upon a matter as to which this Agreement is providing for hereunder, the Parties will endeavor to resolve the dispute by using the services of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties.

9.2 Arbitration. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter shall be resolved by arbitration as provided in this Article 9 and in the California Arbitration Act (Part 3 [commencing with § 1280], Tit. 9, Calif. Code Civ. Proc.), including Section 1283.05. The Parties agree to be bound by the majority decision of a three-member panel to be selected as follows:

- (a) One member shall be selected by Metropolitan;
- (b) One member shall be selected by Arvin-Edison; and
- (c) The third member shall be selected by the other two (2) members.

If the two (2) members selected by Metropolitan and Arvin-Edison are unable to agree on the selection of a third member, either Party may petition a court to appoint the third member pursuant to Code of Civil Procedure Section 1281.6. Each Party shall be responsible for any fees and expenses of the member of the panel appointed by that Party, and the fees and expenses of the third member of the panel shall be shared equally by Arvin-Edison and Metropolitan.

If a Party asserts that another Party has breached obligations under this Agreement, it

may request that the arbitration panel order the other Party to comply with this Agreement. Upon the panel finding that a Party has in fact breached this Agreement, the panel shall order compliance. The panel may order any other equitable relief permitted by California law, including declaratory or injunctive relief, applicable to the matter before the panel for resolution. If termination is sought by a party pursuant to the terms hereof, the panel may determine the issues of whether a default has occurred or other condition precedent to the termination alleged has been satisfied and, if so, may issue orders implementing that termination. The orders of the panel shall be judicially enforceable. The panel may order that the effective date of its order be the date of the breach, if appropriate. If Metropolitan has suspended payments under Section 11.1.2, it shall reimburse Arvin-Edison for any monies withheld and then due to Arvin-Edison as soon as Arvin-Edison again fully complies with this Agreement unless otherwise ordered by the panel. The panel may not order any damages (including consequential or punitive damages) beyond those provided for or permitted under this Agreement.

ARTICLE 10.

TERM OF AGREEMENT

10.1 Regulation Program. With respect to the Regulation Program, unless this Agreement is earlier terminated pursuant to Sections 11.1.3, 11.2, 11.3 or 12.2, this Agreement shall terminate on November 4, 2035. However, if all of Metropolitan's Regulated Water has not been returned by that date, the provisions of Articles 1, 3, 4, 6, 7, 9, 10, 11, 12 and 13 of this Agreement shall continue in full force and effect for such additional period of time as is necessary for Metropolitan to receive its Regulated Water as requested up to the period of extension provided at Section 4.1.1, if any. All water remaining in Metropolitan's Account

Balance as of the later of November 4, 2035, or the end of the extension pursuant to Section 4.1.1, will transfer to Arvin-Edison in its individual capacity to the extent not previously returned to Metropolitan at no cost to Arvin-Edison (except as noted in Section 6.10), and Arvin-Edison shall have no obligation to convey such remaining water to Metropolitan.

10.2 Transportation Program. With respect to the Transportation Program, unless this Agreement is earlier terminated pursuant to Sections 11.1.3, 11.2, 11.3 or 12.2, this Agreement shall terminate on November 4, 2035.

10.3 Late Claims. If a claim arising under or with respect to the terms of this Agreement has not been resolved when this Agreement terminates, with respect to either the Regulated Program or Transportation Program, as the case may be, or if such a claim is brought after this Agreement has terminated but within the period of time for bringing such a claim under California law (such a claim being referred to herein as a "Late Arising Claim"), the provisions of Articles 1, 7, 9 and 13 of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claim and to satisfy the rights and obligations of the Parties hereto with respect to it pursuant to such Articles.

10.4 Renewals of Agreement. This Agreement may be renewed by mutual agreement of the Parties, which renewal shall unless otherwise agreed effect a continuation of both Parties' duties under this Agreement.

ARTICLE 11.

REMEDIES

11.1 Remedies in Event of Arvin-Edison's Voluntary Failure to Perform

11.1.1 If Metropolitan alleges that Arvin-Edison has not substantially performed according to the terms of this Agreement or by causing (or, if within Arvin-Edison's

jurisdiction, permitting) other entities or persons to interfere with Program operation, or by attempting to resign its obligations as trustee under this Agreement, or by failing to accept or return water as and when required by this Agreement, or if Arvin-Edison has otherwise breached its obligations under this Agreement, which failure to perform or breach is not subject to Section 11.3, and notice has been provided to Arvin-Edison pursuant to Section 13.4 and Arvin-Edison has failed to cure the alleged breach within the time provided in Section 13.4, Metropolitan may, at any time thereafter while the default is continuing, advise Arvin-Edison of the remedy or remedies provided in Article 9 (Dispute Resolution), and Sections 11.1.2 and 11.1.3 which Metropolitan intends to pursue with respect to such default. Arvin-Edison may challenge at any time, through Article 9, whether in fact there has been a breach of or default under this Agreement by Arvin-Edison.

11.1.2 In the event of an alleged breach as to which Metropolitan has given notice to Arvin-Edison pursuant to Section 11.1.1, Metropolitan may elect to suspend any payment obligations it may have under Article 6 of this Agreement until Arvin-Edison complies with the terms of this Agreement and cures such breach or default, or is determined, pursuant to Article 9, not to have violated the Agreement. Notwithstanding such suspension of Metropolitan's payment obligations, this Agreement shall remain in effect unless and until Metropolitan elects to terminate the Agreement under Section 11.1.3 in which case termination shall occur in accordance with and as provided in such provision. Notwithstanding an election by Metropolitan under this Section 11.1.2 to suspend payment obligations, Metropolitan or Arvin-Edison may thereafter also seek relief under Article 9.

11.1.3 If, pursuant to Section 11.1.1, Metropolitan elects to terminate this Agreement, Arvin-Edison will purchase the amount of Metropolitan's Regulated Water in its

Account Balance for an amount equal to Metropolitan's previous payments with respect to such Regulated Water, all adjusted based on the index referenced at Section 6.4, plus twenty percent (20%) of said payments, all payable within one (1) year of said election by Metropolitan to terminate. Once such payment has been fully made, this Agreement shall be fully terminated except for Articles 1 (Definitions); 5 (Contract Priority Right for Transportation of Water); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); and 13 (Miscellaneous Provisions). Upon payment in full by Arvin-Edison as provided above, Metropolitan's beneficial interest in the amount of Regulated Water in Metropolitan's Account Balance shall vest in Arvin-Edison and Arvin-Edison shall be entitled to produce and use such water for its own account.

11.2 Remedies in the Event of Metropolitan's Voluntary Failure to Perform.

If Metropolitan has not substantially performed according to the terms of this Agreement, and notice has been provided to Metropolitan pursuant to Section 13.4 and Metropolitan has failed to cure the alleged breach within the time provided in Section 13.4, Arvin-Edison may at its election, at any time thereafter while the default is continuing, either (i) suspend further performance (except that Arvin-Edison shall continue to hold the trust property in trust) and thereafter seek relief under Article 9, and shall recommence performance once Metropolitan complies with the Agreement, or (ii) terminate this Agreement, except that Articles 1, 7, 9 and 13 shall remain in effect. If Arvin-Edison terminates this Agreement after such date, Arvin-Edison will purchase the amount of Metropolitan's Regulated Water remaining in Metropolitan's Account Balance in the manner and at the price provided for in Section 12.2.1. Metropolitan may challenge at any time, through Article 9, whether in fact there has been a breach of this Agreement by Metropolitan.

11.3 Remedies in Event of Failure of Certain Other Remedies. If: (i)

Arvin-Edison has breached or defaulted in the performance of its obligations under this Agreement, and (ii) Metropolitan has given notice of the breach or default pursuant to Section 11.1.1, and (iii) Arvin-Edison has failed to cure that breach or default within thirty (30) days as required by Section 13.4, and (iv) Metropolitan has elected a remedy for that breach or default pursuant to Section 11.1.1, and (v) Arvin-Edison has agreed to such remedy or, if Arvin-Edison has not so agreed, Metropolitan has obtained a judgment or court order against Arvin-Edison (whether based on an order of an arbitration panel under Article 9 or otherwise) which judgment or court order Arvin-Edison has failed or refused to perform, *then* Metropolitan may notify Arvin-Edison that Metropolitan is entitled to and intends to exercise its right to appointment of a successor trustee in place of Arvin-Edison and, thereafter, Metropolitan may apply to a court of competent jurisdiction for such appointment of a successor trustee who shall be charged with performing the duties of the trustee pursuant to the terms of this Agreement. The successor trustee, when appointed, shall be entitled to exercise any and all rights theretofore held by Arvin-Edison as trustee for Metropolitan, including, without limitation, those under or relating to the Regulation Trust Property (excepting, however, the right to receive additional water for storage hereunder), until such time as the successor trustee has collected and recovered water from Arvin-Edison in an amount sufficient to return water in an amount equal to the amount of Metropolitan's Regulated Water in Metropolitan's Account Balance and has conveyed that water to the California Aqueduct. Upon the receipt by Metropolitan at the California Aqueduct of water in an amount equal to Metropolitan's Account Balance pursuant to the exercise by such successor trustee of its rights in the Regulation Trust Property, this Agreement shall be fully terminated except for Articles 1 (Definitions); 5

(Contract Priority Right for Transportation of Water); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); and 13 (Miscellaneous Provisions), all in accordance with the terms of this Agreement.

ARTICLE 12.

EARLY TERMINATION

12.1 Resignation of Arvin-Edison. Because Arvin-Edison is uniquely situated for performing its duties as trustee, Arvin-Edison may not resign its duties and obligations under this Agreement for the term of this Agreement except as permitted by Sections 11.2 and 12.2, and any other attempt by Arvin-Edison to resign shall be deemed to be a breach of its obligations hereunder.

12.2 Involuntary Termination. Notwithstanding Article 11, in the event that Arvin-Edison is unable to perform its obligations under this Agreement for reasons beyond its control, the following shall apply. "Reasons beyond its control" as used in the aforesaid sentence shall not include any reasons caused by Arvin-Edison's breach of its obligations under this Agreement or other failure to comply with any of its legal obligations.

12.2.1 If such inability to perform relates to the Regulation Program, and that inability to perform includes the inability of Arvin-Edison to return Regulated Water which remains in the Metropolitan Account Balance, Arvin-Edison will purchase the Regulated Water which Arvin-Edison is unable to return for an amount equal to the costs which Arvin-Edison would have incurred to purchase such water as Class 2 water from the Friant-Kern Canal under its contract with the Bureau in the Year such Regulated Water was delivered to storage. Such payment by Arvin-Edison to Metropolitan upon involuntary termination under this Section 12.2.1 shall be financed over time upon terms mutually agreeable to Metropolitan and Arvin-

Edison. If Metropolitan and Arvin-Edison are unable to agree on such terms in a reasonable period of time, they shall resolve their disagreement pursuant to Article 9. Once such payments have been fully made, this Agreement shall be fully terminated except for Articles 1 (Definitions); 5 (Contract Priority Right for Transportation of Water); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); this Section 12.2 and Section 13 (Miscellaneous Provisions). If payment is made as provided above, the beneficial interest in the amount of Metropolitan's Regulated Water in Metropolitan's Account Balance which Arvin-Edison is unable to return shall vest in Arvin-Edison.

12.2.2 If such inability to perform relates to the Transportation Program, all provisions of this Agreement shall remain in force and effect except for Article 5 and any other provisions to the extent related to the Transportation Program.

ARTICLE 13.

MISCELLANEOUS PROVISIONS

13.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Any successor to Arvin-Edison shall be a successor Trustee hereunder. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

13.2 No Precedent; Other Agreements. Arvin-Edison entering into this Agreement

shall not create in Metropolitan any rights beyond that expressly provided by this Agreement, nor shall it establish any precedent for extension or renewal of this Agreement beyond its term except as provided for in this Agreement. Furthermore, Metropolitan shall not make any claim to continued use of water provided under this Agreement, beyond that expressly provided under this Agreement, including, but not limited to, asserting any right against Arvin Edison to use of water beyond the term of this Agreement under the doctrine of intervening public use. Arvin-Edison may contract with other parties to provide water management services and/or use of Arvin-Edison's facilities, provided that such other agreements and programs shall not adversely affect Metropolitan's rights and priorities hereunder.

13.3 No Modification of Existing Contracts. This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between the DWR and or Metropolitan or the water supply and related agreements between Arvin-Edison and other parties.

13.4 Waiver/Cure of Defaults. The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

13.5 Construction of Agreement; Opinions and Determinations. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections,

paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it. The preamble, recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "herein," "hereof" and "hereunder" and similar words shall refer to the Agreement generally and not merely to the provision in which such term is used; the word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "Metropolitan" and "Arvin-Edison" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "including," "include" or "includes" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "month" shall mean calendar month; and the term "business day" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement. Where the terms of this Agreement provide for action to be based upon opinion, judgment, approval, review or

determination of either Party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

13.6 Entire Agreement. This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral, pertaining between the Parties relating to the matters provided for herein.

13.7 Severability. In the event that a court of competent jurisdiction or an arbitration panel as provided at Article 9 determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement which were not found to be legally invalid or unenforceable in the final decision shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section 12.2.

13.8 Force Majeure. All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes,

facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 13.8. In event of such an occurrence of duration in excess of one year, Section 12.2 shall control, unless the Parties otherwise agree.

13.9 Notices. All notices, requests and demands hereunder ("Notices") shall be in writing and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Arvin-Edison shall be sent to the Engineer-Manager of Arvin-Edison at P.O. Box 175, Arvin, California 93203-0175, if mailed, and otherwise to the Engineer-Manager at 20401 Bear Mountain Boulevard, Arvin, California. Notices for Metropolitan shall be sent to the General Manager of Metropolitan at Post Office Box 54153, Los Angeles, CA 90054-0153 if mailed, and otherwise to the General Manager at the offices of Metropolitan at 700 North Alameda Street, Los Angeles, California 90012. Each Party hereto (a "Recipient") who receives from another Party hereto (a "Sender") by electronic facsimile transmission (telecopier or email) any writing which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile

transmission, including email, agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

13.10 Regulatory Changes. It is recognized that changes in Arvin-Edison's actual costs of operating the Program or changes in other conditions affecting the Program may occur on or after the date this Agreement is executed as a result of enactments, amendments, changes in implementation or interpretation, or repeal of any federal or state law, rule, regulation or ordinance or changes in contract terms (each, a "Regulatory Change"). If either Party determines that a Regulatory Change has occurred that would result in a material change (upward or downward) in Arvin-Edison's costs or other conditions relating to regulating, recovering or transporting water pursuant to the terms of this Agreement, which change is not reflected in the adjustments in the payments due from Metropolitan to Arvin-Edison pursuant to Article 6 or other provision of this Agreement, such Party shall promptly inform the other Party of the nature and extent of such alleged Regulatory Change and of the reason why that Party believes an adjustment pursuant to this Section 13.10 is warranted in the payments due from Metropolitan to Arvin-Edison or in other terms or conditions. The Parties will thereupon attempt to reach an appropriate amendment of this Agreement in light of the Regulatory Charge. If such agreement cannot be reached within forty-five (45) days after either Party has provided the required notice and information, the matter shall be resolved pursuant to Article 9, the qualified third party or arbitration panel being charged with determining (i) whether a Regulatory Change has occurred (if that is in dispute), (ii) the amount of change, if any, in Arvin-Edison's costs resulting from the Regulatory Change, and (iii) the manner in which the payments due from Metropolitan to Arvin-

Edison or other terms or conditions which should be modified are to be adjusted to fairly and equitably reflect that change in Arvin-Edison's costs or other terms and conditions (it being the intent of the Parties that no windfall or unwarranted compensation or benefit should result to any Party as a result of any adjustment made pursuant to this Section 13.10). Any adjustment to the payments due from Metropolitan to Arvin-Edison or other terms and conditions made pursuant to this Section 13.10 shall be effective as of the first day such Regulatory Change affects Arvin-Edison operations hereunder unless the Parties otherwise agree and may be reconsidered thereafter at any time, at the request of any Party, if the adjustment is unjustly undercompensating or overcompensating any Party.

13.11 Further Assurances. Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

13.12 Counterparts. This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart

thereof signed by the Party against whom enforcement is sought.

13.13 Recording of Memorandum. A memorandum of this Agreement in the form attached hereto as Exhibit E shall be recorded in the Office of the County Recorder, County of Kern, which shall supersede the prior recorded Memorandum referenced therein.


Executed the day and year first hereinabove written.


**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**


By: 
Jeffrey Kightlinger
General Manager

APPROVED AS TO FORM:

General Counsel

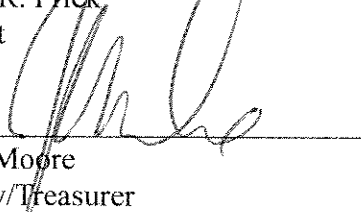
By: 
James Roberts
Deputy General Counsel


Karen L. Tachik
General Counsel


JAMES F. ROBERTS
Deputy General Counsel

ARVIN-EDISON WATER STORAGE DISTRICT

By: 
Howard R. Frick
President

By: 
John C. Moore
Secretary/Treasurer

APPROVED AS TO FORM:

General Counsel

By: 
Ernest Conant
General Counsel

(Deleted)

EXHIBIT A

EXHIBIT "B"

GROUNDWATER MONITORING AND OPERATING CRITERIA

An underlying principle of the proposed water banking and transfer program between the Arvin-Edison Water Storage District (A-E) and Metropolitan Water District of Southern California (Metropolitan), is that the program will not adversely affect A-E landowners as cited in the A-E/Metropolitan Water Management Program Agreement. This exhibit describes, in general terms, the groundwater monitoring program and operating criteria that will be utilized by A-E to operate this program.

GROUNDWATER MONITORING PROGRAM

The existing A-E groundwater monitoring program will be expanded to provide data at the existing recharge and extraction facilities and at the facilities to be constructed as part of the A-E/Metropolitan Water Management Program. Specifically, more wells will be measured and the measurements will be more frequent than would otherwise have occurred without the Program. In addition, A-E will also reinstate its ground subsidence monitoring program.

Initially, surrounding wells within one-mile of the recharge and extraction facilities will be selected for monitoring water levels. Water levels will be measured monthly except during recharge or extraction operations when measurements may be made biweekly. The frequency of these measurements will be reviewed periodically, and the monitoring program may be modified depending on water level changes between measurements of the monitoring program. A-E will prepare periodic reports on the results. The report will present historical water level changes in tabular form and a discussion of the comparison of actual water level changes with those predicted by the computer model of the aquifer system underlying A-E.

GROUNDWATER OPERATING CRITERIA

Computer models of A-E operations and of the groundwater system underlying A-E were developed to evaluate the effects of different hydrologic sequences and the amounts of "puts" and "takes" on groundwater elevations in and adjacent to the recharge and extraction facilities. The first model simulates A-E's operations on a monthly basis. The output of the monthly operations model was then summarized on an annual basis and constitutes the input data to the second model which simulates annual groundwater elevations with and without the proposed program. These models were described in the draft feasibility report prepared by Bookman-Edmonston Engineering, Inc. Both A-E and Metropolitan have used these models to test the impact of various alternatives on groundwater levels. The operational criteria discussed herein are derived from those computer models.

It is recognized that historically the aquifers underlying A-E have not been operated over the range of elevations that may result from implementation of the A-E/Metropolitan Water Management Program. Accordingly, the operational criteria, which determines the annual amount of Regulated Water to be returned to Metropolitan must provide for review and modifications to allow the results of the Groundwater Monitoring Program to be incorporated periodically into the computer model. This will provide a mechanism for modifying the operating criteria, using actual data, to be more, or less, restrictive on groundwater extractions, as additional data are developed. The comparison of actual groundwater level data with the modeled groundwater levels is essential in order to adjust the computer model so as to more closely simulate groundwater conditions. The groundwater operating criteria will be formally reviewed at five (5) year intervals or at other times mutually agreeable to A-E and Metropolitan. The operating criteria also provides both A-E and Metropolitan with the ability to estimate, for the coming year, the magnitude of potential groundwater extractions from the Metropolitan Regulated Water account balance. The groundwater operating criteria address the following issues:

- The Metropolitan groundwater account balance.
- The physical capability of the new and existing facilities to extract groundwater and transport it to the California Aqueduct.
- Projected A-E surface water supply conditions for the water year for which the return is requested.
- The cumulative groundwater extractions (A-E plus Metropolitan) for the sequence of years preceding the proposed return of Regulated Water (from the groundwater) to Metropolitan plus the total groundwater extractions (A-E plus Metropolitan) projected for the current water year.
- The difference in the groundwater elevation predicted by the model and actual groundwater elevations determined from the monitoring program.

The Groundwater Operating Criteria would be used in March of each year to estimate the amount of Regulated Water that could be pumped from the groundwater and returned to Metropolitan in the forthcoming A-E water year, to ensure that, among other things, adverse groundwater impacts which may be caused by this program are avoided. The estimate would be based on the assumption that the hydrologic conditions reported in March hold for the balance of the year. The operating criteria are presented in sequential steps, but some iteration may be required based on cumulative extractions in previous years.

Step 1: Account Balance

Confirm that the balance in the Metropolitan Regulated Water Account equals or exceeds the requested return of Regulated Water by Metropolitan.

Step 2: Groundwater Rule Matrix

Using Table 1, Groundwater Rule Matrix, use the reported A-E Friant-Kern Allocation (Columns 1 and 2) to select the appropriate row. Use number of years of consecutive returns of Regulated Water to Metropolitan, including the year for which the return is requested, to select the appropriate column. The value shown at the intersection of the Friant-Kern Allocation row

and the number of years of consecutive returns of Regulated Water to Metropolitan column is the potential return to Metropolitan.

Step 3: Cumulative Pumpage

Using Table 2, Estimated Maximum Total Cumulative Well Production Constraint, determine the total cumulative pumpage (A-E plus Metropolitan) using A-E records and compare the actual amount with Table 2, Column 2, using the number of years used in Table 1. If the cumulative pumpage, including the proposed pumpage for the current year exceeds the value in Table 2, Column 2, reduce the proposed return to Metropolitan such that the total cumulative pumpage is less than or equal to the value in Table 2, Column 2. If the cumulative pumpage, including the proposed pumpage for the current year, is less than the value in Table 2, Column 2, the return to Metropolitan could be increased consistent with Section 4.1 of the Agreement. The potential increased return to Metropolitan would be determined from Table 1 by moving to the left in the row that reflects A-E water supply conditions to the extent it does not exceed Table 2 constraints. This iterative step is to reflect that sequential total A-E/Metropolitan pumpage is more significant than sequential returns to Metropolitan.

Examples of Application of Groundwater Operating Criteria

Case 1

Conditions:

- Returns to Metropolitan in Previous 3 years
- Metropolitan Account Balance = 100,000 AF
- Requested return in 4th year = 50,000 AF
- A-E Allocation in 4th year = 100% Class 1, 0% Class 2
- Cumulative A-E/Metropolitan pumpage in Previous 3 years = 430,000AF
- Projected A-E pumpage in 4th year = 110,000 AF

Tests:

1. The requested return does not exceed the Metropolitan Account Balance. Therefore, potential return equals 50,000 AF.
2. Table 1, Row 1, Column 7 indicates a maximum return of 29,000 AF. Therefore, potential return now equals 29,000 AF.
3. Table 2, Year 4 Cumulative Pumping Constraint of 550,000 AF is less than the projected cumulative pumpage (430,000 + 110,000 + 29,000 = 569,000). Therefore, potential return now equals 10,000 AF (29,000 – 19,000 = 10,000).

Case 2

Conditions:

- Returns to Metropolitan in Previous 3 years
- Metropolitan Account Balance = 100,000 AF
- Requested return in 4th year = 50,000 AF
- A-E Allocation in 4th year = 100% Class 1, 0% Class 2
- Cumulative A-E/Metropolitan pumpage in Previous 3 years = 390,000AF
- Projected A-E pumpage in 4th year = 110,000 AF

Tests:

1. The requested return does not exceed the Metropolitan Account Balance. Therefore, potential return equals 50,000 AF.
2. Table 1, Row 1, Column 7 indicates a maximum return of 29,000 AF. Therefore, potential return now equals 29,000 AF.
3. Table 2, Year 4 Cumulative Pumping Constraint of 550,000 AF is more than the projected cumulative pumpage (390,000 + 110,000 + 29,000 = 529,000). Therefore, potential return now equals 40,000 AF (29,000 + 21,000 = 50,000),(move across to the highest return in the year condition that is equal to or less than 50,000 AF).

Case 3

Conditions:

- Returns to Metropolitan in Previous 3 years
- Metropolitan Account Balance = 100,000 AF
- Requested return in 4th year = 50,000 AF
- A-E Allocation in 4th year = 100% Class 1, 0% Class 2
- Cumulative A-E/Metropolitan pumpage in Previous 3 years = 403,000AF
- Projected A-E pumpage in 4th year = 110,000 AF

Tests:

1. The requested return does not exceed the Metropolitan Account Balance. Therefore, potential return equals 50,000 AF.
2. Table 1, Row 1, Column 7 indicates a maximum return of 29,000 AF. Therefore, potential return now equals 29,000 AF.
3. Table 2, Year 4 Cumulative Pumping Constraint of 550,000 AF is more than the projected cumulative pumpage (403,000 + 110,000 + 29,000 = 542,000). Therefore, potential return now equals 37,000 AF (29,000 + 8,000 = 37,000),(move across to the highest return in the year condition that is equal to or less than 37,000 AF).

ADDITIONAL CONSIDERATIONS

At the end of each year following extractions, an evaluation of the groundwater conditions may be undertaken. This evaluation will involve: (1) comparison of computed groundwater levels to actual; and (2) review of potential subsidence in and around Arvin-Edison's extraction facilities.

To address the first aspect, Arvin-Edison will compare actual water levels at the recharge and extraction facilities with the water levels predicted by the computer model for the with-and-without program conditions. With this information, the model may be modified incorporating mutually acceptable changes to more closely simulate actual water level conditions, to ensure that, among other things, adverse groundwater impacts which may be caused by this program are avoided.

For the second aspect, Arvin-Edison will review subsidence data gathered during the monitoring program to evaluate if there is any subsidence following extended periods of

pumping. If significant subsidence is indicated at any of the recharge and extraction facilities, A-E will modify patterns of recharge and extractions so as to minimize future subsidence.

**Arvin-Edison Water Storage District
Evaluation of Metropolitan Groundwater Banking Program**

**Table 1
Groundwater Rule Matrix**

Row/ Col.	Friant-Kern Allocation		Total A-E Friant Water Supply (1,000 ac-ft)	Estimated Maximum Return to Metropolitan Based Upon Number of Consecutive Years of Return (1,000 acre-feet)					
	Class 1 (1)	Class 2 (2)		1 (4)	2 (5)	3 (6)	4 (7)	5 (8)	6 (9)
(1)	≤100%	0%	≤40	40	37	33	29	26	24
(2)	100%	1%	43	42	39	34	30	27	24
(3)	100%	2%	46	45	41	35	30	27	25
(4)	100%	3%	49	47	44	35	31	28	25
(5)	100%	4%	52	49	46	36	32	28	26
(6)	100%	5%	56	52	48	37	33	29	26
(7)	100%	6%	59	54	50	38	33	30	26
(8)	100%	7%	62	56	52	39	34	30	27
(9)	100%	8%	65	59	55	39	35	31	27
(10)	100%	9%	68	61	57	40	36	31	28
(11)	100%	10%	71	63	59	41	36	32	28
(12)	100%	11%	74	66	61	42	37	33	28
(13)	100%	12%	77	68	63	43	38	33	29
(14)	100%	13%	81	70	66	43	39	34	29
(15)	100%	14%	84	73	68	44	39	34	30
(16)	100%	≥15%	≥87	75	70	45	40	35	30

Note: No return to Metropolitan in a 7th consecutive year of take.

**Table 2
Estimated Maximum Total Cumulative Well Production Constraint**

Period of Years	Total Cumulative Net Pumpage Over Period not to Exceed (1,000 Ac-Ft) ⁽¹⁾
1	160
2	300
3	430
4	550
5	640
6	720

(1) Includes pumpage for both Metropolitan and Arvin-Edison.

EXHIBIT B

EXHIBIT "C"
CALCULATION OF ESTIMATED ENERGY COSTS FOR CALENDAR YEAR 2007

PROGRAM COMPONENTS	(1) BASIS	(2) KWH/AF	(3) \$/KWH	(4) \$/AF
1. FORREST FRICK PUMPING PLANT	2002	259	\$0.0668	\$17.312
2. TEJON PUMPING PLANT	1999	145	\$0.0668	\$9.692
3. WELLFIELD EXTRACTION	2003	972	\$0.0668	\$64.971
4. INTERTIE PIPELINE PUMPING PLANT	2002	45	\$0.0668	\$3.008

NOTES:

- (1) BASIS WATER YEAR FOR DETERMINING KWH/AF.
- (2) KWH PER AF FROM DISTRICT POWER USE SUMMARY REPORT FOR BASIS YEAR. REPRESENTS THE HIGHEST RECORDED KWH/AF FOR THE MOST RECENT THREE YEARS OF SIGNIFICANT OPERATION.
WELLFIELD EXTRACTION KWH/AF = SYCAMORE + 0.75 X (TEJON - SYCAMORE)
- (3) 90% OF \$/KWH POWER RATE BASED UPON CURRENT CALENDAR YEAR ESTIMATED PWRPA COSTS AND PROJECTED ENERGY USE

<u>COMPONENTS</u>	<u>VALUES</u>
ESTIMATED PWRPA COSTS (\$)	12,700,000
PROJECTED ENERGY USE (KWH)	171,000,000
ESTIMATED POWER RATE (\$/KWH)	0.0743
90% OF POWER RATE (\$/KWH)	0.0668

- (4) COLUMN (2) MULTIPLIED BY COLUMN (3).

EXHIBIT "D" - Methodology for Determining O,M&R Fees

**Average of 5
Water Years
1991-1995**

<p>1. 100% of "Source of Supply" per AEWSD's Audited Financial Statements, plus depreciation and the amount allocated to water-in- storage inventory, does not include water and power costs.</p>	\$872,931
<p>2. 100% of "Pumping Plant" per AEWSD's Audited Financial Statements, plus depreciation and amount allocated to water-in-storage inventory, does not include power costs.</p>	\$587,458
<p>3. 30% of "Transmission and Distribution" per AEWSD's Audited Financial Statements, plus depreciation and amount allocated to water-in-storage inventory, does not include power costs.</p>	\$445,054
<p>4. 15% of "General & Administrative" per AEWSD's Audited Financial Statements.</p>	\$156,785
<p>5. 40% of "Maintenance of General Plant" per AEWSD's Audited Financial Statements, plus depreciation.</p>	\$199,498
<p>Total</p>	<p><u>\$2,261,726</u></p>
<p>6. Average Imported Water (AF) - 20 year average (1978-1997)</p>	<p>170,524</p>
<p>7. Total average cost (\$/AF)</p>	<p><u>\$13.26</u> =====</p>
<hr/>	
<p>6.7.1 - Spreading O,M&R - 50% of total average cost per acre-foot</p>	<p>\$6.63</p>
<p>6.7.2 - Extraction O,M&R - 50% of total average cost per acre-foot</p>	<p>\$6.63</p>
<p>6.7.3 - Intertie Pipeline O,M&R - cost per acre-foot</p>	<p>\$2.00</p>
<p>6.7.4 - Transported Water O,M&R - 30% "Source of Supply", 100% "Pumping Plant", 30% "Transmission & Distribution", 15% "General & Administrative" and 15% "Maintenance of General Plant" divided by 20 year average of imported water plus 6.7.3 costs.</p>	<p>\$10.95</p>

EXHIBIT D

EXHIBIT "D"
PROCEDURE FOR OPERATIONS, MAINTENANCE AND REPLACEMENT
FEEES
ARVIN-EDISON & METROPOLITAN WATER DISTRICT
WATER BANKING PROGRAM

I. DEFINITIONS OF TERMS

Pursuant to the Arvin-Edison Water Storage District's Audited Financial Statements:

Source of Supply - Includes all costs to operate and maintain the District's 14 mile Intake Canal and the Sycamore and Tejon Spreading Ponds. Includes all water costs and the power costs associated with the Tejon Spreading Works.

Pumping Plant - Includes all costs to operate and maintain the Forrest Frick Pumping Plant and the 3 mile long Discharge Pipeline.

Transmission and Distribution - Includes all costs to operate and maintain the District's 31 miles of North and South canal and the Distribution System which includes 45 pumping plants, 170 miles of pressure pipeline, and approximately 520 turnouts.

General and Administrative - Includes all items relating to the general administration of the District (legal, accounting, directors fees, insurance, etc....).

Maintenance of General Plant - Includes all cost associated with supplies, maintenance and repair of District Headquarters, heavy equipment, light equipment, vehicles and trucks.

Other Operating Expenses - Includes all amortization, depreciation, and engineer consulting.

OTHER TERMS USED IN THE CALCULATION OF O,M,&R FEES

Water-in-Storage - The costs allocated into inventory each year from Source of Supply, Pumping Plant, and Transmission and Distribution associated with water that is not delivered to District Water Users but is stored in the District's underground water banking account.

Power Cost- All PG&E and WAPA costs associated with physically transporting or pumping water, which excludes the costs associated with normal utilities.

Water Cost- All costs associated with the purchase of imported water.

II. PROCEDURE FOR EXHIBIT "D"

The goal of Exhibit "D" is to identify the 5 year average of total District costs related to the Intake Canal, Forrest Frick Pumping Plant, and the North and South Canal (facilities that will be used for the AE/MWD Program). These costs will exclude all power costs, water costs, and costs associated with the delivery of water to District customers (water that physically leaves the District's North or South Canal and enters the distribution delivery system).

The following procedures will be followed at the beginning of the project (taken as December 1997) to establish District costs and may also be used at the completion of every five year period over the term of the agreement. The initial District costs will be based on water years 1991 through 1995. Subsequent District costs, if recalculated, will be based on the actual costs that have occurred during the most recently available five year period at the time of the updated calculations. The percentages applied to each of the following categories will be used for the initial 5 year period and, if warranted, will be recalculated at the beginning of each subsequent five year period.

1. **Source of Supply** - As defined in Section I, 100% of these costs per the District's Audited Financial Statements relates to the facilities that will be used for the AE/MWD Program. Additionally the attributable amount of depreciation contained in Other Operating Expenses and the amount of costs that were removed from Source of Supply and recorded in Water in Storage Inventory will be added, less all Power and Water costs associated with Source of Supply.
2. **Pumping Plant** - As defined in Section I, 100% of these costs per the District's Audited Financial Statements relates to the facilities that will be used for the AE/MWD Program. Additionally the attributable amount of depreciation contained in Other Operating Expenses and the amount of costs that were removed from Pumping Plant and recorded in Water in Storage Inventory will be added, less all Power costs associated with Pumping Plant.
3. **Transmission and Distribution** - As defined in Section I, not all of these costs per the District's Audited Financial Statements are attributable to the North and South Canal. A large portion of these costs relate to the delivery of water to District customers. A six month study of North and South Canal repairs and maintenance expenses versus total North and South Canal and Distribution System expenses revealed that approximately 30% of these cost were related to the Canal. Therefore, 100% of these costs per the District's Audited Financial Statements, the attributable amount of depreciation contain in Other Operating Expenses and the amount of costs that were removed from Transmission and Distribution and recorded in Water in Storage Inventory will be added, less all Power costs associated with Transmission and Distribution, and the total multiplied by 30%.
4. **General and Administrative** - As defined above, not all of these costs per the District's Audited Financial Statements relate to the facilities that will be used for the AE/MWD Program. 15% of these cost per the District Audited Financial Statements are assumed for the AE/MWD Program.

EXHIBIT D

5. Maintenance of General Plant - As defined above, not all of these costs per the District's Audited Financial Statements relate to the facilities that will be used for the AE/MWD Program. A study of Maintenance of General Plant indicate that approximately 40% of these costs relate to equipment or facilities that will be utilized by the AE/MWD Program.

6. Average Imported Water - Average Imported Water value will be taken as the average value over the preceding 20 year period, and provided that the District costs are recalculated as specified above, will be recalculated at the completion of every five year period over the term of the agreement. The initial 20 year period will be taken as 1978 to 1997 with an estimate being used for 1997.

7. Total average cost per acre-foot - Total of Section II-1 through 5 divided by Section II-6.

III. CALCULATION OF COST FOR 6.7.1, 6.7.2, 6.7.3 and 6.7.4

6.7.1 - Spreading O,M,&R - 50% of Section II - 7.

6.7.2 - Extraction O,M,&R - 50% of Section II - 7.

6.7.3 - Intertie Pipeline O,M,&R - Initially estimated at \$2.00 per acre-foot. This base value may be reanalyzed at 5 year intervals as specified for Exhibit "D" above.

6.7.4 - Transported Water O,M&R - Pursuant to the Transportation Program water will travel through 48 miles of District facilities, plus the proposed intertie pipeline. The total per acre-foot amount calculated in Section II-7 includes all the costs that will be incurred by the Transportation Program, excluding the intertie costs (6.7.3). The costs associated with spreading and extracting water, which are not a part of the Transportation Program, are also included in Section II-7. To factor out the costs of the spreading and extraction, the following calculation using the procedures in Section II will be used: $((30\% \text{ Source of Supply} + 100\% \text{ Pumping Plant} + 15\% \text{ General \& Administrative} + 15\% \text{ General Plant Maintenance}) / \text{Section II-6}) + 6.7.3$.

**FOR THE BENEFIT OF THE DISTRICT
RECORDING REQUESTED BY
AND RETURN TO:**

Arvin-Edison Water Storage District
P.O. Box 175
Arvin, CA 93203

**MEMORANDUM OF AGREEMENT
FOR A METROPOLITAN/ARVIN-EDISON
WATER MANAGEMENT PROGRAM**

THIS MEMORANDUM OF AGREEMENT ("Memorandum of Agreement"), dated as of October 9, 2007, is entered into by and between The Metropolitan Water District of Southern California ("Metropolitan") and the Arvin-Edison Water Storage District ("Arvin-Edison"), with respect to that certain First Amended And Restated Agreement Between Arvin-Edison Water Storage District and the Metropolitan Water District of Southern California for a Water Management Program ("Agreement"), dated of even date herewith. Metropolitan and Arvin-Edison may be referred to individually as "Party" or, collectively, as "Parties."

RECITALS

A. Arvin-Edison has contracted with the United States Bureau of Reclamation ("Bureau") under a contract dated August 30, 1962 (Contract No. 14-06-200-229-A), which contract was first renewed on an interim basis on February 27, 1995, and renewed for a term of 25 years on January 20, 2001, and for which Arvin-Edison is entitled to subsequent renewals thereof pursuant to the provisions of said contracts and Federal Reclamation Law. Said contract provides for delivery to Arvin-Edison of 40,000 acre-feet of firm Class 1 water and 311,675 acre-feet of non-firm Class 2 water. Arvin-Edison has, since implementing its project in 1966, operated a conjunctive use project whereby a portion of its Class 2 water is stored in the Arvin-Edison Basin when available, and in turn withdrawn during periods of insufficient surface water supplies. Additionally, Arvin-Edison exchanges a portion of its supplies, in order to increase its water supplies available during years of insufficient supply from the Friant-Kern Canal. Arvin-Edison has a surface water service area of approximately 52,000 acres, and the landowners within said area are in large part totally dependent on Arvin-Edison for the water supplies for agricultural, and to a minor degree, municipal and industrial purposes, and additionally enhances groundwater conditions for the remaining approximately 80,000 acres in Arvin-Edison. Arvin-Edison is a party to a Stipulation of Settlement in Natural Resources Defense Council, et al. v. Rodgers, et al., as approved by an order dated October 23, 2006, which to an unknown extent will affect Arvin-Edison's water supply, among other things.

B. Metropolitan is a public agency formed under the Metropolitan Water District Act of 1927. Metropolitan provides imported water to 26 member public agencies to supplement local municipal water supplies within its six-county service area located in Southern California's coastal plain. Metropolitan obtains its water supplies from the Colorado Aqueduct, the State Water Project ("SWP"), and other sources. Metropolitan seeks to augment its dry year water supplies by arranging for Regulated Water to be delivered to Metropolitan during periods of insufficient supply from available sources and to improve water quality in the California Aqueduct.

C. Metropolitan and Arvin-Edison previously found that it would be mutually advantageous to enter into the Regulation Program described in this Memorandum of Agreement and entered into a December 19, 1997 "Agreement Between Arvin-Edison Water Storage District and the Metropolitan Water District of Southern California for a Water Management Program" ("Original Agreement"), whereby Arvin-Edison has regulated water on Metropolitan's behalf and delivered that water to Metropolitan upon request. The Regulated Water generally is banked in the Arvin-Edison Basin, and upon demand of Metropolitan such water is delivered to Metropolitan through either the Intertie Pipeline into the California Aqueduct or through an exchange of water in the California Aqueduct, or both. A Memorandum of that Agreement was recorded with the Kern County Assessor-Recorder on December 24, 1997 as Document No. 0197171555. This Memorandum of Agreement supplements, and to the extent it is inconsistent with supercedes, that December 24, 1997 Memorandum of Agreement. Metropolitan and Arvin-Edison now find that it will be mutually advantageous to amend and restate the Original Agreement by entering into the Agreement as described herein.

D. In addition, Metropolitan shall have a Contract Priority Right to convey Transported Water through certain specified Arvin-Edison facilities to the California Aqueduct. Such Contract Priority Right shall give Metropolitan a priority for conveyance of Transported Water ahead of third parties that may also wish to convey water through Arvin-Edison's facilities. The term of such Contract Priority Right and fees for such right shall be as specified in the Agreement.

E. Pursuant to the Original Agreement, Arvin-Edison timely constructed new facilities, which it owns and operates, including (i) approximately 550 acres of additional spreading ponds; (ii) approximately 17 additional wells; and (iii) a 4.3 mile bi-directional pipeline from the terminus of the Arvin-Edison South Canal to approximately Milepost 277.3 of the California Aqueduct and the related pumping facilities capable of conveying approximately 175 cubic feet per second ("cfs") of water to and approximately 127 cfs from the California Aqueduct ("Intertie Pipeline"). Pursuant to the Agreement, Arvin-Edison will timely construct the South Canal Improvement Project, consisting of an expansion of the South Canal generally between the Tejon Spreading Works and the Intertie Pumping Plant, as generally described in the March 2006 "South Canal Study". Metropolitan will supply the majority of the funds needed to construct the South Canal Improvement Project. Arvin-Edison will own, operate and have first priority to utilize its facilities, including such new facilities which will also be used for the Program to benefit Metropolitan as provided by the Agreement. Metropolitan has the right to benefit from facilities it assisted in financing through the Regulation Program such that Metropolitan shall retain a priority over third parties to regulate Delivered Water during the term of the Regulation Program, subject to the terms of the Agreement.

F. In furtherance of the Original Agreement, the following agreements have been entered into:

1. *“Agreement Among Department of Water Resources of the State of California, Kern County Water Agency, and Arvin-Edison Water Storage District for Introduction of Water Into the California Aqueduct”*, dated March 18, 2004.

2. *“Agreement Among The Department of Water Resources of the State of California, Kern County Water Agency And Arvin-Edison Water Storage District for Construction, Operation, and Maintenance of the Arvin-Edison Turnout, A Permanent Turnout Within the California Aqueduct Right-of-Way”*, dated January 26, 1999.

3. *“Point of Delivery Agreement Among the Department of Water Resources, of the State of California, Metropolitan Water District of Southern California and Kern County Water Agency for the Arvin-Edison Water Storage District Water Management Program”*, dated March 18, 2004.

G. Metropolitan and Friant Water Users Authority entered into a *“Memorandum of Understanding Regarding Feasibility Analysis of Developing Joint Water Supply and Quality Management Projects,”* dated December 12, 2000, as subsequently amended. As part of implementing said MOU, the Proposition 13 grant funding referenced at Section 6.1.2 and 6.1.4 of the Agreement has been secured.

H. The Agreement is consistent with the goal of making optimum use of water and facilities and is consistent with conservation and water quality objectives of Metropolitan and Arvin-Edison. The Agreement, through regulation and conservation of water supplies, will provide Metropolitan with an additional dry-year supply of water, as well as improved water quality, and will provide Arvin-Edison with new facilities, improved reliability of supplies, and an improved ability to enhance groundwater conditions. Nothing in the Agreement is intended to restrict Arvin-Edison from entering into other agreements or arrangements which do not unreasonably interfere with Arvin-Edison's ability to provide Regulated Water or Transported Water to Metropolitan as herein provided.

I. Consistent with the California Environmental Quality Act ("CEQA"), Arvin-Edison, acting as lead agency, completed an Initial Study and Environmental Checklist entitled *“Arvin-Edison Water Management Project Negative Declaration”* with respect to the original Program and associated components/facilities. Arvin-Edison's Board of Directors, on July 8, 1996, considered and approved this Negative Declaration, as being in compliance with CEQA, and Metropolitan's Board of Directors on July 9, 1996, considered and approved this Negative Declaration as a responsible agency. In December 2002, Metropolitan, acting as lead agency completed an *“Addendum to the Negative Declaration of Arvin-Edison Water Management Project”* of 1996.

Arvin-Edison, acting as lead agency, completed an Initial Study and Environmental Checklist entitled *“Negative Declaration for the Arvin-Edison South Canal Improvement Project”* concerning additional facilities and program modifications referenced herein. Arvin-Edison's Board of Directors, on January 9, 2007, considered and approved the Negative Declaration, as being in compliance with CEQA, and Metropolitan's Board of Directors on May

8, 2007, considered and approved the Negative Declaration as a responsible agency.

J. Arvin-Edison has also prepared and implemented a Groundwater Monitoring Program and Operating Criteria referenced at Section 4.2.3 of the Agreement to monitor all potential impacts of the Program and to insure that, among other things, adverse groundwater impacts which may be caused by this Program are avoided.

K. Under the Regulation Program provided for under the Agreement, the maximum regulation capacity shall be set at 350,000 acre-feet of Regulated Water, and the Parties may operate the Regulation Program to cycle water through the Regulation Program within the 350,000 acre-feet limitation, all as more particularly described in Article 2 of the Agreement. The Regulation Program shall not at any given time exceed 350,000 acre-feet of Regulated Water in the Account Balance absent written approval of the Parties. (That is, 350,000 acre-feet of Regulated Water after accounting for losses of ten percent (10%) as provided in Article 3 of the Agreement.) The Parties have relied upon various studies to make the following assumptions upon which the Agreement is based: (i) that it will be possible to regulate and return sufficient water in the groundwater basin with the existing spreading basins and wells along with the additional facilities contemplated and constructed under the Agreement for the operation of the Regulation Program; and (ii) that an estimated minimum of 40,000 acre-feet and an estimated maximum of 75,000 acre-feet of Regulated Water will be available to be conveyed to Metropolitan in any given Year as part of the Regulation Program in accordance with Section 4.1 and 4.6 of the Agreement.

L. As a part of the Agreement, Arvin-Edison, as trustee, will hold in trust for Metropolitan, in accordance with the terms of the Agreement, the Regulated Water, or its equivalent, together with the right to withdraw it and to deliver it to the California Aqueduct. Arvin-Edison, as trustee, will also hold in a second trust for Metropolitan and Arvin-Edison as beneficiaries, in accordance with the terms of the Agreement, the Transportation Facilities Trust Property (as defined below). The Parties create these trust relationships for the purposes set forth below in the Declarations of Trusts.

Arvin-Edison's fiduciary duties are limited to Arvin-Edison's responsibilities as set forth in the Agreement. In addition, Arvin-Edison, in a non-fiduciary capacity, will provide such water resource management services as are necessary to implement and operate the Regulation and Transportation Programs. Arvin-Edison's non-fiduciary duties include, as defined herein, but are not limited to, taking such actions, as the construction and operation of Regulation Facilities, to return Regulated Water to Metropolitan, and to convey Metropolitan's Transported Water through Arvin-Edison's Transportation Facilities to the California Aqueduct in accordance with the terms of the Agreement. As used herein, the "Regulation Facilities" means facilities constructed by Arvin-Edison to support the Regulation Program, including, but not limited to, approximately 550 acres of additional spreading ponds, approximately 17 additional wells, the Intertie Pipeline and Pumping Plant, and the South Canal Improvement Project.

When such regulation and transportation services are provided by Arvin-Edison, Metropolitan will make payments to Arvin-Edison, as provided for in the Agreement, to compensate Arvin-Edison for its services and expenses. These include: payments when water is regulated as provided in Sections 4.6.4, 6.2.1, 6.3.1 and 6.5 of the Agreement; payments when water is returned from regulation, as provided in Sections 4.6.6, 6.2.2 and 6.3.2 of the Agreement; payments with respect to power and energy used to convey water for regulation,

retrieve water from the groundwater basin and to deliver such water to the California Aqueduct, as provided in Sections 4.6.6 and 6.6 of the Agreement; payments for operation, maintenance, and replacement expenses under certain circumstances as provided in Sections 4.6.6 and 6.7 of the Agreement; and payments with respect to conveyance of Transported Water through Arvin-Edison Transportation Facilities, as provided in Section 5.5.2 of the Agreement.

For the first 277,778 acre-feet of Delivered Water under the Regulation Program, Metropolitan has made and will continue to make the regulation payments provided in Sections 4.6.6 and 6.2 of the Agreement. After regulation of 277,778 acre-feet of Delivered Water, Metropolitan will make the regulation payments provided in Sections 4.6.6 and 6.3 of the Agreement. In addition, Metropolitan will pay other costs to reimburse Arvin-Edison, all as specified in Article 6 of the Agreement.

As further provided by the Agreement under the Transportation Program, Metropolitan acquires a Contract Priority Right, as defined herein, for the conveyance of Transported Water through certain Arvin-Edison facilities, in addition to conveyance of the Regulated Water. Conveyance of Transported Water pursuant to Metropolitan's Contract Priority Right shall be scheduled so as to deliver the Transported Water as approved by Arvin-Edison while improving Arvin-Edison's operational flexibility and shall be subject to (i) use of facilities for the needs of Arvin-Edison's water users, (ii) other Normal and Customary Uses, (iii) and the needs of the Regulation Program, all as set forth in Article 5 of the Agreement. Metropolitan's use of Arvin-Edison Transportation Facilities pursuant to the exercise of Metropolitan's Contract Priority Right shall have priority as provided at Section 5.3 of the Agreement.

NOW THEREFORE, in consideration of the foregoing recitals (which are, by this reference incorporated herein and made a part hereof for all purposes) and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Metropolitan and Arvin-Edison do further agree as follows:

1. The Agreement is incorporated herein by this reference, as if set out in full herein.

2. In the event of any conflict between the provision of this Memorandum of Agreement and the Agreement, the provisions of the Agreement shall control.

3.1 With respect to the Regulation Program, unless the Agreement is earlier terminated pursuant to Article 10 of the Agreement thereof or pursuant to Sections 11.1.3, 11.2, 11.3, or 12.2 of the Agreement, the Agreement and this Memorandum of Agreement shall terminate on November 4, 2035. However,, if all of Metropolitan's Regulated Water has not been returned by that date, the provisions of Articles 1,3,4,6,7,9,10,11, 12 and 13 of the Agreement shall continue in full force and effect for such additional period of time as is necessary for Metropolitan to receive its Regulated Water as requested up to the period of extension provided at Section 4.1.1 of the Agreement, if any. All water remaining in Metropolitan's Account Balance as of the later of November 4, 2035, or the end of the extension period of Section 4.1.1 of the Agreement, will transfer to Arvin-Edison in its individual capacity to the extent not previously returned to Metropolitan at no cost to Arvin-Edison (except as noted in Section 6.10 of the Agreement), and Arvin-Edison shall have no obligation to convey such

remaining water to Metropolitan.

3.2 With respect to the Transportation Program, unless the Agreement is earlier terminated pursuant to Section 11.1.3, 11.2, 11.3 or 12.2 of the Agreement, the Agreement shall terminate on November 4, 2035.

3.3 If a claim arising under or with respect to the terms of the Agreement has not been resolved when the Agreement terminates, with respect to either the Regulation Program or Transportation Program, as the case may be, or if such a claim is brought after the Agreement has terminated but within the period of time for bringing such a claim under California Law (such a claim being referred to herein as a "Late Arising Claim"), the provisions of Articles 1, 7, 9 and 13 of the Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claim and to satisfy the rights and obligations of the Parties hereto with respect to it pursuant to such Articles. The Agreement may be renewed by mutual agreement of the Parties, which renewal shall unless otherwise agreed effect a continuation of both Parties' duties under the Agreement and an amendment of this Memorandum of Agreement, whether or not such amendment is recorded.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be duly executed and delivered by their respective authorized officers as of the date first set forth above.

**THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA**

By: _____
Jeffrey Kightlinger
General Manager

ARVIN-EDISON WATER STORAGE DISTRICT

By: _____
Howard R. Frick, President

By: _____
John C. Moore, Secretary-Treasurer

EXHIBIT F

SCALING FACTORS

Month	Factor
Mar	12%
Apr	2%
May	1%
Jun	1%
Jul	1%
Aug	1%
Sep	1%
Oct	8%
Nov	19%
Dec	20% *
Jan	20%
Feb	14%
Total	100%

*Assumes canal not dewatered for winter maintenance

Example: If MWD requests, on April 15, return of 75,000 AF before the end of December, applicable scaling factors are $(12\% + 1/2(2\%) + 20\% + 14\%) = 47\%$, or a reduction of 35,250 AF, setting AE's return obligation at 39,750 AF.

EXHIBIT F

EXHIBIT G

WATER QUALITY SUB ACCOUNT (WQSA) EXAMPLES AND MATRIX

The following cases describe some examples of the initiation, execution and cost responsibility aspects of operating the WQSA. This Exhibit includes the following examples and a Matrix. Also, the dates cited for water movement are for example only and are not to be construed as in conflict with specific dates and deadlines defined in the Agreement. It should be noted further that the permutations of these options are virtually endless and only a few key examples and options are stated.

Cases 1 through 6 represent WQSA actions carried out under a single section of the Agreement on a with-and-without conversion (Section 4.6.6) basis. Cases 7 and 8 represent WQSA actions carried out under multiple sections of the Agreement. In Case 7, the individual WQSA actions are completed for both the delivery and return components and Case 8 is an example of a partial conversion of the year's activities. The Delivered Water (DW) and Regulated Water (RW) components of each of the actions are described.

Case 1 – Standard 4.6.2

AE returns 10,000 AF of RW to MWD before March 1 and takes delivery of 10,000 AF of DW via the Intertie Pipeline (IPL) through June, July and August. AE incurs all costs associated with operating its wellfields and IPL. MWD is assessed no costs or water losses.

Option A: If AE elects to receive a portion of the DW from MWD via the Cross Valley Canal (CVC), AE is responsible for CVC costs (including any additional CVC losses) and MWD is responsible for paying Buena Vista PP (BVPP) costs to AE for that portion of water avoiding use of the BVPP.

Case 2 – Substitution in lieu of 4.6.2

AE returns 10,000 AF of RW to MWD before March 1 and MWD and AE subsequently agree that it is not needed for WQSA actions that year and MWD accepts it in lieu as though it was a return under the original banking program. MWD is responsible for normal program costs as delineated on the Matrix.

Case 3 – Standard 4.6.3

AE initiates MWD delivering 30,000 AF of DW to Arvin in June-August, and AE returns 30,000 AF of RW to MWD during September-December. MWD is assessed no costs or water losses.

Option A above applies.

EXHIBIT G

Option B: If MWD elects to use the CVC to increase WQSA deliveries to AE so as to receive greater WQSA return in the fall, MWD is responsible for CVC costs (including any additional CVC water losses) but not for the BVPP payment to AE, which results in a lower net cost for use of the CVC by MWD. Forrest Frick Pumping Plant costs also apply.

Case 4- Conversion of 4.6.3

AE initiates delivery of 30,000 AF of MWD DW during the summer, and through the IPL, and MWD declines the return of 30,000 AF of RW during the year, thus converting the 30,000 AF DW to normally banked water, which is then subject to water losses. MWD is responsible for normal program costs as delineated on the matrix. Note that since water was delivered at the IPL point of delivery and at such a time as to offset wellfield pumping, as a provision of this Section the power charges for FFPP and Tejon spreading as well as Spreading O&M are not charged. Applicable charges (on both DW and RW) are assessed at time of future return. See Matrix.

Case 5 – Standard 4.6.4

MWD initiates delivery of 30,000 AF of MWD DW to AE during the summer, and MWD receives a 27,000 AF return of RW in the fall. MWD is responsible for costs as delineated on the matrix which are due upon return of water to MWD which is in the same year.

Option A & B above apply.

Case 6 – Conversion of 4.6.4

MWD initiates delivery of 30,000 AF of MWD DW during the summer, and MWD declines the return of 27,000 AF of RW during the year, converting the 27,000 AF to normally banked water. MWD is responsible for normal program costs as delineated on the matrix. Note that since water was delivered at the IPL point of delivery and at such a time as to offset wellfield pumping, as a provision of this Section the power charges for FFPP and Tejon spreading as well as Spreading O&M are not charged. Applicable charges are assessed at time of future return. See Matrix.

Case 7 – Maximum Combined Actions without Conversion

AE initiates under Section 4.6.2 return of 10,000 AF of RW to MWD in January-March and receives a corresponding 10,000 AF of MWD DW during the summer. AE also initiates under Section 4.6.3 delivery of 10,000 AF of MWD DW to AE during the summer. And lastly, MWD initiates under Section 4.6.4 delivery of 10,000 AF of DW to AE during the summer. In total AE took delivery of 30,000 AF (10,000 AF from each of 4.6.2, 4.6.3, and 4.6.4) during the summer months and all water was delivered to AE via the IPL.

The 10,000 AF exchange under 4.6.2 is complete and MWD is subject to no cost or water losses comparable to Case #1.

EXHIBIT G

To complete the 4.6.3 exchange AE will return 10,000 AF in the fall and MWD is subject to no cost or water losses as in Case #3.

To complete the 4.6.4 exchange AE will return 9,000 AF in the fall. MWD is subject to the costs and water losses as in Case #5.

In summary for the year, AE takes delivery of 30,000 AF of DW (10,000 AF from each of 4.6.2, 4.6.3, and 4.6.4) during the summer months, and AE returns 29,000 AF of RW to MWD (10,000 in the beginning of the year and 19,000 during the fall months).

Case 8 – Combined Actions with Partial Conversion

Identical initial conditions as Case 7, except that MWD elects not to schedule the return of 10,000 AF of RW during the year. When several Sections are initiated during the year, the Sections initiated earliest are completed first and the Sections initiated latest are completed last, a “first-initiated-first-completed” accounting. As all the 4.6.2 actions have been completed, the conversion affects Sections 4.6.3 and 4.6.4.

First, the 10,000 AF of converted water exceeds the 9,000 AF of water to be returned to MWD under Section 4.6.4 (the last initiated section), therefore, it is all converted. The 9,000 AF remains in the standard banking program to be returned to MWD in a later year. Water losses have already been applied and the costs associated with Case 6 shall apply (based on 9,000 AF of RW and/or 10,000 AF of DW) and are due when the water is returned to MWD.

The last 1,000 AF of water to be converted represents 1,111 AF of MWD DW, prior to assessment of water losses, and reduces the water returned to MWD under Section 4.6.3. Water losses apply and the costs associated with Case 3 shall apply (based on 1,000 AF of RW and/or 1,111 AF of DW) and are due when the water is returned to MWD. Following is a summary of Case 8 activities:

DW	RW	Section	Costs/Water Losses
10,000	10,000	4.6.2 - standard	Case 1 costs & water losses (none)
8,889	8,889	4.6.3 - standard	Case 3 costs & water losses (none)
1,111	1,000	4.6.3 - converted	Case 4 costs & water losses
<u>10,000</u>	<u>9,000</u>	4.6.4 - converted	Case 6 costs & water losses
30,000	28,889		

EXHIBIT G

EXHIBIT G
WQSA MATRIX

WQSA Combinations		Case Number	Applicability of WQSA Program Charges by Article																	
			Management Fees				Energy						OM&R				CVC		Other	
			5.5.2	6.2.1	6.2.2*	6.3.1	6.3.2*	6.6.1(i)	6.6.1(ii)	6.6.1(iii)	6.7.1	6.7.2	6.7.3	6.7.4	6.5	6.5	3	4.6.7		
Initiation	Completion	Transported Water	Delivered Water <277,778	Regulated Water <250,000	Delivered Water >277,778	Regulated Water >250,000	Forest Frick PP	Telon PP	Wellfield Pumping	Intertie PP	Spreading	Extraction	Intertie PP	Transportation	Pumping Costs	Capital Costs	10% Losses	Buena Vista PP		
			4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	
4.6.3	AE initiates MWD delivery of DW to AE	3	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD		
			4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	
4.6.4	MWD initiates MWD delivery of DW to AE	5	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD	AE returns RW to MWD		
			4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	4.6.5	
4.6.2	AE initiates AE return of RW to MWD	1	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE	MWD delivers DW to AE		
			4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	
4.6.2	MWD accepts as non-WQSA water	2	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water	MWD accepts as non-WQSA water		
			4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	4.6.2	

The shaded areas represent charge categories that do not apply to WQSA operations.
X: The bold and underlined X Indicates charges are assessed in a future year at time of return (as defined under 4.6.6).
 *Return Water subject to 6.2.2 or 6.3.2 but not both.
 O: See case options

EXHIBIT H

**WQSA MAXIMUM RETURN CAPABILITIES
AND DATES**

Date	Return Capacity	
	Monthly	Cumulative
Oct-1	9,500	47,500
Nov-1	9,500	38,000
Dec-1	9,500	28,500
Jan-1	9,500	19,000
Feb-1	9,500	9,500
Mar-1		0

Note:

WQSA water remaining unreturned in excess of the cumulative return capability shall be converted on the first of each month

EXHIBIT H

DEPARTMENT OF WATER RESOURCES1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-579146000001462
4506627660

OCT 13 2000

Mr. Phillip J. Pace, Chairman
Board of Directors
Metropolitan Water District of
Southern California
Post Office Box 54153
Los Angeles, California 90054-0153

Interim Water Supply Grant Commitment Safe Drinking Water, Clean Water, Watershed
Protection and Flood Protection Act (Proposition 13, Chapter 9, Article 4)

Dear Mr. Pace:

The Governor's Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the Department of Water Resources local assistance grant funds in the amount of \$161,544,000 by budget item 3860-01-6027, payable from the Interim Water Supply and Water Quality Infrastructure and Management Subaccount. The Metropolitan Water District's Water Quality Exchange Partnership Program has been selected for funding from this appropriation. This letter agreement serves as our commitment of \$20 million to fund your program.

This letter sets forth the terms and conditions under which the transfer of funds will be made from DWR to MWD. Before the funds can be transferred your agency must complete the following:

- Submit to DWR a formally adopted resolution of your governing body, accepting the grant, designating a representative to sign this letter agreement, and designating a project director to be your agency's representative for the administration of the program and liaison with DWR for submission of required documents.
- Sign and date both originals of this agreement and return one signed original to:

Division of Planning and Local Assistance
Department of Water Resources
Post Office Box 942836
Sacramento, California 94236-0001
Attention: Linda Buchanan Herzberg

EXHIBIT I

Mr. Phillip J. Pace, Chairman

OCT 13 2000
Page 2

- Submit to DWR a copy of all memoranda of understanding or other cooperative agreements between your agency and all other participating agencies in the Water Quality Exchange Partnership Program.
- Provide to DWR an itemized budget projection of costs and an invoice, on your agency's letterhead, stating the purpose of the funds as outlined in this letter agreement.
- Provide to DWR a detailed description and work plan for your proposal including a narrative statement of the program's purposes and goals. This description should include a definition of the scope of the program, maps of the locations the program will encompass, a detailed list of the program components to be funded with this grant and a timeline for completion with major benchmarks noted.

By signature of this letter agreement the Metropolitan Water District of Southern California agrees to comply with the following terms and conditions for completion of your program:

1. Your agency agrees to faithfully and expeditiously perform or cause to be performed all work related to Water Quality Exchange Partnership Program and to apply State funds received only to eligible program costs.
2. Your agency, its contractors, subcontractors, and their respective agents and employees required for performing any work in connection with the program shall act in an independent capacity and not as officers, employees or agents of the State.
3. Your agency shall be responsible for obtaining any and all permits, licenses and approvals that may be required for completion of the program activities. You shall also be responsible for observing and complying with any applicable federal, State and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement and safety laws, rules, regulations and ordinances.
4. Your agency must comply with all applicable requirements of the California Environmental Quality Act and the National Environmental Policy Act and complete appropriate environmental documentation including, but not limited to, any required environmental impact reports, environmental impact statements, negative declarations, mitigation agreements and environmental permits, prior to beginning any construction work associated with the program.

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5. Your agency, its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Sections 11135-11139.5) and the regulations or standards adopted by the awarding State Agency to implement such article. Your agency, its contractors and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. Your agency shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts let for the program.
6. Your agency agrees, unless exempted, to comply with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.
7. Your agency shall comply with the provisions of Section 3700 of the California Labor Code, requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and you affirm that it will comply with such provisions and will make its contractors and subcontractors aware of this provision.
8. Your agency, its contractors or subcontractors agree to comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.) and have or will provide a drug-free workplace.
9. Your agency agrees to comply with the Americans with Disabilities Act of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
10. Your agency shall be responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers and providers of services. You shall give personal supervision to any work required or employ a competent representative with the authority to act for your agency. Your agency shall give attention to completion of the work funded through this letter agreement, and shall keep work under control.
11. Your agency shall be responsible for any and all disputes arising out of its contracts for work on the program, including but not limited to bid disputes and payment disputes with your contractors and subcontractors. The State will not mediate disputes between your agency and any other entity concerning responsibility for performance of work.

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12. During the course of the program, your agency shall provide semiannual progress reports detailing the activities completed for the reporting period, the amount of funds expended and the purpose of those expenditures. The first report shall be due six months from the date of your agency's signature on this letter agreement. Subsequent reports shall be due every six months thereafter.
13. All contracts for any construction necessitated by the program shall be let by competitive bid procedures that assure award of the contract to the lowest responsible bidder, except as may be otherwise authorized under your agency's enabling authority.
14. Procurement of necessary supplies or equipment shall be undertaken in such a manner as to encourage fair and competitive treatment of potential suppliers.
15. The State shall have the right to inspect the work being performed at any and all reasonable times during the conduct of the program. This right shall extend to any subcontracts and your agency shall include provisions ensuring such access in all its contracts or subcontracts entered into for completion of this work.
16. The Water Quality Exchange Partnership Program shall be completed no later than March 8, 2009.
17. Upon completion of the program, your agency shall furnish to the State, within 60 days, a final statement of incurred eligible costs.
18. Within 60 days of completion of the program, your agency shall provide a final program report. Findings should include, but are not limited to, observations and conclusions regarding the engineering, hydrologic and hydrogeologic feasibility, economic feasibility, potential environmental impacts and associated mitigation measures, pre-design and design work, and recommendations for future action.
19. Within a period of 60 days from completion, your agency shall remit to the State any unexpended funds that were disbursed that were not needed to pay eligible costs for your program.
20. All money disbursed under this letter agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.

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21. Your agency shall account for the money disbursed separately from all other agency funds. You shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. You shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds.
22. During regular office hours, each of the parties to this letter agreement and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to the work funded by this letter agreement. Each of the parties shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to this work.
23. Pursuant to Government Code Section 8546.7, your agency and its subcontractors shall be subject to the examination and audit of the State for a period of three years after completion of the work funded by this letter agreement. All of your records or those of your subcontractors shall be preserved for this purpose for at least three years after such work is complete.
24. Your agency shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times, upon reasonable notice.
25. The State reserves the right to conduct an audit at any time between the execution of this letter agreement and the completion of the Water Quality Exchange Partnership Program, with the costs of such audit borne by the State. Within 60 days after the program is completed, the State shall require your agency to conduct, at your agency's expense, a final financial and compliance audit of revenue and expenditures. Such audit shall be conducted and a report prepared by an independent Certified Public Accountant in compliance with generally accepted auditing standards and government auditing standards. Upon its completion, said report shall be submitted to the State for review and acceptance.
26. The State shall withhold 10 percent of the total funding provided by this letter agreement until the audit report, required in Item 25, above, is received and accepted by the State.

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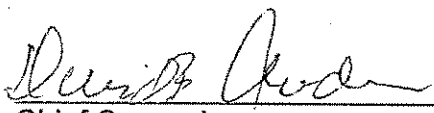
Page 6

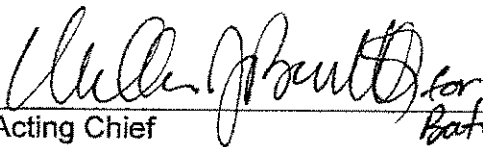
27. Your agency agrees to indemnify the State and its officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to, either in whole or in part, and whether directly or indirectly, arising out of the work funded by this letter agreement.

Your expeditious handling of this letter agreement is appreciated. If you have any questions, please contact Linda Buchanan Herzberg at (916) 327-1663.


Sincerely,

Approved as to Legal Form
and Sufficiency:

By: 
Chief Counsel
Department of Water Resources


Acting Chief
Division of Planning and Local Assistance

Metropolitan Water District of Southern California

By:  Date: March 9 2001
Title: General Manager

Enclosure

cc: (See attached list.)

EXHIBIT I

**AGREEMENT BETWEEN ANTELOPE VALLEY-EAST KERN WATER AGENCY
AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
FOR WATER STORAGE AND EXCHANGE PROGRAMS**

THIS AGREEMENT BETWEEN ANTELOPE VALLEY-EAST KERN WATER AGENCY ("AVEK") AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("METROPOLITAN") FOR A WATER STORAGE AND EXCHANGE AGREEMENT ("Agreement") is entered into by and between AVEK and METROPOLITAN. Metropolitan and AVEK may be referred to individually as Party or collectively as Parties.

RECITALS

A. AVEK is a water agency formed pursuant to Act of 1959, as amended. It includes approximately 2,400 square miles within its boundaries. AVEK has, among other things, contracted for a water supply with the California Department of Water Resources ("DWR") providing for delivery to AVEK of Table A Water from the California State Water Project ("Table A Water").

B. Metropolitan is a public agency formed under the Metropolitan Water District Act (Stats. 1969, ch. 209, as amended, codified at Section 109.1 et seq. of Appendix to the California Water Code). Metropolitan provides imported water to 26 member public agencies to supplement local water supplies within its six county service area located in southern California's coastal plain. Metropolitan obtains its water supplies from the Colorado Aqueduct, the State Water Project pursuant to a State Water Contract similar to that of AVEK, and other sources. Metropolitan seeks to enter into a program to augment its water supplies by arranging for delivery to AVEK of State Water Project (SWP) water ("Storage Water") that is available to Metropolitan and the return by AVEK of a like quantity of SWP water ("Return Water") to Metropolitan from AVEK's Table A Water in subsequent years or the pumping of stored water.

C. By coordinating each Party's State Water Project supplies, Metropolitan is able to enhance its dry-year reliability while AVEK is able to reduce its State Water Project operational costs. This Agreement improves financial accounting of return supplies, defines the return yield of the program, and extends the operational flexibility for the benefit of both Parties. Metropolitan and AVEK agree it is mutually advantageous to develop a water storage program as provided in this Agreement, whereby AVEK will accept Storage Water on Metropolitan's behalf and furnish Return Water to Metropolitan upon request.

D. This Agreement will allow for improved coordination of both AVEK and Metropolitan State Water Project supplies to improve the reliability of each agency's water supply by allowing for the exchange of their supplies.

ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used.

1.1 **"Agreement"** means, Agreement Between Antelope Valley-East Kern Water Agency and The Metropolitan Water District of Southern California for Water Storage and Exchange Program, as amended or supplemented by the Parties.

1.2 **"Antelope Valley Adjudication"** means Coordination Proceeding Special Title (Rule 1550(b)) ANTELOPE VALLEY GROUNDWATER CASES Judicial Council Coordination Proceeding No. 4408.

1.3 **"AVEK Basin"** means the groundwater basin underlying the lands within the boundaries of AVEK, which is the same basin referred to as AVEK Basin Area, as described in the AVEK Basin Area Adjudication.

1.4 "DWR" means the Department of Water Resources of the State of California.

1.5 "Exchange Point" means Banks Pumping Plant or other point of delivery on the California Aqueduct as agreed to by the parties.

1.6 "Exchange Water" means SWP water made available to Metropolitan from AVEK's SWP allocation.

1.7 "Late Arising Claim" shall have the meaning set forth in Section 7.2 (Pending and Late Arising Claims).

1.8 "Metropolitan's Agreement Administrator" means Metropolitan's employee in charge of coordinating the provisions of this agreement with AVEK.

1.9 "Point of Delivery to AVEK" means the California Aqueduct turnout at Reach 18A to 22B or any other point of delivery agreed to by the Parties.

1.10 "Point of Delivery to Metropolitan" means the California Aqueduct at the beginning of Reach 18A to 22B or another point of delivery agreed to by the Parties.

1.11 "Program" means the storage or exchange of water provided for in this Agreement.

1.12 "Retained Water" equals one half the amount of Exchange Water delivered.

1.13 "Return Exchange Water" means State Project Water which Metropolitan makes available to AVEK at the Exchange Point, pursuant to this Agreement. The Return Exchange Water is fifty percent (50%) of the Exchange Water made available by AVEK.

1.14 "Return Water" means water which AVEK makes available to Metropolitan at the Point of Delivery to Metropolitan, pursuant to this Agreement, which is to be debited pursuant to Section 2.5 (Storage Account and Return Water). Return Water is to be

delivered using capacity in the California Aqueduct available to Metropolitan under its State Water Contract after the Point of Delivery to Metropolitan.

1.15 "State Water Contract" means the long-term water supply contracts entered into by Metropolitan and AVEK, respectively, with DWR.

1.16 "Metropolitan Storage Account" means an account maintained by AVEK for the benefit of Metropolitan pursuant to this Agreement in which Storage Water is credited, with a 10% loss, unless otherwise modified by the Antelope Valley Watermaster upon delivery to the Point of Delivery to AVEK and is debited, upon delivery of Return Water to the Point of Delivery to Metropolitan.

1.17 "Storage Account Balance" means the difference between the credits and debits in the Storage Account.

1.18 "Storage Water" means State Project Water which Metropolitan makes available to AVEK at the Point of Delivery to AVEK pursuant to this Agreement which is to be credited pursuant to Section 2.5 (Storage Account and Return Water).

1.19 "Termination Date" means December 31, 2025, unless extended by mutual agreement.

1.20 "Year" means a calendar year commencing on January 1 and ending on December 31.

ARTICLE 2. STORAGE AND RETURN WATER

2.1 Source of Water.

Metropolitan shall provide Storage Water at the Point of Delivery to AVEK to be credited to AVEK's Storage Account for the benefit of Metropolitan for this Agreement.

2.2 Storage Water Amounts.

In any year in which Metropolitan offers Storage Water to AVEK and AVEK accepts delivery, a like amount of water less 10% will be credited to the Storage Account of AVEK for the benefit of Metropolitan. Unless mutually agreed by the Parties, the maximum amount of Storage Water in the account after losses is 30,000 acre-feet at any one time. Metropolitan may cycle water within the 30,000 acre-foot.

2.3 Scheduling of Storage Water.

Metropolitan shall submit an initial proposed schedule to AVEK for delivery of Storage Water. AVEK, at its sole discretion, may accept or reject the proposed schedule. Upon AVEK's concurrence, no later than thirty (30) days in advance of the date Metropolitan proposes to commence delivery, Metropolitan shall submit a final proposed schedule to AVEK and DWR for delivery of Storage Water for that Year. The Parties can agree, with the DWR's concurrence, that any of AVEK's SWP supplies delivered to AVEK may be reclassified as Metropolitan SWP supplies delivered to AVEK for storage under the terms of the Agreement.

2.4 Return Water Amounts, Scheduling and Delivery.

2.4.1 Upon request by Metropolitan, AVEK shall be responsible for scheduling delivery of Return Water to the Point of Delivery to Metropolitan and Metropolitan shall be responsible for scheduling delivery from the Point of Delivery to Metropolitan. Return Water shall be scheduled by AVEK from AVEK's Table A Water or the direct return of Storage Water to the California Aqueduct. AVEK will ensure that any Return Water consisting of AVEK's groundwater meets DWR requirements for introduction into the SWP.

2.4.2 AVEK's obligation to deliver Return Water shall be the lesser of (i)

the amount requested by Metropolitan or (ii) the amount calculated by the following formulas, as appropriate:

2.4.2.1 During the period 2016 through 2021, inclusive, Return Amount = (SWP Allocation x AVEK Table A Amount) - (AVEK Table A Amount x 10%).

2.4.2.2 During the period 2022 through 2035, inclusive, Return Amount = (SWP Allocation x AVEK Table A Amount) - (AVEK Table A Amount x 20%).

2.4.2.3 Notwithstanding the above, during any year in which SWP allocations are greater than 60 percent, Return Amount = (SWP Allocation x AVEK Table A Amount) - (AVEK Table A Amount x 20%).

2.5 Metropolitan Storage Account and Return Water.

2.5.1 AVEK shall establish a Metropolitan Storage Account. AVEK shall take control and possession of Storage Water at the Point of Delivery to AVEK and shall credit the Metropolitan Storage Account in an amount equal to the water so delivered. Metropolitan shall not receive storage rights within Antelope Basin as a result of this Agreement.

2.5.2 AVEK shall accurately maintain the Metropolitan Storage Account and prepare and maintain adequate supporting records. All records shall be subject to audit, review, reconciliation, and approval by Metropolitan at Metropolitan's exercise upon reasonable notification to AVEK.

2.5.3 AVEK shall return one acre-foot of Return Water for each acre-foot of Storage Water delivered to AVEK less 10%. Upon delivery of Return Water to the Point of Delivery to Metropolitan, AVEK shall debit the Metropolitan Storage Account in an amount equal to the water so delivered.

2.6 Representations and Warranties of AVEK.

As a material inducement to Metropolitan to enter into this Agreement AVEK represents, warrants and covenants that (i) it has the legal authority to enter into this Agreement, and (ii) that litigation relating to the AVEK Basin, including but not limited to, the AVEK Basin Area Adjudication, does not (a) affect its ability to perform its obligations under this Agreement, (b) impair the validity of this Agreement, or (c) impair the rights of any entity described in subsection (c) of Section 5.1 (AVEK Responsibilities). In this connection, however, the Parties acknowledge that paragraph 14 of the Judgment and Physical Solution entered in the Antelope Valley Adjudication places certain limitations upon water storage including, without limitation: obtaining the Watermaster's agreement for new banking projects and new exchange agreements; a requirement that storage agreements expressly preclude operations which will cause material injury to any producer; a prohibition against AVEK exporting its Table A Stored State Project Water stored for the benefit of AVEK to any area outside its jurisdictional boundaries and the Basin when all water demands within AVEK's jurisdictional boundaries have not been met.

ARTICLE 3. STORAGE COMPENSATION

3.1 Storage Payment Obligations.

3.1 Metropolitan is responsible for all costs to transport Storage Water to the Point of Delivery to Metropolitan and for all costs to transport return water from the Point of Delivery to Metropolitan. If Return Water consists of AVEK's SWP water, then upon delivery, Metropolitan will pay AVEK the greater of: (1) \$300 per acre-foot of Return Water; or (2) the SWP per acre-foot cost to transport the SWP water to the Delivery Point to Metropolitan. If Return Water consists of Storage Water returned directly to the California Aqueduct then upon delivery, Metropolitan will pay AVEK the greater of: (1) \$300 per acre-

foot of Return Water; or (2) the cost to extract such groundwater and transport it to the Point of Delivery to Metropolitan.

3.2 Payment Schedule.

For payment obligations incurred pursuant to Subsection 3.1.1 (Payment Obligations), AVEK may only invoice Metropolitan after AVEK delivers Storage Water to the Point of Delivery to Metropolitan. AVEK may bill Metropolitan no more frequently than monthly. Payments shall be due AVEK and shall become delinquent forty-five (45) days after Metropolitan receives the invoice under the terms of this Agreement. Data supporting the amounts invoiced shall be provided upon the request of Metropolitan. Payment may be delayed until requested supporting documentation has been provided.

3.3 Billing.

AVEK shall submit invoices to Metropolitan's Accounts Payable Section, whose mailing address is P.O. Box 54153, Los Angeles, California 90054-0153. Copies of the invoices and any mailing address change must be submitted in writing to Metropolitan's Agreement Administrator at the above address. Invoices shall be itemized with a description of the items being billed.

ARTICLE 4. EXCHANGE

4.1 As an additional alternative to the storage of Metropolitan water pursuant to Section 2 of this Agreement, Metropolitan and AVEK may agree to an exchange of Table A supplies under the State Water Contract.

4.1.1 AVEK Delivery. By December 31, 2025, AVEK may deliver up to 30,000 acre-feet of AVEK's SWP water to Metropolitan at the Exchange Point. By mutual agreement, the Parties will determine how much of the 30,000 acre-feet

AVEK provides to Metropolitan in each particular year. The Parties may agree in writing to increase the amount of water AVEK delivers and to extend the date by which AVEK will deliver water. Metropolitan is responsible for all costs to transport the water from the Exchange Point to Metropolitan's service area. Metropolitan will pay AVEK for the amount of Retained Water Metropolitan receives each year in accordance with the following pricing schedule:

Final SWP Allocation	Price (\$/AF)
1-5%	587
6-10%	552
11-15%	518
16-20%	483
21-25%	449
26-30%	414
31-35%	380
36-40%	345
41-45%	311
46-50%	276

Final SWP Allocation	Price (\$/AF)
51-55%	242
56-60%	207
61-65%	173
66-70%	150
71-75%	69
76-80%	69
81-85%	53
86-90%	38
91-95%	38
96-100%	38

4.1.2 Metropolitan Return. Pursuant to Sections 4.1.2(a) and (b) below, Metropolitan will deliver Return Exchange Water to AVEK at the Exchange Point by December 31, 2025.

(a) AVEK may request that Metropolitan deliver Return Exchange Water. If AVEK makes such a request, Metropolitan will deliver the Return Exchange Water to AVEK at the Exchange Point. AVEK may only use such water to meet its own consumptive use needs during the calendar year in which Metropolitan returns the water. AVEK shall be responsible for the costs to transport the Return Exchange Water from the Exchange Point to AVEK's service area.

(b) Metropolitan may deliver Return Exchange Water to AVEK that AVEK

has not requested Metropolitan return. If Metropolitan does so, Metropolitan will pay AVEK the greater of: (1) \$300 per acre-foot; or (2) the SWP per acre-foot cost to transport the water from the Exchange Point to AVEK's service area ("actual costs").

(c) Metropolitan may deliver Exchange Water under this Agreement and simultaneously receive Return Water pursuant to Section 2 of this Agreement in order to offset the delivery of Return Exchange Water. In the event that Metropolitan chooses to do so, Metropolitan will not pay AVEK for the delivery of Return Water under this Agreement. However, Metropolitan will pay AVEK if the actual costs to Return Water exceed \$300/AF. In the case that the actual costs exceed \$300/AF, Metropolitan will pay AVEK the actual costs minus \$300/AF.

4.1.3 All records shall be subject to audit, review, reconciliation, and approval by Metropolitan at Metropolitan's exercise upon reasonable notification to AVEK.

4.2 Payment Obligations.

Metropolitan is responsible for the cost to transport Exchange Water from the Exchange Point to Metropolitan's service area and for the cost of Retained Water Metropolitan receives each year in accordance with the pricing schedule described in Section 4.1.1. Metropolitan is also responsible for costs described in Section 4.1.2(b) and 4.1.2(c).

4.3 Payment Schedule.

For payment obligations incurred pursuant to Subsection 4.2, AVEK may bill Metropolitan no more frequently than monthly. Payments shall be due AVEK and shall become delinquent forty-five (45) days after Metropolitan receives the invoice under the

terms of this Agreement. Data supporting the amounts invoiced shall be provided upon the request of Metropolitan. Payment may be delayed until requested supporting documentation has been provided.

4.4 Billing.

AVEK shall submit invoices to Metropolitan's Accounts Payable Section, whose mailing address is P.O. Box 54153, Los Angeles, California 90054-0153. Copies of the invoices and any mailing address change must be submitted in writing to Metropolitan's Agreement Administrator at the above address. Invoices shall be itemized with a description of the items being billed.

ARTICLE 5. DIVISION OF RISK RESPONSIBILITIES

AVEK and Metropolitan agree to cooperate in reducing, to the greatest extent practicable, the risk from claims arising against any of the Parties from implementation of this Agreement. In the event of claims by third parties relating to this Agreement, the responsibilities of AVEK and Metropolitan shall be divided as follows:

5.1. AVEK Responsibilities.

AVEK shall defend, indemnify and hold harmless Metropolitan and its directors, officers, agents, employees and volunteers against any and all losses, claims, demands and causes of action (herein collectively referred to as "claims") and will assume responsibility for payment of any settlements, judgments, costs and attorneys' fees arising from claims concerning the following:

- (a) Control, carriage, transportation, handling, use, disposal, or distribution of Storage Water once furnished by Metropolitan to the Point of Delivery to AVEK;
- (b) Control, carriage, transportation, handling, use disposal, or distribution

of Return Water to the Point of Delivery to Metropolitan;

(c) Any contest or dispute by any water purveyor; landowner; water user or groundwater rights holder within the AVEK service area or within or overlying the AVEK Basin concerning any disposition of the Storage Water by AVEK;

(d) Actions of AVEK's officers, employees or agents; and

(e) Any other activities under the exclusive control of AVEK.

If Metropolitan is named in any such action, it may submit its defense to AVEK, which shall bear the full cost of defense, except to the extent that Metropolitan utilizes its own counsel for such defense. Metropolitan shall not be entitled to any indemnification from AVEK except as set forth in this Section 5.1 (AVEK Responsibilities).

5.2 Metropolitan Responsibilities.

Metropolitan shall defend, indemnify and hold harmless AVEK and its respective directors, officers, agents, employees and volunteers, against any and all claims and shall assume responsibility for payment of any settlements, judgments, costs or attorneys' fees arising from claims concerning the following:

(a) Control, carriage, transportation, handling, use, disposal or distribution of Storage Water to the Point of Delivery to AVEK and Return Water from the Point of Delivery to Metropolitan;

(b) Any claim or dispute by a landowner, resident, public agency or other entity within the service area of, or otherwise served by, Metropolitan challenging the exchange, storage, or this Agreement directly or indirectly;

(c) Operation of the facilities of or the actions of the officers, employees

or agents of Metropolitan; and

(d) Any other activities under the exclusive control of Metropolitan.

If AVEK is named in any such action, it may submit its defense to Metropolitan which shall bear the full cost of defense, except to the extent AVEK utilizes its own counsel for such defense. AVEK shall not be entitled to any indemnification from Metropolitan except as set forth in this Section 5.2 (Metropolitan Responsibilities).

5.3 Multiple Claims.

In the event that payments are made in settlement of a claim, in satisfaction of a judgment or for defense costs where the claim arises from issues applying to both AVEK and Metropolitan, payments shall be divided in proportion to the relative liability of each arising from the common claim.

ARTICLE 6. DISPUTE RESOLUTION

6.1 Informal Mediation.

In the event of a dispute between the Parties regarding this Agreement, the Parties will attempt to resolve the dispute by using the services of a mutually acceptable mediator. The Parties will equally share the mediator's fees and expenses.

ARTICLE 7. TERM OF AGREEMENT

7.1 Agreement Termination.

7.1.1 This Agreement shall terminate on the Termination Date unless extended pursuant to Section 7.2 (Pending and Late Arising Claims); or Section 9.7 (Force Majeure).

7.1.2 Return of Water on Termination. Notwithstanding Section 7.1.1, if all of the Return Water has not been returned by the date provided for in Section 7.1.1, the

applicable provisions of this Agreement shall continue in full force and effect for such additional time as is necessary for Metropolitan to receive the Return Water.

7.2 Pending and Late Arising Claims.

If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated but within the period of time for bringing such a claim under California law ("Late Arising Claim"), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

7.3 Renewals of Agreement.

This Agreement may be renewed by mutual agreement of the Parties, which renewal shall, unless otherwise agreed, effect a continuation of both Parties' rights and duties under this Agreement.

ARTICLE 8. REMEDIES

8.1 Remedies in the Event of AVEK's Failure to Perform.

8.1.1 If AVEK has not substantially performed according to the terms of this Agreement and notice has been provided to AVEK pursuant to Section 9.3 (Waiver/Cure of Defaults) and AVEK has failed to cure the alleged breach within the time provided in Section 9.3 (Waiver/Cure of Defaults), Metropolitan may at its election, at any time thereafter while the default is continuing, suspend further performance and thereafter seek any relief provided by law, including termination of this Agreement.

8.1.2 If AVEK fails to provide Return Water for or to Metropolitan at Metropolitan's request under circumstances where such return is not excused by the terms of

this Agreement, and Metropolitan elects to terminate this Agreement, AVEK shall reimburse Metropolitan for payments made to DWR pursuant to Section 3.1.1 for the water remaining in the Storage Account, with interest accruing at a rate equal to the Local Agency Investment Fund rate over the period from the date of the earliest delivery of water remaining in the Storage Account to the time of reimbursement.

8.2 Remedies in the Event of Metropolitan's Failure to Perform.

8.2.1 If Metropolitan has not substantially performed according to the terms of this Agreement, and notice has been provided to Metropolitan pursuant to Section 9.3 (Waiver/Cure of Defaults) and Metropolitan has failed to cure the alleged breach within the time provided in Section 9.3 (Waiver/Cure of Defaults), AVEK may at its election, at any time thereafter while the default is continuing, suspend further performance and thereafter seek any relief provided by law, including termination of this Agreement.

8.2.2 If Metropolitan fails to request the full amount of Return Water to which it is entitled under this Agreement by the Termination Date, Metropolitan must, each year thereafter, request return of at least twenty percent (20%) of the Return Water remaining in the Storage Account each Year until the Storage Account is reduced to zero acre-feet.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Successors and Assigns.

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns,

or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

9.2 No Modification of Existing Contracts.

This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between DWR and Metropolitan and between DWR and AVEK.

9.3 Waiver/Cure of Defaults.

The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

9.4 Construction of Agreement.

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "herein," "hereof" and "hereunder" and similar words shall refer to the

Agreement generally and not merely to the provision in which such term is used; the word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "Metropolitan" and "AVEK" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "including," "include" or "includes" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "month" shall mean calendar month; and the term "business day" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

9.5 Entire Agreement.

This Agreement constitutes the final, complete and exclusive statement of the terms of the agreement among the Parties pertaining to the matters provided herein during the term and supersedes all prior and contemporaneous understandings or agreements of the Parties related thereto. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

9.6 Severability.

In the event that a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid or unenforceable and such

decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be terminated and the Parties will return any water owed to each other.

9.7 Force Majeure.

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 8.7. All time limits to perform and the term of the Agreement shall be extended by period equivalent to the length of suspension.

9.8 Notices.

All notices, requests and demands hereunder ("Notices") shall be in writing, including electronic communications, and shall be deemed to have been duly given when

delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for AVEK shall be sent to the General Manager of AVEK at 6500 West Avenue N, Palmdale, California 93551. Notices for Metropolitan shall be sent to the General Manager of Metropolitan at Post Office Box 54153, Los Angeles, CA 90054-0153.

9.9 Further Assurances.

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

9.10 Counterparts.

This Agreement may be executed in two or more counterparts, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

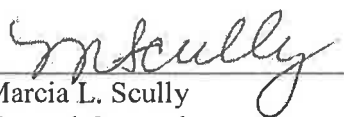
By: _____


Jeffrey Kightlinger
General Manager

8/24/16
Dated

APPROVED AS TO FORM:

By: _____

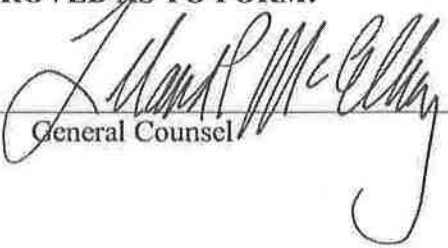

Marcia L. Scully
General Counsel

ANTELOPE VALLEY-EAST KERN WATER AGENCY

By: 
General Manager

9-2-16
Dated

APPROVED AS TO FORM:

By: 
General Counsel

Recorded at the request of
Public

DOC#: 0203122030



Stat Types: 1 Pages: 92

Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Kern Delta Water District
501 Taft Highway
Bakersfield, California 93307

(Space above this line is reserved for County Recorder's use.)

Agreement #58053

**AGREEMENT BETWEEN
KERN DELTA WATER DISTRICT
AND THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA FOR A
WATER MANAGEMENT PROGRAM**

THIS AGREEMENT ("Agreement"), dated as of MAY 27, 2003,

is entered into by and between the **KERN DELTA WATER DISTRICT** ("Kern Delta"), and
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
("Metropolitan"). Metropolitan and Kern Delta may be referred to individually as Party or
collectively as Parties.

PREAMBLE

This Agreement is in furtherance of development of a water management program
("Regulation Program") generally described in the "Principles For An Agreement Between The
Metropolitan Water District of Southern California And Kern Delta Water District," a copy of

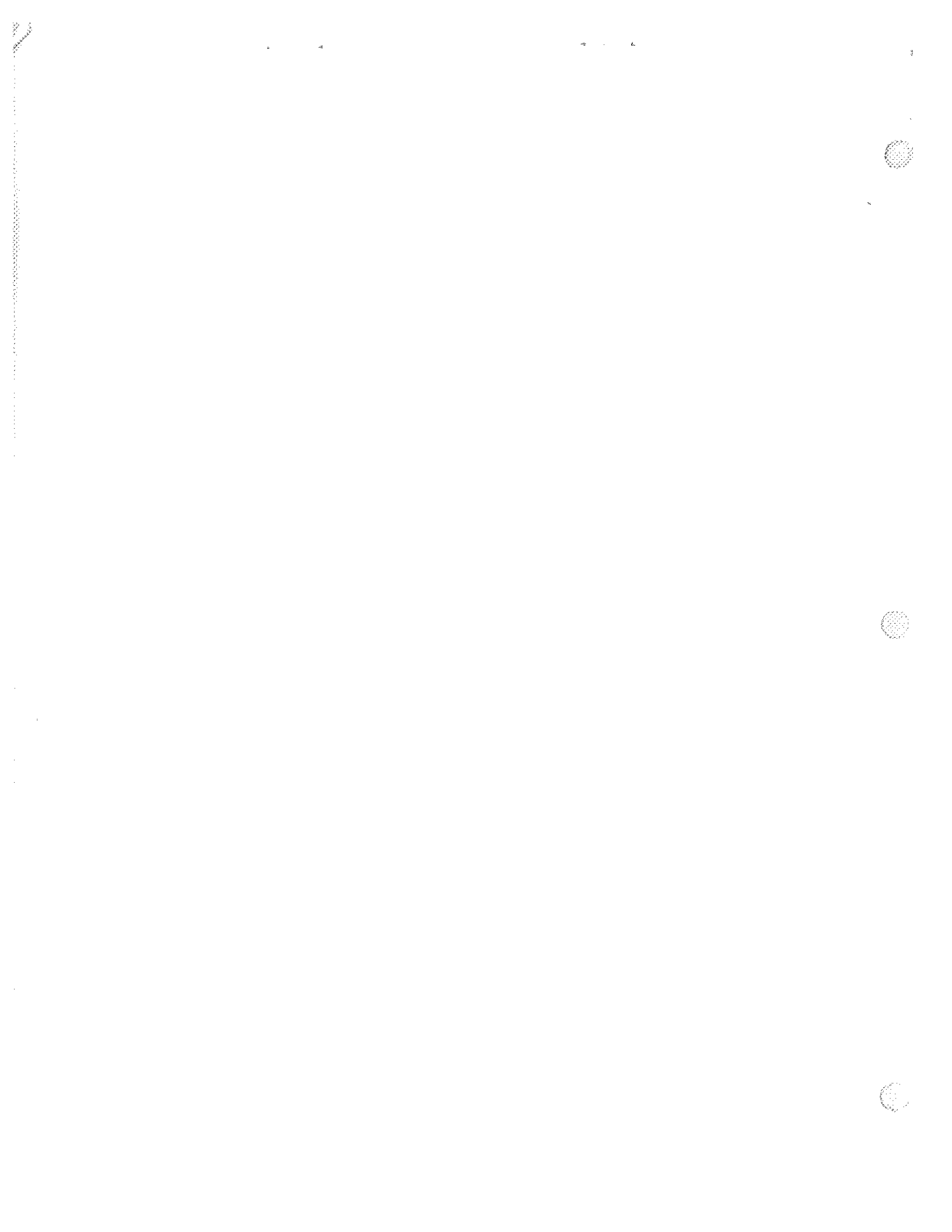


which is attached hereto as Exhibit "A" and incorporated herein by this reference. The Regulation Program is being implemented by Kern Delta and Metropolitan for the purpose of enhancing the water supply available to both entities. It is intended that nothing in this Agreement or the Regulation Program is to (1) materially impair the integrity of existing and ongoing Kern Delta operations; (2) adversely impact either physically, operationally or economically the Kern Delta Water District or its landowners; or (3) result in a net decrease in water supplies available for beneficial use within Kern Delta's boundaries specifically and the southern San Joaquin Valley generally. It is the intention of the Parties that, through provisions of this Agreement, actual or prospective adverse impacts of the Regulation Program will be avoided. The Regulation Program is intended to be operated in a manner to optimize available water supplies. It will utilize Kern Delta Facilities, as well as the Kern Water Bank Canal of the Kern Water Bank Authority Transportation Facilities and the Intertie Canal of the Arvin-Edison Transportation Facilities.

This Agreement is also in furtherance of a Transportation Program ("Transportation Program") under which Kern Delta will provide Metropolitan certain rights to utilize Kern Delta Transportation Facilities as well as obtain for the benefit of Metropolitan rights to utilize Arvin-Edison Transportation Facilities and Kern Water Bank Authority Transportation Facilities for purposes in addition to Regulation Program purposes.

RECITALS

A. Kern Delta includes approximately 129,000 acres within its boundaries. Attached Exhibit B includes maps setting forth the boundaries (service area) of Kern Delta (Exhibit B-1);



the Regulation Program Facilities (Exhibits B-2 and B-3); and Transportation Program Facilities (Exhibit B-4). Approximately 87,000 acres have existing service connections to the Kern Delta distribution system (2,000 acres of which lie outside Kern Delta's boundaries), and the landowners within said surface water service area are in large part dependent on Kern Delta for a water supply. Additionally, Kern Delta's operations enhance groundwater conditions for the remaining approximately 34,000 acres within the District. To meet landowner demand, Kern Delta has, among other things, (i) contracted for a water supply with the Kern County Water Agency ("KCWA") providing for delivery to Kern Delta of 25,500 acre-feet of Table A Water from the California State Water Project ("Table A Water"); (2) entered into agreements with Buena Vista Water Storage District ("Buena Vista") providing for the exchange of Kern Delta's Table A Water for a like amount of Buena Vista's Kern River water; and (3) acquired various Kern River water rights historically utilized to serve lands within and without Kern Delta's boundaries ("Kern River Entitlement"). At times, Kern Delta has water available from its Table A Water, its Kern River Entitlement, or other sources, which could be better regulated through additional facilities constructed within Kern Delta and, in consideration of the benefits to be derived through this Agreement, Kern Delta is willing to regulate for Metropolitan other water provided by Metropolitan.

B. Metropolitan is a public agency formed under the Metropolitan Water District Act of 1927. Metropolitan provides imported water to 26 member public agencies to supplement local municipal water supplies within its six county service area located in southern California's coastal plain. Metropolitan obtains its water supplies from the Colorado Aqueduct, the State Water Project, and other sources. Metropolitan seeks to augment its dry year water supplies by

arranging for delivery to and banking of water within Kern Delta and the extraction and delivery of banked water to Metropolitan during periods of insufficient supply from available sources.

C. Metropolitan and Kern Delta find that it will be mutually advantageous to enter into the Regulation Program as provided in this Agreement, whereby Kern Delta will regulate water on Metropolitan's behalf and deliver that water to Metropolitan upon request. The regulated water generally will be banked in the Kern Delta Basin and, upon demand of Metropolitan, such water will be delivered to Metropolitan through either an existing intertie into the California Aqueduct or through an exchange for water in the California Aqueduct, or both.

D. The Regulation Program will provide for usage by Metropolitan of existing Kern Delta Facilities and construction and operation, for Metropolitan usage, of Kern Delta Regulation Program Facilities, as well as Metropolitan's usage of certain of Arvin-Edison Transportation Facilities and Kern Water Bank Authority Transportation Facilities. This Regulation Program is intended to provide a minimum recharge and return capability of 50,000 acre-feet annually.

E. This Agreement, through regulation and conservation of water supplies, is intended to (1) provide Metropolitan with additional supplies of water and (ii) consistent with providing benefit to Metropolitan also provide Kern Delta with access to new facilities, improved reliability of supplies and improve Kern Delta's ability to enhance groundwater conditions.

F. Consistent with the California Environmental Quality Act ("CEQA"), Kern Delta, acting as lead agency, has completed an Environmental Impact Report concerning the Regulation

Program. Kern Delta's Board of Directors, on November 12, 2002, considered, approved and certified the Final Environmental Impact Report ("FEIR"), as being in compliance with CEQA, and Metropolitan's Board of Directors, acting as a responsible agency, on November 18, 2002, also considered and approved the same. A Notice of Determination to proceed with the Regulation Program was adopted by Kern Delta on November 12, 2002.

G. The parties have relied upon various studies to make the following assumption upon which this Agreement is based: that, with existing facilities and wells along with the new facilities contemplated under this Agreement for the operation of the Regulation Program, it will be possible to regulate sufficient water in, and return sufficient water from, the groundwater basin for both Kern Delta's Normal and Customary Uses and Regulation Program purposes.

H. As a part of this Agreement and pursuant to Article 10 (Declarations of Trusts), Kern Delta, as trustee will hold in trust for Metropolitan, in accordance with the terms of this Agreement, the Regulation Trust Property, as defined below, or its equivalent, together with the right to withdraw it and to deliver it to the California Aqueduct. This trust will include the rights under the Arvin-Edison MOU and the Kern Water Bank Agreement to transport water to the California Aqueduct. Kern Delta, as trustee, as part of this Agreement, and pursuant to Article 10 (Declarations of Trusts), will also hold in a second trust for Metropolitan as beneficiary, in accordance with the terms of this Agreement, the Transportation Facilities Trust Property, as defined therein. The parties create these trust relationships for the purposes set forth in Article 10 (Declarations of Trust).

ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used.

1.1 "Account" means an account maintained by Kern Delta for the benefit of Metropolitan pursuant to this Agreement in which Regulated Water, which is Delivered Water less losses deducted in accordance with Article 3 (Operational Losses), is credited upon delivery to the Point of Delivery to Kern Delta and is debited upon delivery to the Point of Delivery to Metropolitan.

1.2 "Account Balance" means the difference between the credits and debits in the Account.

1.3 "Agreement" means, as of any particular time, this Agreement for a Water Management Program, as amended or supplemented by the Parties through that time.

1.4 "Arvin-Edison Intake Canal" (See Supplement)

1.45 "Arvin-Edison MOU" means the agreement among Kern Delta with Arvin-Edison Water Storage District to use all or a portion of Arvin-Edison Transportation Facilities.

1.5b "Arvin-Edison Transportation Facilities" means Arvin-Edison Intake Canal, Forest Frick Pumping Plant, and all appurtenant facilities and structures as specified in the Arvin-Edison MOU.

1.7 "Buena Vista Canal" (See Supplement)

1.8 "Buena Vista Canal Extension" (See Supplement)

1.89 "Buena Vista Spreading Facilities" means the Buena Vista Spreading Facilities described in Exhibit A, Section 1.3.3 (Spreading Facilities).

1.90 "Capital Put Payment" means the amount of money paid by Metropolitan to Kern Delta for the first 280,899 acre-feet of Delivered Water as full compensation for regulation program implementation costs (i.e., design, construction, inspection, administration and right of

way) determined on a per acre-foot basis by dividing such costs by 280,899 which amount is \$105.00 per acre foot, subject to adjustment pursuant to Section 5.5 (Adjustment of Rates) hereof.

1.811 "Combined Recharge System" means the facilities described in Exhibit A, Section 1.3.4 (Combined Recharge System).

1.912 "Contract Priority Right" means the right of Metropolitan specified in Section 6.1 (Transportation Program—General).

1.103 "Contract Priority Right Facilities" means Kern Delta Transportation Facilities;

Kern Water Bank Authority Transportation Facilities; and Arvin-Edison Transportation

Facilities.

1.14 "Cross Valley Canal" (See Supplement)
1.15 Cross Valley Canal Participation Agreement"

1.116 "Delivered Water" means water which Metropolitan makes available to Kern

Delta at the Point of Delivery to Kern Delta pursuant to this Agreement.

1.127 "Delivery Canal" means the facility described in Exhibit A, Section 1.3.1

(Delivery Canal) and Subsection 2.8.2 of Section 2.8 (Provision of and Construction of Kern Delta Regulation Program Facilities).

1.18 "Delivery Canal Capital Fee" 1.19 "Delivery Canal O&M Fee" (See Supplement)

1.130 "DWR" means the Department of Water Resources of the State of California.

21
1.14 "Effective Date" means the date determined pursuant to Section 8.1.7 (Certificate of Fulfillment or Waiver of Conditions Precedent).

22
1.15 "Execution Date" means the date set forth on the first line of this Agreement.

23
1.16 "Financial Account" means the Account provided for in ^{Sub} Section 5.2.3. of Section 5.2 (Payments)

24
1.17 "In Lieu Water Distribution Facilities" means the facilities described in Exhibit A, Section 1.3.2 ("In Lieu" Water Distribution Facilities).

1.18 "KCWA" means the Kern County Water Agency.

²⁶
1.19 "Kern Delta Basin" means that portion of the southern San Joaquin Valley groundwater basin underlying the lands within the boundaries of Kern Delta.

⁷
1.20 "Kern Delta Facilities" means Kern Delta Regulation Program Facilities and Kern Delta Transportation Facilities.

1.218 "Kern Delta Regulation Program Facilities" means Kern Delta Initial Regulation Program Facilities and Kern Delta Supplemental Regulation Program Facilities.

1.221 "Kern Delta Initial Regulation Program Facilities" means the facilities described in Subsection 2.8.2 of Section 2.8 (Provision of and Construction of Kern Delta Regulation Program Facilities).

1.230 "Kern Delta Supplemental Regulation Program Facilities" means the facilities described in Subsection 2.8.3 of Section 2.8 (Provision of and Construction of Kern Delta Regulation Program Facilities).

³¹
1.24 "Kern Delta Transportation Facilities" ^(see supplement page) means enhanced capacity in the Stine Canal between Gosford Road and the Arvin-Edison Intake Canal, Delivery Canal and including, without limitation, the Kern Water Bank Authority Canal and Arvin-Edison Intake Canal.

1.25 "KWBA Fee" means the fee specified in Subsection 5.2.1.1(iv) of Section 5.2 (Put Payments) for usage of the Kern Water Bank Authority Canal.

1.26 "Kern Water Bank Authority Canal" means the canal owned by the Kern Water Bank Authority and described in the Kern Water Bank Authority Agreement.

1.27 "Kern Water Bank Authority Agreement" means the agreement between Kern Delta and the Kern Water Bank Authority providing, among other things, the terms and conditions for conveyance of Metropolitan water through the Kern Water Bank Authority's intake canal to the point of intersection of said canal with the new intake canal to be construed by

Kern Delta pursuant to this Agreement.

1.28 “Kern Water Bank Authority Transportation Facilities” means the facilities specified in the Kern Water Bank Authority Agreement.

³²
1.29 “Late Arising Claim” shall have the meaning set forth in Section 11.4 (Pending and Late Arising Claims).

1.30 “Normal and Customary Uses” means (i) deliveries to meet historic demands, as existing prior to Execution Date, of water users within Kern Delta’s surface water service areas as provided at Subsection 4.2.2 of Section 4.2 (Conditions On Return of Regulated Water), (ii) historic transfers (including exchanges) and transfers similar to the type historically existing prior to Execution Date, entered into by Kern Delta with other entities, and (iii) operational conditions and criteria which would exist and/or be employed with or without the Regulation Program (for example spreading programs, energy load management, aquatic pest control and the like).

1.31 “Operating Plan” means the Groundwater Monitoring Program and Operating Criteria attached as Exhibit C (Groundwater Monitoring and Operating Criteria).

1.35 “Original Agreement” (See Supplement)

1.32 “Point of Delivery to Kern Delta” means the California Aqueduct turnout to the Cross Valley Canal Kern Water Bank Authority Transportation Facilities or other turnout mutually agreed upon by

the parties such as the Cross Valley Canal, or Arvin-Edison Transportation Facilities, and the Buena Vista Canal Extension

1.33 “Point of Delivery to Metropolitan” means the California Aqueduct at or above between Reaches 12E and 14A, Reach 13B, or any other point of delivery mutually agreed upon by the parties.

1.34 “Put Payment” means, for the first 280,899 acre-feet of Delivered Water, the Capital Put Payment and operation, maintenance and replacement costs determined on a per acre-foot basis in accordance with Subsections 5.2.1.1(ii) through (iv) of Section 5.2 (Put Payments),

and for Delivered Water in excess of 280,899 acre-feet, the amounts determined in accordance with Subsection 5.2.2 of Section 5.2 (Put Payments).

1.35⁹ "Recovery Facilities" means the facilities described in Exhibit A, Section 1.3.5 (Recovery Facilities).

1.36¹⁰ "Regulated Water" means Delivered Water less losses deducted in accordance with Article 3 (Operational Losses), credited pursuant to Section 2.5 (Regulation of Water).

1.37¹¹ "Regulation Program" means the water management program provided for in this Agreement.

1.38⁴² "Regulation Trust Property" has the meaning set forth in Subsection 10.1.3 of Section 10.1 (Declaration of Regulation Trust).

1.39⁴³ "Regulatory Change" shall have the meaning set forth in Section 14.10 (Regulatory Change).

1.40⁴ "Spreading Facilities" means the Buena Vista Spreading Facilities and other facilities described in Exhibit A, Section 1.3.3 (Spreading Facilities).

1.41⁵ "Take Payment" means the amount of money paid by Metropolitan to Kern Delta for each acre foot of Regulated Water returned to Metropolitan pursuant to this Agreement, which amount is specified in Section 5.3 (Take Payments) hereof.

1.42⁶ "Transportation Facilities Trust Property" has the meaning set forth in Subsection 10.2.2 of Section 10.2 (Declaration of Transportation Facilities Trust).

1.43¹ "Transportation Program" means those facilities, agreements, including the

Delivery Canal; Cross Valley Canal Participation Agreement;
Kern Water Bank Authority Agreement; Arvin-Edison MOU; and operational activities

necessary to provide Metropolitan with a Contract Priority Right to convey Transported Water ^{for the benefit of Metropolitan} to and from

the California Aqueduct ² for ultimate delivery to Metropolitan, as specified in this Agreement

as provided for in Article 6 (Contract Priority Right for Transportation of Water (Transportation Program)).

1.448 "Transported Water" means Metropolitan water conveyed in Kern Delta Transportation Facilities, Kern Water Bank Authority Transportation Facilities and Arvin-Edison Transportation Facilities as provided for in Article 6 (Contract Priority Right for Transportation of Water pursuant to the Transportation Program).

1.459 "Year" means a calendar year commencing on January 1 and ending on December 31.

ARTICLE 2. REGULATION OF WATER

2.1 **Source of Water.** Metropolitan shall provide Delivered Water at the Point of Delivery to Kern Delta for regulation under this Agreement. All such Delivered Water (exclusive of losses) shall be credited to Metropolitan's Account as Regulated Water. Any Delivered Water shall be scheduled consistent with Section 2.4 (Annual Scheduling of Delivered Water) so as to maximize the quantities regulated under this Agreement and other water imported by Kern Delta for its own account. Delivered Water shall be of at least as good water quality as otherwise available from the California Aqueduct or as Kern Delta would otherwise be able to accept for its own use.

2.2 **Program Level.** If requested by Metropolitan, Kern Delta shall in each Year accept from Metropolitan at Point of Delivery to Kern Delta such a quantity of Delivered Water as will result in crediting to the Account 50,000 acre-feet (after losses determined pursuant to Article 3) up to a total credit of 250,000 acre-feet of Regulated Water. After Metropolitan has provided the aforesaid total quantity of Delivered Water, Metropolitan may, in its sole discretion, cycle the Account by providing such quantity of Delivered Water which, after losses determined

pursuant to Article 3 (Operational Losses), results in a Kern Delta obligation to credit an additional 50,000 acre-feet per year up to an additional 150,000 acre-feet of Regulated Water; provided, however, Kern Delta may, in its sole discretion, permit Metropolitan to cycle additional amounts of water. At no time may the Account Balance for the Regulation Program, determined after making the credits and debits permitted by this Agreement exceed 250,000 acre-feet of Regulated Water in the Account absent amendment of this Agreement, unless Kern Delta has failed to notify Metropolitan that a scheduling of Delivered Water pursuant to Section 2.4 (Annual Scheduling of Delivered Water) will result in this amount exceeding Account Balance.

2.3 Priorities and Schedule For Regulation.

2.3.1 Kern Delta shall have first priority to utilize Kern Delta Facilities for the purpose of meeting Normal and Customary Uses. Regulation for Metropolitan shall be second priority to the first priority.

2.3.2 Regulation program operations shall not cause a net decrease in supplies available to Kern Delta for its own purposes.

2.4 Annual Scheduling of Delivered Water. Metropolitan shall by January 15 submit a proposed schedule to Kern Delta for delivery of Delivered Water in the current Year. Kern Delta, in conformity with Metropolitan's proposed schedule, shall be responsible for scheduling delivery of Delivered Water with KCWA and shall coordinate with KCWA on its resulting request to DWR for scheduling of Delivered Water. Metropolitan shall provide written notice to Kern Delta of its intent to provide water for regulation pursuant to Section 2.7 (Deliveries). Preliminary notice shall be provided by January 15 each year and final notice by March 15 each Year. Metropolitan and Kern Delta shall confer and develop a mutually agreeable schedule for delivery of water for regulation within 30 days of such notice. Kern Delta shall

assist Metropolitan in making arrangements for delivery of such water to the Point of Delivery to Kern Delta.

2.5 Regulation of Water.

2.5.1 Kern Delta shall take control and possession of Delivered Water at the Point of Delivery to Kern Delta and shall credit Account in an amount equal to the water so delivered less the deduction for losses provided for in Article 3 (Operational Losses) with respect to such water. If Kern Delta does not accept water offered by Metropolitan in a notice of intent to provide water for regulation given pursuant to Section 2.4 (Annual Scheduling of Delivered Water), Kern Delta shall nevertheless credit the Account in an amount equal to the amount of water offered but not accepted; provided that Metropolitan shall after 250,000 acre-feet has been credited to the Account, at mutually agreeable times and flow rates, complete the delivery of the credited but previously unaccepted amount of water, and no additional credit shall be given to the Account for such delivery.

2.5.2 At the time Kern Delta credits the Account, pursuant to Subsection 2.5.1 of this Section 2.5 (Regulation of Water), legal title to such water, together with the right to withdraw from the Kern Delta Basin an amount sufficient to return to Metropolitan the Regulated Water, shall vest in Kern Delta, as trustee for Metropolitan. Upon crediting Metropolitan's Account, Kern Delta shall convey and cause to be regulated the water so credited. Kern Delta shall thereafter hold and return the Regulated Water as provided in Article 4 (Return of Water) of this Agreement.

2.5.3 Kern Delta shall accurately maintain the Account and prepare and maintain adequate supporting records. All records shall be subject to audit, review and approval by Metropolitan at Metropolitan's exercise upon reasonable notification to Kern Delta.

2.5.4 Metropolitan acknowledges that Regulated Water may be commingled with other water. At all times during the term of this Agreement, there shall be in the Kern Delta Basin an amount at least equal to the amount of the Account Balance, which shall be deemed to be Regulated Water. Kern Delta shall be deemed to remove Regulated Water from storage only as and when requested by Metropolitan pursuant to the terms of this Agreement, and any other removal of water by Kern Delta from the Kern Delta Basin shall be deemed to be the removal of water that is not Regulated Water.

2.6 Metropolitan Service Area. Kern Delta shall not utilize Regulation Program Facilities in any manner that directly or knowingly indirectly results in the delivery of water to Metropolitan's service area by Kern Delta or third parties contracting with Kern Delta without Metropolitan's prior written approval.

2.7 Deliveries. Metropolitan shall not be obligated to provide Delivered Water; but shall nevertheless use reasonable efforts to provide quantities of Delivered Water which, after losses pursuant to Article 3 (Operational Losses), shall result in Kern Delta crediting the minimum amounts of Regulated Water specified in Subsection 5.2.1.2 of Section 5.2 (Put Payments).

2.8 Provision of and Construction of Kern Delta Regulation Program Facilities.

2.8.1 Construction of Kern Delta Regulation Program Facilities shall be staged pursuant to agreement between the parties so that Regulation Program Facilities will be built in a timely manner to enable Kern Delta to comply with the requirements of Subsection 4.1.4 of Section 4.1 (Methods of Return of Regulated Water). Subject to Section 5.5 (Adjustment of Rates), the Parties agree that the total implementation cost of Kern Delta Regulation Program Facilities was estimated to be \$31,683,000 in January 1, 1999, and that Capital Put Payments,

including earned interest, provided for by this Agreement, provide sufficient funds to construct the Kern Delta Facilities with the capability to accept Delivered Water in the amounts provided for in Section 2.7 (Deliveries) and to return Regulated Water in the amounts provided for in Article 4 (Return of Water) in accordance with the schedule provided for in Subsections 2.8.2 and 2.8.3 of this Section 2.8 (Provision of and Construction of Kern Delta Regulation Program Facilities).

2.8.2 ^{For purposes of this Agreement} Kern Delta shall make all reasonable efforts to construct ^{and enforce agreements to utilize} (a) Kern Delta Initial Regulation Program Facilities, which consist of the following Facilities on the following schedule: (i) Delivery Canal ^(except the Buena Vista Canal Extension) within 36 months; (ii) Phase 1, groundwater recharge facilities, Buena Vista Spreading Facilities ^{Buena Vista Canal Extension} within 60 months; (iii) Phase 1 of the Kern Delta Program Recovery Facilities (15 new wells) completion within 48 months; (iv) Phase 2 of the Kern Delta Program Recovery Facilities (8 new wells) to be completed within 60 months.

2.8.3 Kern Delta shall make all reasonable efforts to construct Kern Delta Supplemental Regulation Program Facilities, which consist of the following Facilities on the following schedule: (a) Phase 2 groundwater recharge facilities (either In-Lieu or Spreading Basins) capable of recharging approximately 20,000 acre-feet per year completed within 84 months; and (b) Phase 3 of the Recovery Facilities (consisting of such new Kern Delta and existing Kern Delta landowner wells as necessary to bring the total actual production rate of all Kern Delta Program Recovery Facilities to approximately 85,000 acre-feet per year) completed within 60 months).

2.8.4 All of the time periods specified in Section 2.8 (Provision of and Construction of Kern Delta Regulation Program Facilities) shall be calculated from Effective Date.

2.9 Operating Plan. The Parties have jointly prepared the Operating Plan (Exhibit C) to monitor all potential impacts of the Program and agree that it shall be utilized to monitor Program groundwater impacts to ensure that adverse groundwater impacts that may result from Program Operation are avoided or mitigated. The Operating Plan shall be superceded by, inconsistent provisions, if any, in this Agreement.

ARTICLE 3. OPERATIONAL LOSSES

Transportation losses, evaporation, metering discrepancies and any other losses of water, for purposes of this Agreement are collectively fixed to be eleven percent (11%) of the amount of Delivered Water provided for the Regulation Program as measured at the Point of Delivery to Kern Delta. These losses are subject to modification in the future with the concurrence of both Parties. Any modifications shall only apply to deliveries made after the date of the modification and Account Balance shall not be adjusted as to previous Delivered Water and Regulated Water.

ARTICLE 4. RETURN OF WATER

4.1 Methods of Return of Regulated Water.

4.1.1 Kern Delta shall only be obligated to return Regulated Water so long as the return does not cause the Account Balance to be less than zero.

4.1.2 Upon request by Metropolitan, Kern Delta shall deliver Regulated Water to Metropolitan at the Point of Delivery to Metropolitan by any one or more of the following methods: (i) an exchange of Regulated Water for SWP water in the California Aqueduct; (ii) an

exchange of Regulated Water for other surface supplies, or with Metropolitan's consent, groundwater deliverable to and into the California Aqueduct; (iii) the recovery of Regulated Water and delivery thereof to and into the California Aqueduct via existing or new Kern Delta facilities; or (iv) any other means mutually acceptable to the Parties.

4.1.3 In utilizing the methods specified in Subsection 4.1.2(ii) and (iv) of Section 4.1 (Methods of Return of Regulated Water), Kern Delta may propose to exchange Metropolitan's Regulated Water for an equal amount of water from other sources which Kern Delta elects to make available in the California Aqueduct. Upon Metropolitan's written consent to such an exchange, Kern Delta will be deemed to have effected such an exchange by delivering such water to Metropolitan at the Point of Delivery to Metropolitan. Upon completion of such an exchange, Metropolitan's beneficial interest in the Regulated Water that was the subject of the exchange and the right to withdraw such water shall be vested in Kern Delta free of any trust obligations hereunder.

4.1.4 Kern Delta, upon request of Metropolitan, and subject to the conditions at Sections 4.2 (Conditions On Return of Regulated Water) through 4.4 (Water Quality), shall return 50,000 acre-feet of Regulated Water per year, subject to adjustment, pursuant to Operating Plan.

4.2 Conditions on Return of Regulated Water. The return of Regulated Water by Kern Delta to Metropolitan shall be subject to the following terms and conditions:

4.2.1 Except as otherwise provided for in Section 11.1 (Regulation Program), for each acre-foot of Regulated Water held by Kern Delta for Metropolitan, Kern Delta shall ultimately return one acre-foot of water to Metropolitan.

4.2.2 Return of Regulated Water by Kern Delta shall not interfere with Normal

and Customary Uses by Kern Delta of its available water supplies. Kern Delta may modify from time to time its service area. Any such modifications shall not interfere with Kern Delta's ability to deliver Regulated Water to Metropolitan unless consented to in writing by Metropolitan.

4.2.3 Notwithstanding any other provision of this Agreement, Kern Delta shall temporarily reduce or terminate groundwater pumping for the purpose of returning Regulated Water to Metropolitan to the extent required pursuant to the Operating Plan attached as Exhibit C. However, such reduction or termination shall only be temporary and Kern Delta shall, with Metropolitan's approval, adjust the scheduling of groundwater pumping to mitigate reductions in return of Regulated Water and to the extent practical, in a manner that does not cause additional unreimbursed costs to Kern Delta, Kern Delta shall take measures to: (i) change the timing and location of pumping to avoid reduction in or termination of the return of Regulated Water pursuant to the Operating Plan or (ii) return other available supplies.

4.2.4 The Regulation Program shall not adversely affect Kern Delta's existing exchanges with other parties. Kern Delta shall consult with Metropolitan and obtain Metropolitan's consent before entering into future exchange agreements during the term of the Regulation Program. Metropolitan shall review such programs and determine whether they interfere with the Regulation Program. Metropolitan shall not unreasonably withhold consent.

4.3 Annual Scheduling of Regulated Water. Metropolitan shall notify Kern Delta of its intent to take delivery of Regulated Water at a Point of Delivery to Metropolitan as early in the Year as possible, but no later than March 15 of the same Year. If such notification is provided after March 15 Kern Delta shall, in good faith, endeavor to comply with the notice to the maximum extent feasible. Kern Delta shall be responsible for all necessary approvals to return the Regulated Water to the Point of Delivery to Metropolitan. Metropolitan shall be

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responsible for any necessary approvals and costs once the Regulated Water has been returned to the Point of Delivery to Metropolitan, provided that Kern Delta shall cooperate in obtaining such approvals.

4.4 Water Quality.

4.4.1 Based on available data, the parties have concluded that Kern Delta currently can supply Regulated Water at the California Aqueduct which meets existing Safe Drinking Water Act primary and secondary standards. (The foregoing is only a reference to an existing standard and shall not be interpreted as causing Kern Delta to become subject to the Safe Drinking Water Act.) Subject only to Kern Delta obligations under contracts or agreements existing as of Execution Date, Kern Delta shall take no direct action that would knowingly cause the quality of recovered groundwater returned as Regulated Water to not meet the existing or reasonably predictable future Safe Drinking Water primary and secondary standards. Should Kern Delta knowingly take such impermissible direct action which causes the quality of Regulated Water delivered into the California Aqueduct to not meet existing or reasonably predictable future Safe Drinking Water Act primary and secondary standards, Kern Delta shall be responsible for taking additional steps, at Kern Delta's expense, to ensure that such water meets such standards. The preceding sentence shall not apply to delivery of water under Kern Delta's Normal and Customary Uses or water quality degraded as a result of operating under this Program. In the event that future water quality standards change, or the quality of groundwater from Kern Delta wells or surface water is such that Kern Delta cannot meet acceptable standards for direct pumpback of Regulated Water into the California Aqueduct, Regulated Water shall be returned to Metropolitan by alternative methods satisfactory to Metropolitan. Such alternative methods may include, but are not necessarily limited to: purchases, exchanges with others, and/or

by improving Regulated Water quality to acceptable standards for direct pumpback, with the additional costs of any such methods being paid by Metropolitan. Kern Delta's operations and financial situation shall not be adversely impacted as a result of these alternative methods.

4.4.2 Without limiting the foregoing, Kern Delta, with Metropolitan's consent, shall rotate pumping if and to the extent necessary to maximize Regulated Water quality and to use the best quality wells available, to the greatest extent practicable, for Regulated Water return purposes.

ARTICLE 5. COMPENSATION

5.1 Construction Costs.

5.1.1 Kern Delta shall utilize Put Payments made pursuant to Section 5.2 (Put Payments) and any accrued interest to construct Kern Delta Facilities for the purposes specified in this Agreement. Kern Delta shall maintain all Put Payments and accrued interest in the Financial Account.

5.1.2 Kern Delta shall obtain Metropolitan's approval in writing of design and construction firms Kern Delta proposes to select for construction of Regulation Program Facilities. Metropolitan and Kern Delta shall jointly review and approve the estimated costs of right-of-way, engineering, construction management, appraisal, and legal costs related to construction of the Regulation Program Facilities. Kern Delta shall not exceed estimated costs for construction of any facilities unless it first consults with Metropolitan as provided for under Section 5.5 (Adjustment of Rates). Metropolitan shall only reimburse Kern Delta or otherwise pay for disbursements in excess of the approved estimates if Metropolitan has made an advance

written approval. Kern Delta shall provide Metropolitan annual statements, an audited statement upon completion of construction and timely provide Metropolitan with such additional accountings of disbursements and credits against Financial Account as Metropolitan requests.

5.1.3 Additional Feasibility Work. Within 45 days of the date of execution of this Agreement, Metropolitan shall pay Kern Delta \$87,213.37 to complete its reimbursement for Program feasibility work.

5.2 Put Payments.

5.2.1

5.2.1.1 Metropolitan shall pay Kern Delta for each acre foot of the first 280,899 acre-feet of Delivered Water a Put Payment which shall consist of (i) Capital Put Payment as set forth in Section 5.4 (Capital Put Payments); plus (ii) an amount equal to actual costs per acre foot of operation, maintenance and replacement of Kern Delta Facilities used to regulate Delivered Water determined in accordance with Section 5.7 (OM&R Fees); plus (iii) an amount sufficient to pay all energy costs associated with the delivery, distribution, and recharge of each acre foot of Delivered Water determined in accordance with Section 5.6 (Power & Energy Costs); plus (iv) a ^{Delivery Canal} KWBA Capital Fee of \$12.50.

5.2.1.2 The number of acre-feet used to calculate the Capital Put Payment ^{Delivery Canal OM & R Fee for Delivered Water, and the Delivery Canal} and the KWBA Capital Fee for the first, ~~fourth and seventh~~ ^{third and sixth} Years from Effective Date shall be an amount determined as follows:

(a) For the first Year, the minimum amount shall be the higher of (i) the amount of Delivered Water necessary to result in a credit of ^{60,000} 50,000 acre-feet of Regulated Water to the Account or (ii) the actual amount of Delivered Water.

(b) For the ^{third} fourth Year, the minimum amount shall be the higher of (i)

the amount of Delivered Water necessary to result in a total credit of ~~150,000~~^{160,000} acre-feet of Regulated Water to the Account or (ii) the actual amount of Delivered Water.

(c) For the ~~seventh~~^{sixth} Year, the minimum amount shall be the higher of (i) the amount of Delivered Water necessary to result in a total credit of 250,000 acre-feet to the Account or (ii) the actual amount of Delivered Water.

5.2.2 Payments for all Delivered Water beyond 280,899 acre-feet shall be (i) \$50 adjusted pursuant to Subsection 5.5.2 of Section 5.5 (Adjustment of Rates), plus, (ii) an amount equal to actual costs per acre foot of operation, maintenance and replacement of Kern Delta Facilities used to regulate Delivered Water calculated pursuant to Section 5.7 (OM&R Fees) below, plus; (iii) an amount sufficient to pay all energy costs associated with the delivery, distribution, and recharge of each acre foot of Delivered Water calculated as more particularly set forth in Section 5.6 (Power & Energy Costs) below.

5.2.3 All Capital Put Payments shall be deposited by Kern Delta in an interest bearing Account ("Financial Account") in a commercial bank or other depository satisfactory to Metropolitan, which identifies Kern Delta as trustee for Metropolitan, pursuant to Subsection 10.1.3 of Section 10.1 (Declaration of Regulation Trust). All amounts in Financial Account, including interest earnings, shall be used by Kern Delta solely to pay costs for construction of Kern Delta Regulation Program Facilities which are due and owing under construction invoices and documentation which Kern Delta has reviewed and approved for payment. Any funds remaining after completion of construction of Kern Delta Regulation Program Facilities shall be retained by and released to Kern Delta, free of trust.

5.3 **Take Payments.** For each acre foot of Regulated Water returned by Kern Delta to Metropolitan, whether by recovery from the Kern Delta Basin or by exchange, Metropolitan

shall pay to Kern Delta a Take Payment equal to the sum of the following components: (i) \$40.00 adjusted pursuant to Subsection 5.5.2 of Section 5.5 (Adjustment of Rates) from the Effective Date; plus (ii) an amount equal to actual costs per acre foot of operation, maintenance, repair and replacement of Kern Delta Facilities used to provide Regulated Water to Metropolitan calculated as set forth in Section 5.7 (OM&R Fees) below; plus (iii) an amount sufficient to pay all energy costs associated with the delivery of each acre foot of Regulated Water to Metropolitan calculated as set forth in Section 5.6 (Power & Energy Costs) below.

5.4 Capital Put Payments. For each acre-foot of the initial 280,899 acre-feet of Delivered Water credited to the Account, pursuant to Subsection 2.5.1 of Section 2.5 (Regulation of Water) Metropolitan shall pay Kern Delta a one-time "Capital Put Payment" of \$105 per acre-foot subject to adjustment only as provided in Subsection 5.5.2 of Section 5.5 (Adjustment of Rates). Put Payments made pursuant to Subsection 5.2.1.2 of Section 5.2 (Put Payments) in excess of Delivered Water accepted by Kern Delta shall be credited against the last Delivered Water accepted by Kern Delta. Capital Put Payments shall be made only for the first 280,899 acre-feet of Delivered Water credited to the Account.

5.5 Adjustment of Rates.

5.5.1 In the event implementation cost of Kern Delta Initial Regulation Program Facilities increases due to construction cost overruns such that funds in the Financial Account (including interest) are insufficient to meet projected implementation costs, Kern Delta and Metropolitan shall; (i) jointly review construction cost estimates and, to the extent practical, modify proposed facilities to reduce cost, (ii) jointly review Kern Delta Supplemental Regulation Program Facilities and endeavor to modify proposed Kern Delta Regulation Program Facilities to reduce construction cost and still provide full project benefits; and (iii) only if approved by

Metropolitan in its sole discretion, increase remaining Capital Put Payments to provide sufficient additional funds equivalent to the increased construction cost.

5.5.2

5.5.2.1 The amount payable for a calendar year under Section 5.4 (Capital Put Payment) (\$105 per acre-foot as of January 1, 1999) shall be adjusted commencing December 1 of each year commencing 1999 for the following year by the fraction of the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the Year immediately preceding the Year with respect to which the adjusted amount is being determined and the denominator of which shall be the CPI for 1999 (based on the 1982-84 index).

5.5.2.2 The amount payable for a calendar year under Section 5.2 (Put Payments) (\$50 per acre-foot as of January, 1999) shall be adjusted commencing December 1 of each year commencing 1999 for the following year by multiplying the lesser of a fraction, 1) the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the Year immediately preceding the Year with respect to which the adjusted amount is being determined and the denominator of which shall be the CPI for 1999 (based on the 1982-84 index) or 2) escalated and compounded each year by 2.5 percent (2.5%).

5.5.2.3 The amount payable for a calendar year under Section 5.3 (Take Payments) (\$40 per acre-foot as of Execution Date) shall be adjusted commencing December 1 of each year commencing Execution Date for the following year by the lesser

of a fraction, (1) the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the Year immediately preceding the Year with respect to which the adjusted amount is being determined and the denominator of which shall be the CPI for the Execution Date (based on the 1982-84 index) or (2) escalated and compounded each year by 2.5 percent (2.5%).

5.6 Power & Energy Costs.

5.6.1 For each acre-foot of Regulated Water returned by Kern Delta to Metropolitan, whether by recovery from the Kern Delta Basin or by exchange, the applicable Put Payment component specified in Subsections 5.2.1.1(iii), or 5.2.2(iii), both of Section 5.2 (Put Payments) and the Take Payment component specified in Subsection 5.3(iii) of Section 5.3 (Take Payments) shall be determined by calculating the average unit power and energy costs then actually incurred by Kern Delta to (i) convey Delivered Water from Kern Delta's Point of Delivery to Spreading Facilities or in lieu delivery points, (ii) pump Regulated Water from the Kern Delta Basin for either direct delivery to the California Aqueduct or for entitlement exchange, (iii) convey Regulated Water through the distribution system and to deliver such water into the California Aqueduct, and (iv) convey Transported Water through the distribution system and deliver such water into the California Aqueduct. Said power costs shall be computed based on the amount of energy consumed to pump, withdraw, transport, and when applicable to convey to the California Aqueduct Metropolitan's Regulated Water in a given Year multiplied by Kern Delta's average actual unit power cost for that period. If requested by Metropolitan, Kern Delta shall establish an estimated power rate for each Year and shall provide Metropolitan with such estimate, including back-up documentation to justify the rate, within fourteen (14) days of the

request. Such estimated rate shall be used for billing purposes for the Year, and then the billing will be adjusted to reflect actual costs by June 1 of the following Year, or as soon as possible thereafter. Once the variance amount has been agreed to by the Parties, any amount due by either Party shall be billed immediately and paid in accordance with Section 5.11 (Payment Schedule).

5.6.2 The initial calculation of energy costs shall be consistent with the calculation shown in the table included in Exhibit "D-1," (Methodology for Determining Energy Requirements) and incorporated herein by this reference. The Table 2 (Energy Analysis Results) in Exhibit D-1 may be revised from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. The intent of Exhibit D-1 is to provide Kern Delta with sufficient revenue to recover the power costs incurred by Kern Delta for transportation, regulation and withdrawal of Delivered and Regulated Water and to allow Kern Delta flexibility to change the calculation based on experience and the changing electric utility industry and possible changes in its power supply and transmission contracts.

5.7 **OM&R Fees.** For each acre-foot of Regulated Water returned by Kern Delta to Metropolitan, whether by recovery from the Kern Delta Basin or by exchange, Metropolitan shall pay to Kern Delta the applicable operation, maintenance and replacement fee ("OM&R fee") based on the following rates which are to approximate Kern Delta's actual OM&R and administrative costs to perform the functions listed. The methodology for determining such costs is included in Exhibit "D-2" (Methodology for Determining O&M Costs and Replacement Cost) attached hereto and incorporated herein by this reference.

5.7.1 Spreading (Either direct recharge or in-lieu) OM&R Fee of \$3.00 per acre-foot of Delivered Water regulated for Metropolitan.

5.7.2 Extraction OM&R Fee of \$7.00 per acre-foot of Regulated Water

delivered to Metropolitan upon return of Regulated Water.

5.7.3 ^{Delivery} Kern Delta Conveyance Canal OM&R Fee for acre-foot conveyed ^{through} ~~the facility~~ ^{by Kern Delta for the Program} is ~~\$4.00~~ ^{\$11.00} per acre-foot of Delivered Water (upon delivery into storage), and ~~\$4.00~~ ^{\$11.00} per acre-foot of Regulated Water (upon return of Regulated Water) and \$4.00 per acre-foot of Transportation Water delivered to Metropolitan.

5.7.4 KWBA Conveyance Canal OM&R Fee for each acre-foot conveyed through the facility is set forth in the Kern Water Bank Authority Agreement, which will not be modified without Metropolitan's approval.

5.7.5 Commencing December of the first full year following Execution Date, each OM&R Fee provided for in this Section 5.7 (OM&R Fees) shall be adjusted for the following Calendar Year by an amount equivalent to the lesser of (1) a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the Year immediately preceding the Year with respect to which the adjusted amount is being determined and the denominator of which shall be the CPI for January 2001 (based on the 1982-84 index) or (2) the amount determined by escalating and compounding the then existing OM&R Fee by 2.5 percent (2.5%), whichever is less. In lieu of the aforesaid adjustment for each of the sixth and subsequent fifth full years ("Methodology Adjustment Years") following Execution Date, each OM&R Fee provided for in this Section 5.7 (OM&R Fees) shall be subject to the Methodology Adjustment, which shall utilize the applicable methodology provided for in Exhibit D-2 (Methodology for Determining O&M Costs and Replacement Costs). For purposes of calculating adjustments in years between Methodology Adjustment Years, the OM&R Fee determined for the previous

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Methodology Adjustment Year shall be utilized for adjustments until the next succeeding Methodology Adjustment Year,

5.8 State Project Costs. For all Regulated Water returned by Kern Delta pursuant to Subsection 4.1.2 of Section 4.1 (Methods of Return of Regulated Water), Metropolitan shall pay applicable State Water Project costs beyond the Point of Delivery to Metropolitan.

5.9 Cost of Water: Kern Delta shall, upon request by Metropolitan, exercise reasonable efforts to acquire water for Metropolitan in amounts other than those provided for in this Agreement at actual Kern Delta cost and assist in ensuring delivery of such water to Metropolitan whether or not Kern Delta facilities are utilized. In addition to any other payments provided for by this Agreement, Metropolitan shall, if advance approval is given by Metropolitan, pay to Kern Delta the cost of water Kern Delta obtains, together with any other costs or fees Kern Delta incurs to deliver such water to the Point of Delivery to Metropolitan, including exchange and regulatory fees and charges imposed by other agencies, all as approved in advance by Metropolitan.

5.10 Exchanges. Without limiting the applicability of Section 5.6 (Power & Energy Costs) and Section 5.7 (OM&R Fees), the Parties shall equally share savings due to reduction in power, energy or other costs resulting from substitution by Kern Delta of exchanges, pursuant to Section 2.1 (Source of Water) or Subsection 4.1.2 of Section 4.1 (Methods of Return of Regulated Water), in lieu of direct usage of some portion of Kern Delta Facilities. Kern Delta shall bill and Metropolitan shall pay to Kern Delta fifty percent of such savings pursuant to Section 5.11 (Payment Schedule). Kern Delta shall be solely responsible for all costs of water supplies it obtains by exchange to meet its obligations under Subsection 2.5.1 of Section 2.5 (Regulation of Water).

5.11 Payment Schedule. For payment obligations incurred pursuant to Sections 5.2 (Put Payments); 5.3 (Take Payments); 5.4 (Capital Put Payments); 5.6 (Power & Energy Costs); and 5.7 (OM&R Fees), Kern Delta may only bill Metropolitan for water previously credited or debited to Account pursuant to this Agreement. For payment obligations incurred pursuant to Sections 5.9 (Cost of Water) and 5.10 (Exchanges), Kern Delta may only bill Metropolitan after Kern Delta incurs the specified obligations. In all events, Kern Delta may only bill Metropolitan, no more frequently than monthly for payments under this Agreement which payments shall be due Kern Delta and shall become delinquent forty-five (45) days after Metropolitan receives the invoice under the terms of this Agreement. Data supporting the amounts invoiced shall be provided upon the request of Metropolitan. Kern Delta shall correct any erroneous billing promptly upon discovery of the error. If Metropolitan has been underbilled, payment of the underbilled amount, together with interest thereon at the average investment yield of Metropolitan's investments as reported monthly by Metropolitan's Treasurer, shall be due and become delinquent forty-five (45) days after Metropolitan receives the corrective invoice and data justifying the change. Correction of overpayments by Metropolitan shall become delinquent unless refunded by Kern Delta to Metropolitan within forty-five days of discovery by either Metropolitan or Kern Delta, together with interest thereon computed from the date the overpayment was made at the average investment yield of Metropolitan's investments as reported monthly by Metropolitan's Treasurer.

5.12 Delinquencies. In addition to other amounts payable, delinquencies shall bear interest at the rate of one percent (1%) per month.

ARTICLE 6. CONTRACT PRIORITY RIGHT

**FOR TRANSPORTATION OF WATER
(TRANSPORTATION PROGRAM)**

6.1 Transportation Program - General. Metropolitan shall have a right ("Contract Priority Right") to require the conveyance of Transported Water available to Metropolitan through Contract Priority Right Facilities to the Point of Delivery to Metropolitan and to the Point of Delivery To Kern Delta. Such Transported Water shall be conveyed through Contract Priority Right Facilities in addition to the return of Regulated Water under the provisions of this Agreement. Such Contract Priority Rights shall be used by Metropolitan solely for the benefit of Metropolitan and not for third parties.

6.2 Cross Valley Canal **Kern Water Bank Authority** and Arvin-Edison Transportation Rights. *(See Supplement Page)*

Metropolitan's rights to utilize Kern Water Bank Authority Transportation Facilities shall be as specified in the Kern Water Bank Authority Agreement. Metropolitan's rights to utilize Arvin-Edison Transportation Facilities shall be as specified in the Arvin-Edison MOU.

6.3 Transported Water. The amount of Transported Water to be conveyed through Kern Delta Transportation Facilities shall be dependent upon the capacity available for conveyance of Transported Water in Kern Delta's Transportation Facilities. For purposes of Transported Water, Water conveyance capacity in Kern Delta facilities available for use by any party shall be determined by the priority system provided for in Section 6.4 (Kern Delta Priorities). Metropolitan's Contract Priority Right may use all water conveyance capacity available in Kern Delta's Transportation Facilities up to 100% of normal maximum operating capacity not being used by any superior priority as specified in Section 6.4 (Kern Delta

Priorities). Such capacities shall be determined by Kern Delta.

6.4 Kern Delta Priorities.

6.4.1 The priorities of water conveyed through Kern Delta Transportation Facilities during the term of the Regulation Program shall be determined as follows: (i) first priority: water deliveries for Normal and Customary Uses; (ii) second priority: water deliveries for the Regulation Program pursuant to this Agreement; (iii) third priority: Transported Water; and (iv) fourth priority: any other water deliveries by Kern Delta not already covered under the first priority. Kern Delta and Metropolitan shall endeavor to maximize total usage of Kern Delta Transportation Facilities by the third and fourth priority uses for benefit of both Parties. Kern Delta shall retain sole discretion to determine the availability of, and terms and conditions for, any use of Kern Delta Facilities not otherwise governed by this Agreement.

6.4.2 The priority of all water conveyed through Kern Delta Transportation Facilities commencing from the end of the Regulation Program term shall be determined as follows: (i) First Priority: Water deliveries for Normal and Customary Uses; (ii) Second Priority: Water deliveries for other Kern Delta third party programs which do not exceed a maximum conveyance of 75,000 acre-feet per Year through the Delivery Canal; (iii) Third Priority: Transported Water; and (iv) Fourth Priority: any other water deliveries by Kern Delta not already covered under the previous priorities.

6.5 Scheduling of Transported Water. Metropolitan shall schedule with Kern Delta the conveyance of Transported Water through Contract Priority Right Facilities by providing Kern Delta with a preliminary notice of Metropolitan's intent to convey Transported Water by

March 15, which may thereafter be modified from time to time up until May 1. Such delivery schedule shall state the amount of Transported Water to be conveyed in the noticed Year as expressed in total acre-feet through Kern Delta Transportation Facilities. Kern Delta shall be responsible for scheduling deliveries through Arvin-Edison Transportation Facilities and Kern the Delivery Canal Water Bank Authority Transportation Facilities. Kern Delta shall review the delivery schedule and, within 30 days, after receipt of Metropolitan's preliminary notice, inform Metropolitan of any known difficulties in complying with the schedule for conveyance of Transported Water pursuant to the Contract Priority Right. Conveyance of such Transported Water will be scheduled in such a fashion so as to maximize Kern Delta's operational flexibility and water supply reliability, to the greatest extent practicable consistent with Kern Delta's obligations under this Agreement. The parties may mutually agree to amend the delivery schedule at any time.

6.6 Other Terms. The following shall also apply with respect to Metropolitan's Contract Priority Right for the conveyance of Transported Water through Contract Priority Right Facilities.

6.6.1 Losses. Transportation Losses, evaporation, metering discrepancies and other losses of Transported Water for purposes of this Agreement, are collectively assumed to be five percent (5%) of the amount of Transported Water as measured at the Point of Delivery to Metropolitan. These losses are subject to modification in the future to be equal to actual losses with the concurrence of both parties. Neither party shall unreasonably withhold concurrence with such modification. In no event shall Kern Delta be responsible for any losses of

Transported Water absent Kern Delta's negligence or intentional wrongdoing. Article 3 shall not be applicable to Transported Water.

6.6.2 Costs. Metropolitan shall compensate Kern Delta for the estimated actual costs to convey such Transported Water through Contract Priority Right Facilities, which charge shall be adjusted in the same manner as provided at Subsection 5.5.2 of Section 5.5 (Adjustment of Rates). Such actual conveyance costs shall be (i) power and energy costs as provided in Section 5.6 (Power & Energy Costs), and (ii) OM&R costs as provided in Section 5.7 (OM&R Fees). Payments shall be timely made, as provided at Section 5.11 (Payment Schedule).

6.6.3 Term. Except as provided in Section 12.2 (Remedies in the Event of Metropolitan's Voluntary Failure to Perform), Metropolitan's Contract Priority Right shall remain in existence until November 4, 2035, regardless of any prior expiration of the Regulation Program Agreement.

ARTICLE 7. DIVISION OF RISK RESPONSIBILITIES

Kern Delta and Metropolitan agree to cooperate, in reducing, to the greatest extent practicable, the risk from claims arising against any of the Parties from implementation of this Agreement. In the event of claims by third parties relating to this Agreement, the responsibilities of Kern Delta, whether acting in its individual and/or trustee capacity, and Metropolitan shall be divided as follows:

7.1 **Kern Delta Responsibilities.** Kern Delta shall defend, indemnify and hold harmless Metropolitan and its directors, officers, agents, employees and volunteers against any

and all losses, claims, demands and causes of action (herein collectively referred to as "claims") and shall assume responsibility for payment of any settlements, judgments, costs and attorneys' fees arising from claims concerning the following:

- (a) Control, carriage, transportation, handling, use, disposal, or distribution of Delivered, Regulated or Transported Water from the Point of Delivery to Kern Delta and to the Point of Delivery to Metropolitan;
- (b) Any contest or dispute by any landowner or water user within the service area of, or otherwise served by, Kern Delta concerning the allocation of benefits among or the assessment of charges to Kern Delta landowners or water users;
- (c) Construction, repair, modification, or replacement of any Regulation Program Facilities;
- (d) Operation of the Regulation Program or Kern Delta Facilities or the actions of Kern Delta's officers, employees or agents; and
- (e) Any other activities under the exclusive control of Kern Delta. If Metropolitan is named in any such action, it may submit its defense to Kern Delta, which shall bear the full cost of defense, except to the extent that Metropolitan utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Regulation Program under this Agreement shall be as provided at Section 7.3 (Other Claims). Metropolitan shall not be entitled to any indemnification from Kern Delta except as set forth in this Section 7.1 (Kern Delta Responsibilities).

7.2 Metropolitan Responsibilities. Metropolitan shall defend, indemnify and hold harmless Kern Delta and its respective directors, officers, agents, employees and volunteers,

against any and all claims and shall assume responsibility for payment of any settlements, judgments, costs or attorneys' fees arising from claims concerning the following:

(a) Control, transportation, handling, use, disposal or distribution of Delivered Water to the Point of Delivery to Kern Delta and Regulated Water from the Point of Delivery to Metropolitan;

(b) Any claim by a landowner, resident, public agency or other entity within the service area of, or otherwise served by, Metropolitan challenging the Regulation Program or this Agreement directly or indirectly;

(c) Construction, repair, modification or replacement of any of the facilities of Metropolitan, or the State Water Project;

(d) Operation of the facilities of or the actions of the officers, employees or agents of Metropolitan; and

(e) Any other activities under the exclusive control of Metropolitan.

If Kern Delta is named in any such action, it may submit its defense to Metropolitan involved, in which event Metropolitan shall bear the full cost of defense, except to the extent Kern Delta utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 7.3 (Other Claims). Kern Delta shall not be entitled to any indemnification from Metropolitan except as set forth in this Section 7.2 (Metropolitan Responsibilities).

7.3 Other Claims. As for any claims by a third party with respect to the Regulation Program which are not otherwise provided for at Sections 7.1 (Kern Delta Responsibilities) or 7.2 (Metropolitan Responsibilities), including any claims challenging the underlying authority for

or the validity or enforceability of the Regulation Program under this Agreement, Metropolitan shall be responsible for payment of any settlements it has approved or any judgments with respect to such claims. If Kern Delta is named in any action with respect to such a claim, it may submit its defense to Metropolitan and Metropolitan shall bear the full cost of defense, except to the extent Kern Delta utilizes its own counsel for such defense. At the request of Metropolitan, Kern Delta shall join in the defense of any claim which is not adverse to Kern Delta's water supply or financial interests, in which case Metropolitan shall reimburse Kern Delta for all of its costs of defense. However, with respect to claims in which one or more of the plaintiffs resides or does business in Kern County challenging the recovery of groundwater under this Agreement, Metropolitan may demand that Kern Delta join in the defense of claims. In such case, Kern Delta must comply with any such demand, the Parties shall jointly manage the litigation, and Kern Delta and Metropolitan shall each pay one-half of the defense costs. In other such cases, Metropolitan shall reimburse Kern Delta for all of its costs of defense.

7.4 Multiple Claims. In the event that payments are made in settlement of a claim, in satisfaction of a judgment or for defense costs where the claim arises from issues applying to both Kern Delta and Metropolitan, payments shall be divided in proportion to the relative liability of each arising from the common claim. If the Parties cannot agree on the proportion, then the share to be paid by each of Kern Delta and Metropolitan shall be submitted to arbitration as provided at Article 9 hereof.

ARTICLE 8. REQUIRMENTS FOR IMPLEMENTATION

8.1 **Conditions Precedent.** The obligations of the Parties under this Agreement are subject to the satisfaction of the following conditions (each a condition precedent) by no later than 24 months of Execution Date.

8.1.1 Execution of the following, in form Reasonably Acceptable To Each Party: (i) the Kern Water Bank Authority Agreement; and (ii) the Arvin-Edison MOU.

8.1.2 Commitment, in form reasonably acceptable by each Party, of the California Department of Water Resources and the Kern County Water Agency, to cooperate in Agreement implementation.

8.1.3 For purposes of Subsections 8.1.1 and 8.1.2 of this Section 8.1 (Conditions Precedent), "reasonably acceptable to each party" includes, but is not limited to, assurance that the agreements shall not be changed during the term of this Agreement, that Metropolitan shall be named as direct third party beneficiary and that the Agreement shall not be amended in a manner affecting Metropolitan without its written approval.

8.1.4 Opinion of Kern Delta Counsel. Metropolitan have received an opinion from Kern Delta's counsel in form and substance reasonably satisfactory to Metropolitan that: (i) as respects the effectiveness of this Agreement, all submissions required of Kern Delta to federal, state and local governmental authorities have been made, all necessary approvals have been obtained, all conditions imposed by approvals are satisfied or will be (and may be) satisfied; (ii) Kern Delta, acting as lead agency (as defined in CEQA) has adopted a Final Environmental Impact Report and Notice of Determination for this project pursuant to Section CEQA; and (iii) this Agreement has been duly authorized, executed and delivered by Kern Delta and, assuming due authorization, execution and delivery by the other Parties, thereto, constitutes the legally valid and binding obligation of Kern Delta, enforceable against Kern Delta in accordance with its terms, except as the enforcement thereof

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may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally, or by the application of equitable principles, including concepts of materiality, reasonableness, good faith and fair dealing, and the possibility of the unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

8.1.5 Opinion of Metropolitan Counsel. Kern Delta have received an opinion from Metropolitan's counsel in form and substance reasonably satisfactory to Kern Delta that: (i) as respects the effectiveness of this Agreement, all submissions required of Metropolitan to federal, state and local governmental authorities have been made, all necessary approvals have been obtained, all conditions imposed by approvals are satisfied or will be (and may be) satisfied; (ii) this Agreement has been duly authorized, executed and delivered by Metropolitan and, assuming due authorization, execution and delivery by the other Parties, thereto, constitutes the legally valid and binding obligation of Metropolitan, enforceable against Metropolitan in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally, or by the application of equitable principles, including concepts of materiality, reasonableness, good faith and fair dealing, and the possibility of the unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

8.1.6 No Litigation. No litigation, proceeding or investigation shall be pending or threatened which does or would bind or relate to the activities, parties or facilities necessary to consummate the transactions contemplated by this Agreement, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect the ability of the Parties, or any of them, to perform their respective obligations under this

Agreement or which raises a question as to the validity of this Agreement, or any action to be taken hereunder. Without limiting the generality of the foregoing, no challenge to the Parties' or Kern Delta's compliance with CEQA shall be pending.

8.1.7 Certificate of Fulfillment or Waiver of Conditions Precedent. The Agreement shall become effective at such time as the Parties execute a Certificate in the form attached as Exhibit E (Certification That Conditions Precedent Have Been Satisfied or Waived).

8.1.8 Recording. This Agreement shall have been recorded in the Office of the County Recorder, County of Kern.

ARTICLE 9. DISPUTE RESOLUTION

9.1 **Informal Mediation.** In the event of a dispute regarding the interpretation or implementation of this Agreement, or if the parties are unable to agree upon a matter as to which their agreement is provided for hereunder, the Parties will endeavor to resolve the dispute by using the services of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties.

9.2 **Arbitration.**

9.2.1 If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter shall be resolved by arbitration as provided in this Article 9 and in the California Arbitration Act (Part 3 [commencing with § 1280], Tit. 9, Calif. Code Civ. Proc.), including Section 1283.05. The Parties agree to be bound by the majority decision of a three-member

panel to be selected as follows: (i) one member shall be selected by Metropolitan; (ii) one member shall be selected by Kern Delta; and (iii) the third member shall be selected by the other two (2) members. If the two (2) members selected by Metropolitan and Kern Delta are unable to agree on the selection of a third member, either Party may petition a court to appoint the third member pursuant to Code of Civil Procedure Section 1281.6. Each Party shall be responsible for any fees and expenses of the member of the panel appointed by that Party, and the fees and expenses of the third member of the panel shall be shared fifty percent (50%) by Kern Delta and fifty percent (50%) by Metropolitan.

9.2.2 If a Party asserts that another Party has breached obligations under this Agreement, it may request that the arbitration panel order the other Party to comply with this Agreement. Upon the panel finding that a Party has in fact breached this Agreement, the panel shall order compliance. The panel may order any other equitable relief permitted by California law, including declaratory or injunctive relief, applicable to the matter before the panel for resolution. If termination is sought by a party pursuant to the terms hereof, the panel may determine the issues of whether a default has occurred or other condition precedent to the termination alleged has been satisfied and, if so, may issue orders implementing that termination. The orders of the panel shall be judicially enforceable. The panel may order that the effective date of its order be the date of the breach, if appropriate. If Metropolitan has suspended payments as provided in Subsection 12.1.2 of Section 12.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), it shall reimburse Kern Delta for any monies withheld and then due to Kern Delta as soon as Kern Delta again fully complies with this Agreement unless otherwise ordered by the panel. The panel may not order any damages (including consequential or punitive damages) beyond those provided for or permitted under this Agreement.

ARTICLE 10. DECLARATIONS OF TRUSTS

10.1 Declaration of Regulation Trust.

10.1.1 Metropolitan hereby appoints Kern Delta to hold, and Kern Delta hereby accepts such appointment and agrees to hold, in trust the Regulation Trust Property (as defined below), for the use and benefit of Metropolitan, as beneficiary, upon the terms set forth in this Agreement. This trust shall be designated the "Regulation Trust."

10.1.2 Kern Delta acknowledges and agrees that all Regulated Water will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Kern Delta in its capacity as trustee for Metropolitan with respect to the Regulated Water and the rights relating to the Regulated Water as set forth below. Metropolitan has herein authorized Kern Delta, as trustee, to commingle, exchange or otherwise dispose of the Regulated Water as permitted under this Agreement.

10.1.3 Metropolitan hereby grants to the Regulation Trust the Capital Put Payments deposited into Financial Account pursuant to Subsection 5.2.3 of Section 5.2 (Put Payments) and the Regulated Water. Kern Delta has granted, and does hereby grant, to the Regulation Trust, for the use and benefit of Metropolitan, as beneficiary, the Kern Delta Regulation Program Facilities and all appurtenant facilities and structures and any rights, easements, lands or facilities it acquires for the purpose of regulating Regulated Water. The rights and interests granted by Metropolitan and Kern Delta to the Regulation Trust pursuant to this Subsection 10.1.3 shall collectively be referred to herein as the "Regulation Trust Property."

10.1.4 Metropolitan acknowledges that Metropolitan's Regulated Water may be

commingled with other water. At all times during the term of this Agreement, an amount of water in the Basin equal to the amount of the Metropolitan's Account Balance shall be deemed to be Metropolitan's Regulated Water. So long as water in the amount of Metropolitan's Account Balance remains in the Basin, Kern Delta, as trustee, shall be deemed to remove Metropolitan's Regulated Water from storage only as and when expressly requested by Metropolitan to do so, and any other removal of water from the Basin shall be deemed to be the removal of water that is not Metropolitan's Regulated Water.

10.1.5 The Regulation Trust created under this paragraph exists only for the purpose of protecting: (i) Metropolitan's interest in a quantity of water equivalent to the Regulated Water, if Kern Delta fails or refuses to return such water when required to do so by this Agreement; and (ii) Metropolitan's right, also held in trust by Kern Delta for Metropolitan, to recover from the Kern Delta Basin and return to Metropolitan ^{through the Delivery Canal} ~~the~~ Kern Water Bank Canal of the Kern Water Bank Authority Transportation Facilities ^{at} and the Intertie Canal of the Arvin-Edison Transportation Facilities, a quantity of water equal to the Regulated Water, such rights to be exercised by Kern Delta, as trustee, through the lands, facilities, rights and interests of Kern Delta, including but not limited to rights pursuant to the Arvin-Edison MOU and the Kern Water Bank Authority ^{Cross Valley Canal Participation} Agreement, or by its successor in interest in and to the Regulation Trust Property, all in accordance with the terms of this Agreement.

10.1.6 The creation of the Regulation Trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Kern Delta performs its obligations as provided in this Agreement, Kern Delta will not be deemed or construed to have breached any fiduciary duty to Metropolitan arising out of the Regulation Trust. The trust relationship created by the Declaration of Regulation Trust in this Agreement is

not otherwise intended to apply to or affect the obligations of Kern Delta or Metropolitan hereunder, or the remedies in the event of default. Notwithstanding creation of this Regulation Trust under this Agreement, Kern Delta may benefit from the Regulation Program and Transportation Program set forth in this Agreement.

10.1.7 Subject to the priorities of use stated in Section 6.4 (Kern Delta Priorities) and the conditions contained in Section 4.2 (Conditions on Return of Regulated Water), the Parties agree that the Delivery canal of Kern Delta Regulation Program Facilities is to be held by Kern Delta for purposes of both the Regulation Trust and the Transportation Facilities Trust.

10.2 Declaration of Transportation Facilities Trust.

10.2.1 Metropolitan and Kern Delta hereby appoint Kern Delta to hold, and Kern Delta hereby accepts such appointment and agrees to hold, in trust, for the use and benefit of Metropolitan, as beneficiary, the Transportation Facilities Trust Property (as defined below), upon the terms set forth in this Agreement. This trust shall be designated the "Transportation Facilities Trust."

10.2.2 In exchange for the rights Metropolitan has granted Kern Delta pursuant to Section 10.1 (Declaration of Regulation Trust) and in addition to the grant to the Regulation Trust, Kern Delta does hereby grant and contribute to the Transportation Facilities Trust the Transportation Facilities Trust Property. As used herein, the "Transportation Facilities Trust Property" means: (i) all appurtenant facilities and structures and any rights, easements, lands or facilities Kern Delta acquires for the purpose of conveying Transported Water to the California Aqueduct initially using monies in the Financial Account (ii) the Delivery Canal of Kern Delta Regulation Program Facilities; (iii) Cross Valley Canal Participation Contract Priority Rights held pursuant to the Arvin-Edison MOU and the Kern Water Bank Authority Agreement; and (iv) any additional rights, easements,

lands or facilities needed to complete the construction of facilities that are acquired or constructed by Kern Delta or the Transportation Facilities Trust initially using monies in the Financial Account.

10.2.3 The purposes for which the Transportation Facilities Trust is created are to convey to Kern Delta to hold in trust, for the use and benefit of Metropolitan easements and Contract Priority Rights in the Kern Delta Transportation Facilities, Kern Water Bank Authority Transportation Facilities and Arvin Edison Transportation Facilities, to the extent necessary to convey Transported Water to the California Aqueduct for delivery to Metropolitan therein pursuant to the terms of this Agreement for purposes of both the Regulation Program and the Transportation Program.

10.2.4 The creation of the Transportation Facilities Trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Kern Delta performs its obligations as provided in this Agreement, Kern Delta will not be deemed or construed to have breached any fiduciary duty to Metropolitan arising out of the Transportation Facilities Trust. The trust relationship created by the Transportation Facilities Trust in this Agreement is not otherwise intended to apply to or affect the obligations of Kern Delta or Metropolitan hereunder, or the remedies in the event of default. Notwithstanding creation of this Transportation Facilities Trust under this Agreement, Kern Delta may benefit from the Regulation Program and Transportation Program set forth in this Agreement.

ARTICLE 11 TERM OF AGREEMENT

11.1 **Regulation Program.** Unless the Regulation Program provisions of this

Agreement are earlier terminated pursuant to Subsection 12.1.3 of Section 12.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), Section 12.2 (Remedies in the Event of Metropolitan's Voluntary Failure to Perform), Section 12.3 (Remedies in Event of Failure of Certain Other Remedies), or Section 13.2 (Involuntary Termination), Metropolitan's right to provide Delivered Water pursuant to Section 2.1 (Source of Water) and to receive Regulated Water pursuant to Article 4 (Return of Water) shall terminate at the end of the twenty-fifth (25th) calendar year after Effective Date. At the end of the twenty-fifth (25th) calendar year after Effective Date, the entire Account Balance shall be debited and the remaining Regulated Water, if any, shall be available for Kern Delta to utilize for its own purposes.

11.2 Transportation Program. Unless the Transportation Program provisions of this Agreement are earlier terminated pursuant to Subsection 12.1.3 of Section 12.1 (Remedies in Event of Kern Delta's Willful Failure to Perform); Section 12.2 (Remedies in the Event of Metropolitan's Voluntary Failure to Perform); Section 12.3 (Remedies in Event of Certain Other Remedies) or Section 13.2 (Involuntary Termination), the Transportation Program provisions shall terminate as specified in Subsection 6.6.3 (Term).

11.3 Agreement Termination. This Agreement shall terminate at the time of termination of both the Regulation Program and Transportation Program unless extended pursuant to Section 11.4 (Pending and Late Arising Claims).

11.4 Pending and Late Arising Claims. If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated but within the period of time for bringing such a claim under California law ("Late Arising Claim"), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such

claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

11.5 Renewals of Agreement. This Agreement may be renewed by mutual agreement of the Parties, which renewal shall, unless otherwise agreed, effect a continuation of both parties' rights and duties under this Agreement.

ARTICLE 12. REMEDIES

12.1 Remedies in the Event of Kern Delta's Willful Failure to Perform.

12.1.1 If Metropolitan alleges that Kern Delta has not substantially performed according to the terms of this Agreement or has willfully failed to perform this Agreement by causing (or, if within Kern Delta's jurisdiction, permitting) other entities or persons to interfere with Regulation Program or Transportation Program operation, or by attempting to resign its obligations as trustee under this Agreement, or by failing to accept or return water as and when required by this Agreement, or if Kern Delta has otherwise breached its obligations under this Agreement and notice has been provided to Kern Delta pursuant to Section 14.4 (Waiver/Cure of Defaults) and Kern Delta has failed to cure the alleged breach within the time provided in Section 14.4 (Waiver/Cure of Defaults), Metropolitan may, at any time thereafter while the default is continuing, advise Kern Delta of the remedy or remedies provided in Article 9 (Dispute Resolution), and Subsections 12.1.2 and 12.1.3 below which Metropolitan intends to pursue with respect to such default. Kern Delta may challenge at any time, through Article 9 (Dispute Resolution), whether in fact there has been a breach of or default under this Agreement by Kern Delta.

12.1.2 In the event of an alleged breach as to which Metropolitan has given notice

to Kern Delta pursuant to Section 12.1.1, Metropolitan may elect to suspend any payment obligations it may have under Article 5 (Compensation) of this Agreement until Kern Delta complies with the terms of this Agreement and cures such breach or default, or is determined, pursuant to Article 9 (Dispute Resolution), not to have violated the Agreement. Notwithstanding such suspension of Metropolitan's payment obligations, this Agreement shall remain in effect unless and until Metropolitan elects to terminate the Agreement under Section 12.1.3 in which case termination shall occur in accordance with and as provided in such provision.

Notwithstanding an election by Metropolitan under this Section 12.1.2 to suspend payment obligations, Metropolitan or Kern Delta may thereafter also seek relief under Article 9 (Dispute Resolution).

12.1.3 If Kern Delta willfully fails to recharge or return water for or to Metropolitan under circumstances where such performance or nonperformance is not excused by the terms of this Agreement and Metropolitan elects to terminate this Agreement, Kern Delta shall purchase the amount of Metropolitan's Regulated Water in its Account Balance for an amount equal to Metropolitan's previous payments with respect to such Regulated Water, all adjusted as provided in Section 5.5.2, plus twenty percent (20%) of said payments, all payable within one (1) year of said election by Metropolitan to terminate. Once such payment has been fully made, this Agreement shall be fully terminated except for Preamble; Recitals; Articles 1 (Definitions); 6 (Contract Priority Right for Transportation of Water (Transportation Program)); 9 (Dispute Resolution); 11 (Term of Agreement); 12 (Remedies); and 14 (Miscellaneous Provisions). Upon payment in full by Kern Delta as provided above, Metropolitan's beneficial interest in the amount of Regulated Water in Metropolitan's Account Balance shall vest in Kern

Delta free of trust and Kern Delta shall be entitled to produce and use such water for its own account.

12.2 Remedies in the Event of Metropolitan's Voluntary Failure to Perform. If

Metropolitan has not substantially performed according to the terms of this Agreement, and notice has been provided to Metropolitan pursuant to Section 14.4 (Waiver/Cure of Defaults) and Metropolitan has failed to cure the alleged breach within the time provided in Section 14.4 (Waiver/Cure of Defaults), Kern Delta may at its election, at any time thereafter while the default is continuing, either (i) suspend further performance (except that Kern Delta shall continue to hold in trust the Regulation Trust Property and the Transportation Facilities Trust Property and Delivery Canal and Metropolitan shall continue to hold its rights in the Kern Water Bank Canal of the Kern Water Bank Authority Transportation Facilities and the Intertie Canal of the Arvin-Edison Transportation Facilities) and thereafter seek relief under Article 9 (Dispute Resolution), recommencing performance once Metropolitan complies with the Agreement, or (ii) terminate this Agreement. If Kern Delta elects to terminate this Agreement, any Regulated Water remaining in Metropolitan's Account shall be transferred to Kern Delta at no cost to Kern Delta. In such event, Kern Delta shall have no further responsibility for repayment of funds advanced by Metropolitan under Article 5 (Compensation). Metropolitan may challenge at any time, through Article 9 (Dispute Resolution), whether in fact there has been a breach of this Agreement by Metropolitan.

12.3 Remedies in Event of Failure of Certain Other Remedies. If: (i) Kern Delta

has breached or defaulted in the performance of its obligations under this Agreement, and (ii) Metropolitan has given notice of the breach or default pursuant to Subsection 12.1.1 of Section 12.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), and (iii) Kern

Delta has failed to cure that breach or default within thirty (30) days as required by Section 14.4 (Waiver/Cure of Defaults), and (iv) Metropolitan has elected a remedy for that breach or default pursuant to Subsection 12.1.1 of Section 12.1 (Remedies in the Event of Kern Delta's Willful Failure to Perform), and (v) Kern Delta has agreed to such remedy or, if Kern Delta has not so agreed, Metropolitan has obtained a judgment or court order against Kern Delta (whether based on an order of an arbitration panel under Article 9 (Dispute Resolution) or otherwise) which judgment or court order Kern Delta has failed or refused to perform, *then* Metropolitan may notify Kern Delta that Metropolitan is entitled to and intends to exercise its right to appointment of a successor trustee in place of Kern Delta and, thereafter, Metropolitan may apply to a court of competent jurisdiction for such appointment of a successor trustee who shall be charged with performing the duties of the trustee pursuant to the terms of this Agreement. The successor trustee, when appointed, shall be entitled to exercise any and all rights theretofore held by Kern Delta as trustee for Metropolitan, including, without limitation, those under or relating to the Transportation Facilities Trust Property and Regulation Trust Property until, as to the Regulation Trust Property, such time as the successor trustee has collected and recovered water from Kern Delta in an amount sufficient to return water in an amount equal to the amount of Metropolitan's Regulated Water in Metropolitan's Account Balance and has conveyed that water to the California Aqueduct and, as to the Transportation Facilities Trust, operated the Transportation Facilities Trust Property for the term specified in Section 6.6.3. (Term). Upon the later of (i) receipt by Metropolitan at the California Aqueduct of water in an amount equal to Metropolitan's Account Balance pursuant to the exercise by such successor trustee of its rights in the Trust Property, or (ii) expiration of the term specified in Section 6.6.3 (Term), this Agreement shall be fully terminated unless extended pursuant to Section 11.4 (Pending and Late Arising Claims).

ARTICLE 13. EARLY TERMINATION

13.1 Resignation of Kern Delta. Because Kern Delta is uniquely situated for performing its duties as trustee, Kern Delta may not resign its duties and obligations under this Agreement for the term of this Agreement except as permitted by Sections 12.2 (Remedies in the Event of Metropolitan's Voluntary Failure to Perform) and 13.2 (Involuntary Termination), and any other attempt by Kern Delta to resign shall be deemed to be a breach of its obligations hereunder.

13.2 Involuntary Termination. Notwithstanding Article 12 (Remedies), in the event that Kern Delta is unable to perform its obligations under this Agreement for reasons beyond its control, the following shall apply ("reasons beyond its control" as used in this sentence shall not include any reasons caused by Kern Delta's breach of its obligations under this Agreement or other failure to comply with any of its legal obligations).

13.2.1 If such inability to perform relates to the Regulation Program, and that inability to perform includes the inability of Kern Delta to return Regulated Water which remains in the Metropolitan Account Balance, Kern Delta shall purchase the Regulated Water which Kern Delta is unable to return for an amount equal to the costs which Kern Delta would have incurred to purchase such water under its contract with the KCWA in the Year such Regulated Water was delivered to storage. Such payment by Kern Delta to Metropolitan upon involuntary termination under this Section 12.2 (Remedies in the Event of Metropolitan's Voluntary Failure to Perform) shall be financed over time upon terms mutually agreeable to Metropolitan and Kern Delta. If Metropolitan and Kern Delta are unable to agree on such terms in a reasonable period

of time, they shall resolve their disagreement pursuant to Article 9 (Dispute Resolution). Once such payments have been fully made, this Agreement shall be fully terminated. If payment is made as provided above, the beneficial interest in the amount of Metropolitan's Regulated Water in Metropolitan's Account Balance which Kern Delta is unable to return shall vest in Kern Delta.

13.2.2 If such inability to perform relates to the Transportation Program, all provisions of this Agreement shall remain in force and effect except for Article 6 (Contract Priority Right for Transportation of Water (Transportation Program)) and any other provisions related to the Transportation Program shall no longer be applicable to the Transportation Program.

ARTICLE 14. MISCELLANEOUS PROVISIONS

14.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Any successor to Kern Delta shall be a successor trustee hereunder. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any party to this Agreement, or to give any person any right of subrogation or action over or against any party to this Agreement.

14.2 No Precedent. Kern Delta entering into this Agreement shall not create in Metropolitan any rights beyond those expressly provided by this Agreement, nor shall it establish any precedent for extension or renewal of this Agreement beyond its term. Furthermore,

Metropolitan shall not make any claim to continued use of water provided under this Agreement, beyond that expressly provided under this Agreement, including, but not limited to, asserting any right against Kern Delta to use of water beyond the term of this Agreement under the doctrine of intervening public use.

14.3 No Modification of Existing Contracts. This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between DWR and Metropolitan or the water supply and related agreements between Kern Delta and other parties.

14.4 Waiver/Cure of Defaults. The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

14.5 Construction of Agreement. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it. The preamble, recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context

(or otherwise provided herein): the words "herein," "hereof" and "hereunder" and similar words shall refer to the Agreement generally and not merely to the provision in which such term is used; the word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "Metropolitan" and "Kern Delta" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "including," "include" or "includes" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "month" shall mean calendar month; and the term "business day" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

14.6 Entire Agreement. This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral, pertaining between the Parties relating to the matters provided for herein. In the event of inconsistency between and among (i) other documents, (ii) Exhibits to this Agreement, and (iii) the remaining provisions of this Agreement, the remaining provisions of this Agreement shall control.

14.7 Severability. In the event that a court of competent jurisdiction or an arbitration

panel as provided at Article 9 (Dispute Resolution) determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement which were not found to be legally invalid or unenforceable in the final decision shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section 12.2 (Remedies in the Event of Metropolitan's Voluntary Failure to Perform).

14.8 Force Majeure. All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 14.8. All time limits to perform and the term of the Agreement shall be extended by period equivalent to the length of suspension. In event of such an occurrence of duration in excess of one year, Section 13.2 (Involuntary Termination) shall control, unless the Parties otherwise agree.

14.9 Notices. All notices, requests and demands hereunder ("Notices") shall be in writing and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Kern Delta shall be sent to the Engineer Manager of Kern Delta at 501 Taft Highway, Bakersfield, CA 93307-6247. Notices for Metropolitan shall be sent to the Chief Executive Officer of Metropolitan at Post Office Box 54153, Los Angeles, CA 90054-0153 if mailed and otherwise to the Chief Executive Officer at the offices of Metropolitan at 700 No. Alameda Street, Los Angeles, California 90012. Each Party hereto (a "Recipient") who receives from another Party hereto (a "Sender") by electronic facsimile transmission (telecopier) any writing which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile transmission agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

14.10 Regulatory Changes. It is recognized that changes in Kern Delta's actual costs of operating the Regulation Program or changes in other conditions affecting the Regulation Program may occur on or after the date this Agreement is executed as a result of enactments, amendments, changes in implementation or interpretation, or repeal of any federal or state law,

rule, regulation or ordinance or changes in contract terms (each, a "Regulatory Change"). If either Party determines that a Regulatory Change has occurred that would result in a material change (upward or downward) in Kern Delta's costs or other conditions relating to regulating, recovering or transporting water pursuant to the terms of this Agreement, which change is not reflected in the adjustments in the payments due from Metropolitan to Kern Delta pursuant to Article 5 (Compensation) or other provision of this Agreement, such Party shall promptly inform the other Party of the nature and extent of such alleged Regulatory Change and of the reason why that party believes an adjustment pursuant to this Section 14.10 is warranted in the payments due from Metropolitan to Kern Delta or in other terms or conditions. The Parties will thereupon attempt to reach an appropriate amendment of this Agreement in light of the Regulatory Change. If such agreement cannot be reached within forty-five (45) days after either Party has provided the required notice and information, the matter shall be resolved pursuant to Article 9 (Dispute Resolution), the qualified third party or arbitration panel being charged with determining (i) whether a Regulatory Change has occurred (if that is in dispute), (ii) the amount of change, if any, in Kern Delta's costs resulting from the Regulatory Change, and (iii) the manner in which the payments due from Metropolitan to Kern Delta or other terms or conditions which should be modified are to be adjusted to fairly and equitably reflect that change in Kern Delta's costs or other terms and conditions (it being the intent of the Parties that no windfall or unwarranted compensation or benefit should result to any Party as a result of any adjustment made pursuant to this Section 14.10). Any adjustment to the payments due from Metropolitan to Kern Delta or other terms and conditions made pursuant to this Section 14.10 shall be effective as of the first day such Regulatory Change affects Kern Delta operations hereunder unless the Parties otherwise

agree and may be reconsidered thereafter at any time, at the request of any Party, if the adjustment is unjustly undercompensating or overcompensating any Party.

14.11 Further Assurances. Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

14.12 Counterparts. This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the party against whom enforcement is sought.

14.13 Recording. In addition to the recording provided for in Section 8.1.8 (Recording), either or both parties may record in the Office of the County Recorder, County of Kern descriptions of Regulation Program Facilities and Transportation Program Facilities and related agreements entered into by Kern-Delta.

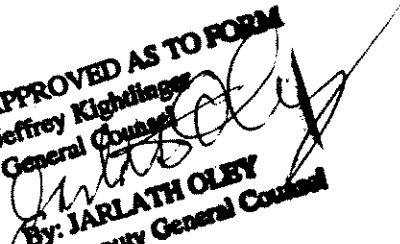
Executed the day and year first hereinabove written.

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

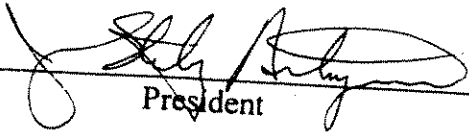
By: 
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
General Counsel

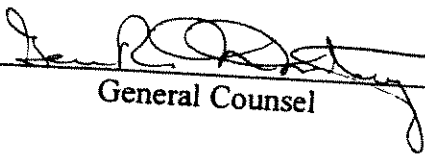
APPROVED AS TO FORM
Jeffrey Kightlinger
General Counsel

By: **JARLATH OLEY**
Sr. Deputy General Counsel

KERN DELTA WATER DISTRICT

By: 
President

By: David C. Losoya
Secretary

APPROVED AS TO FORM:

By: 
General Counsel

Exhibits

- A. Principles for an Agreement Between The Metropolitan Water District of Southern California and Kern Delta Water District
- B. Map Depicting Kern-Delta Boundaries and Program Facilities
- C. Groundwater Monitoring and Operating Criteria ("Operating Plan")
- D-1. Methodology for Determining Energy Requirements
- D-2. Methodology for Determining O&M Costs and Replacement Cost
- E. Certification That Conditions Precedent Have Been Satisfied or Waived



EXHIBIT A

PRINCIPLES

FOR AN AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND KERN DELTA WATER DISTRICT

Metropolitan Water District of Southern California ("Metropolitan") and Kern Delta Water District ("Kern Delta"), hereinafter sometimes collectively referred to as the "Parties," are evaluating the feasibility of a water storage and regulation program ("Regulation Program"). Under this Regulation Program, Kern Delta would receive from, regulate for, and return to Metropolitan the amounts of water hereinafter specified. Kern Delta would regulate this water and return it to Metropolitan as a supplemental water supply upon request as set forth below. If the Regulation Program is determined to be feasible, and appropriate hydrogeological, institutional, water quality, and environmental requirements are met, the Parties will exercise good faith efforts to negotiate an agreement (the "Agreement") consistent with the following stated guidelines (the "Principles"). These Principles may be modified on completion of more detailed studies. The Principles are:

1. Regulation Program

- 1.1 Kern Delta will create a water banking account for storage of Metropolitan water. The size of the account, after losses, will be 250,000-acre feet. Kern Delta will regulate Metropolitan's water in that portion of the southern San Joaquin Valley groundwater basin, which underlies lands within the boundaries of Kern

Delta. A mutually agreed upon program operations plan will govern the extent of cycling, if any, that could be managed within the said storage account.

1.2 Kern Delta will return this regulated water minus losses to Metropolitan upon request as set forth in Section 2 below.

1.3 Kern Delta will construct or cause to be constructed and will own, operate and/or control all facilities needed to provide regulatory storage and withdrawal capabilities for Metropolitan. This Regulation Program contemplates implementation of the following necessary and associated facilities (collectively referred to as "facilities") to provide a recharge and return capability of 50,000 acre-feet annually.

1.3.1 Delivery Canal: a new conveyance canal of approximately 200 cfs capacity capable of delivering water from the California Aqueduct into the Kern Delta service areas. This canal will connect the Kern Water Bank Authority canal to the Arvin-Edison Intake Canal and thereby allow access from the California Aqueduct to existing Kern Delta facilities, including the Buena Vista Canal, the Stine Canal, the Farmers Canal, the Kern Island Main and Central Canals, and the Eastside Canal.

1.3.2 "In Lieu" Water Distribution Facilities: New distribution laterals from existing canals to generate "in lieu" recharge by providing surface water

service to approximately 3000 acres of irrigated agricultural lands currently relying on groundwater pumping for irrigation.

1.3.3 Spreading Facilities: New spreading facilities within the boundaries of Kern Delta which will allow for direct recharge of Metropolitan's water into that portion of the southern San Joaquin Valley groundwater basin underlying lands within Kern Delta's boundaries.

1.3.4 Combined Recharge System: A combination of in lieu water distribution facilities and spreading facilities.

1.3.5 Recovery Facilities: Approximately 45 extraction wells (i.e., extraction wells may be any combination of new wells and existing landowner wells committed on a first priority basis by contract to the Regulation Program) to be utilized to return 50,000 acre-feet annually of Metropolitan's regulated water minus losses.

1.4 Facilities will be built in a timely manner so as to provide sufficient return capabilities to Metropolitan corresponding to water in storage. Metropolitan will either through put payments or by advance payments provide funds to Kern Delta at a time and in amounts sufficient to timely pay all fees and costs associated with the construction of facilities described above. Construction of said facilities may be staged at the mutual agreement of Kern Delta and Metropolitan.

1.5 Transportation losses, evaporation, metering discrepancies, and any other losses of water will be fixed at an appropriate amount agreeable to the Parties (but not greater than 11% which is the established loss rate agreed to by and among members of the Kern Fan Monitoring Committee). These losses will be assessed to all water regulated by Kern Delta for Metropolitan. All regulated water provided by Metropolitan, minus losses, shall be available for return upon request as provided in Section 2 below.

2. Delivery of Water to Metropolitan

2.1 Kern Delta will operate the Regulation Program and, in that capacity, will be responsible for taking all steps needed to deliver the regulated water to Metropolitan upon request as set forth below. It is the intent of the parties that the Regulation Program will be designed, constructed and operated in a manner such that:

2.1.1 Regulated water delivered to Metropolitan, directly or by exchange, will not interfere with water deliveries to Kern Delta's water users or other normal and customary uses. Kern Delta may modify from time to time its service area but any modification to Kern Delta's service area that unreasonably interferes with Kern Delta's ability to deliver water to

Metropolitan as specified in the Regulation Program must be agreed to by both Parties.

- 2.1.2 The Regulation Program shall not create any significant adverse impacts upon Kern Delta water supplies, delivery capabilities, financial condition, operations, or groundwater conditions as determined by Kern Delta in accordance with a mutually agreed upon program operations plan. The plan shall provide a procedure for identifying such impacts and addressing them.
 - 2.1.3 The Regulation Program shall not adversely affect Kern Delta's existing exchanges with other parties. Kern Delta will consult with Metropolitan regarding any future exchanges to insure that they do not unreasonably interfere with the Regulation Program.
 - 2.1.4 Kern Delta may be excused from performance by the occurrence of a "force majeure" event as defined in the Agreement.
- 2.2 Regulated water will be delivered to Metropolitan by any of the following methods, prioritized when possible in the following order: (1) an exchange of regulated water for State Water Project water in the California Aqueduct; (2) an exchange of regulated water for other water, acceptable to Metropolitan, deliverable to and into the California Aqueduct; (3) the recovery of regulated water and delivery thereof to and into the California Aqueduct via existing or new Kern Delta facilities; or (4) the recovery of regulated water and delivery thereof to

and into the California Aqueduct via third party facilities (i.e., Arvin-Edison facilities, Cross Valley Canal, etc.)

- 2.3 Kern Delta shall not deliver water in excess of water currently being stored on behalf of Metropolitan (i.e., Metropolitan must always maintain a positive account).
- 2.4 Subject to a mutually agreed to schedule and several limitations set forth in this Section 2, Kern Delta will recharge or return up to 50,000 acre feet in any given calendar year during the term of the Agreement if such return is requested by Metropolitan with a minimum return rate of 50 cfs. Annual recharge or return in excess of 50,000 acre feet in a particular calendar year, if requested by Metropolitan, will be at Kern Delta's sole discretion.
- 2.5 While the parties believe the quality of return water to be sufficient for introduction into the California Aqueduct, Kern Delta and Metropolitan will work to assess issues relating to the responsibility for the quality of water returned to the California Aqueduct. The following steps will be taken by the parties:
 - 2.5.1 Kern Delta and Metropolitan will mutually design a program to assess the existing quality of groundwater that may be returned by the program.
 - 2.5.2 Kern Delta and Metropolitan staff will collect samples and perform lab

tests to quantify the existing water quality.

2.5.3 Kern Delta and Metropolitan will assess the means to optimize the quality of water returned to the California Aqueduct consistent with the return priorities in section 2.2.

2.6 A monitoring program shall be implemented by Kern Delta to insure, among other things, that any significant adverse groundwater impacts caused by its operation of the Regulation Program are adequately mitigated or avoided, including, if necessary, curtailment of pumping regulated water from storage. A return table will be developed as part of the Agreement setting forth more specific groundwater monitoring and operating criteria.

2.7 The point of delivery to Metropolitan shall be (1) within Reach 13B of the California Aqueduct with respect to water delivered by exchange; and (2) at any available connection with the California Aqueduct with respect to regulated water extracted for direct delivery to said facility.

3. Cost For Water Regulation

3.1 Subject to adjustment as provided below, Metropolitan will pay Kern Delta (1) a Put Payment -- To be determined by taking the total anticipated Regulation Program implementation costs (i.e. design, construction, inspection, administration

and right of way) as determined by a mutually acceptable cost estimate divided by the anticipated deliveries by Metropolitan to the regulation program, this payment is currently estimated at \$105.00 per acre-foot of water delivered by Metropolitan to Kern Delta (including losses) plus O&M at an agreed amount (reflecting actual costs); (2) Take Payment -- \$40.00 for each acre foot of water returned by Kern Delta to Metropolitan pursuant to the Regulation Program, with the first priority for such payments being to cover Kern Delta's contingent liabilities under the Agreement; further, the associated O&M costs at an agreed amount (reflecting actual costs); and (3) plus energy for Put and Take at Kern Delta's melded energy cost.

3.2 The Put Payment will be adjusted to (1) reflect up front payments by Metropolitan for anticipated implementation cost (by reducing cost component of the put cost calculation in section 3.1), (2) any savings realized between the estimated implementation costs and actual implementation costs (any reduced costs to be shared equally by the parties) and the (3) increase in implementation costs during the period between preparation of the cost estimate and actual construction of facilities. The Put Payment maybe adjusted for cycling, if any. Using the date of the Agreement as the base month and year the Take Payment of \$40.00 per acre-foot will be adjusted annually according to a mutually agreed upon index. O&M charges are intended to reflect actual costs and the agreed amounts therefor will be adjusted as necessary to accomplish this goal.

3.3 Any payments made to Kern Delta in advance of Metropolitan delivering water for storage and receiving water from storage shall be secured to the satisfaction of Metropolitan.

4. Miscellaneous Provisions

4.1 The willful failure to recharge or return water to Metropolitan under circumstances where such performance is not excused by the terms of the Agreement shall constitute a breach of the agreement. In such event, Kern Delta will be required to pay the lesser of the cost of replacement supplies acquired by Metropolitan or an amount equivalent to the proportionate payments made by Metropolitan (escalated as provided at rate of return on its investments) plus 20%.

4.2 Kern Delta shall be the lead agency with respect to environmental, groundwater modeling and monitoring, feasibility, etc. review and any institutional approvals of the Regulation Program, and will be responsible for preparing such documentation and obtaining any necessary permits. If any federal approval is required the appropriate federal agency shall be the lead agency with respect to such approvals. Kern Delta will coordinate these activities with Metropolitan. Metropolitan will share the cost of preparing such documentation and obtaining such approvals applicable to the Regulation Program equally with Kern Delta.

- 4.3 Neither Party may assign the Agreement, in whole or in part, except with the prior written consent of the other.
- 4.4 The Regulation Program is intended for the purpose of providing a "dry year" supply to Metropolitan. Accordingly, the Parties agree that water delivered to Metropolitan pursuant to the Regulation Program shall be used to meet consumer demands within the Metropolitan service area and for no other purpose. During the term of this agreement, Kern Delta shall not use facilities paid for by Metropolitan pursuant to this Regulation Program that directly or knowingly indirectly result in the sale of water in Metropolitan's service area by Kern Delta or third parties contracting with Kern Delta without Metropolitan's prior written approval.
- 4.5 The Agreement shall be structured in such a manner as to protect Metropolitan's access to the water supply in the event of bankruptcy and against Kern Delta's failure to perform.
- 4.6 Indemnity – Kern Delta shall be responsible for third party claims for personal injury and property damage arising from program construction, maintenance and operations, including exchanges. Metropolitan shall be responsible for claims attributable to program usage of State Water Project or Metropolitan facilities.

5. Term

5.1 The term of the Agreement shall be 25 years.

5.2 Upon expiration of the term all water in the Metropolitan account created pursuant to the Regulation Program remaining unreturned as of that date shall be and become the property of Kern Delta without further cost, obligation or liability to Metropolitan. The Agreement shall include appropriate provisions for any return, purchase or forfeiture of water on early termination.

Executed this 20th day of March, 2001.

METROPOLITAN WATER DISTRICT

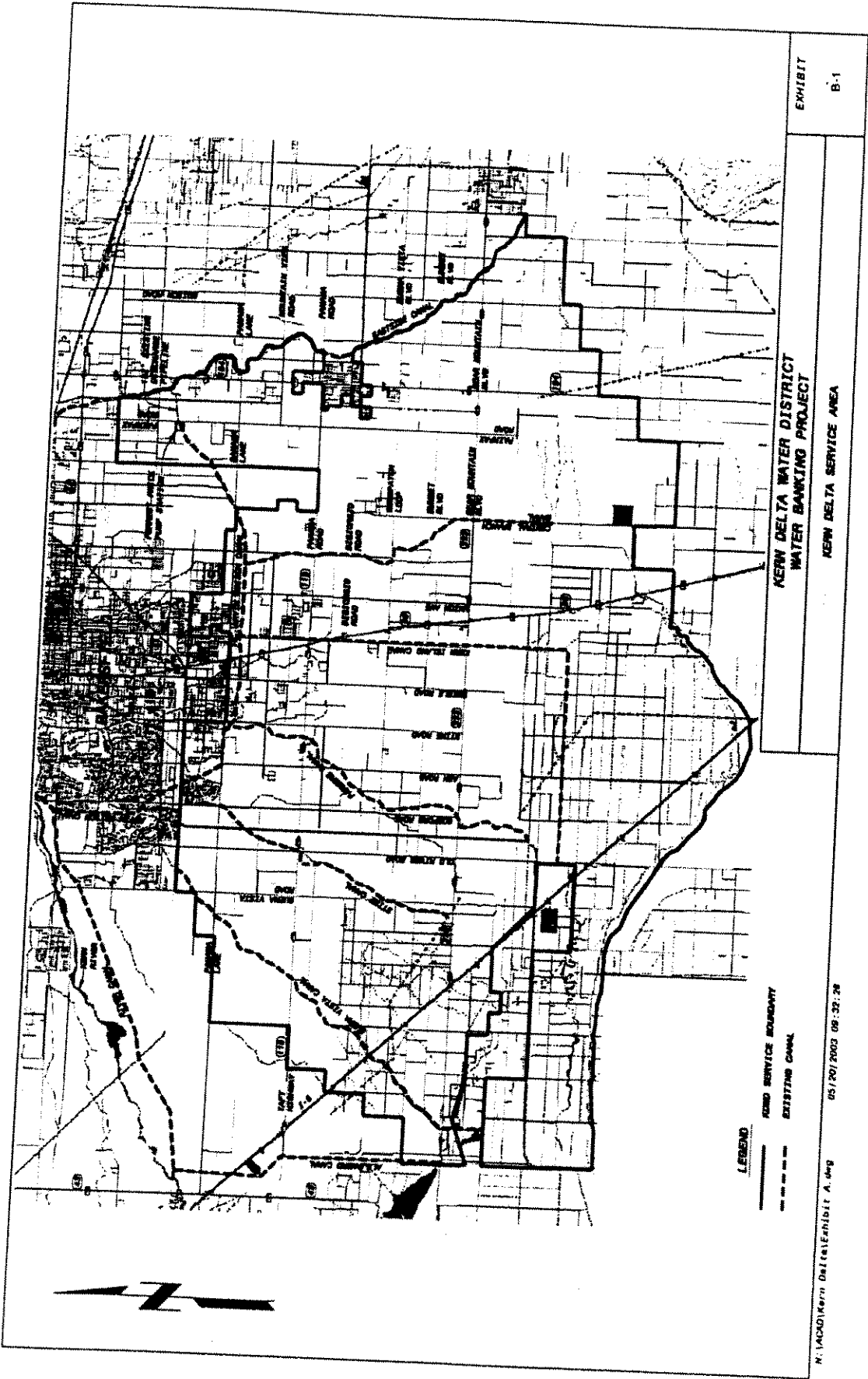
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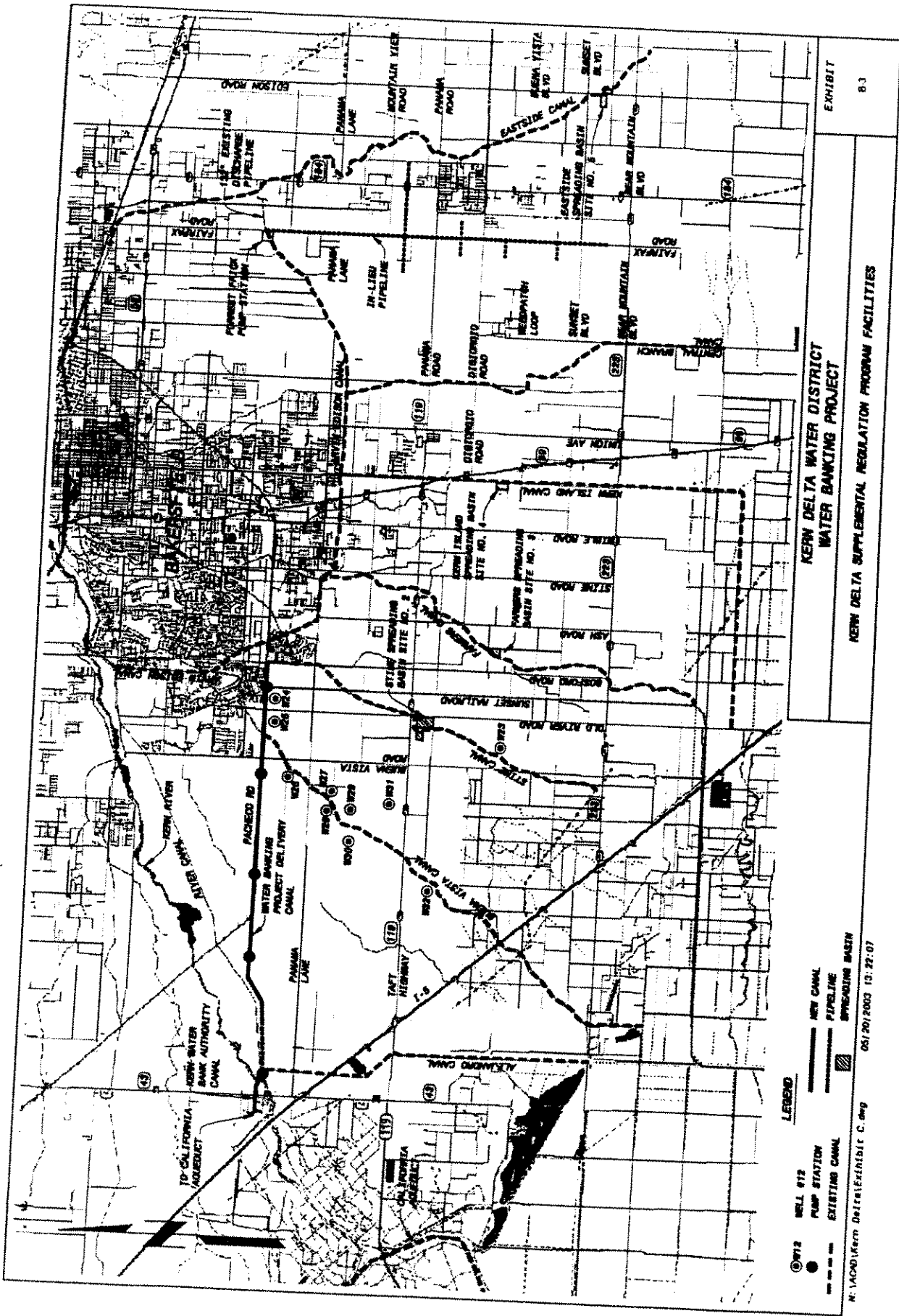
KERN DELTA WATER DISTRICT

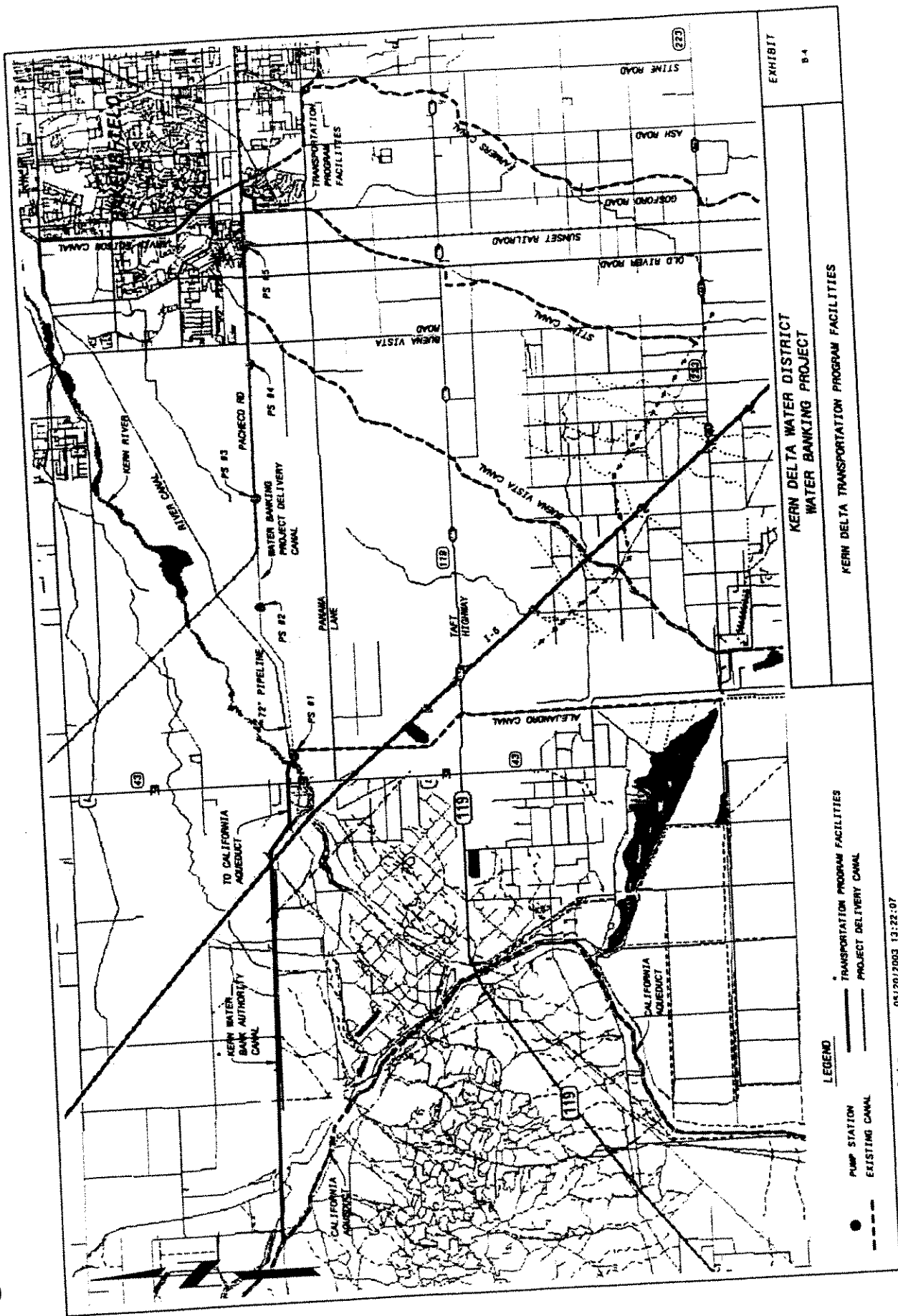
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EXHIBIT B Replaced by New Exhibit F
 MAPS DEPICTING KERN-DELTA BOUNDARIES AND PROGRAM FACILITIES







LEGEND

- PUMP STATION
- EXISTING CANAL
- - - - - PROJECT DELIVERY CANAL
- TRANSPORTATION PROGRAM FACILITIES

**KERN DELTA WATER DISTRICT
WATER BANKING PROJECT**

KERN DELTA TRANSPORTATION PROGRAM FACILITIES

EXHIBIT
B-4

EXHIBIT C

GROUNDWATER MONITORING AND OPERATING CRITERIA

(DRAFT)

An underlying principle of the proposed water storage and regulation program between Kern Delta Water District (Kern Delta) and The Metropolitan Water District of Southern California (Metropolitan) is that the program will not adversely affect Kern Delta's growers. This exhibit defines, in general terms, the groundwater monitoring program and operating criteria that will be utilized by Kern Delta to operate the program.

GROUNDWATER MONITORING PROGRAM

Since 1989, Kern Delta has been monitoring spring and fall groundwater levels in approximately 150 wells located throughout the District. In addition, 22 wells in the western portion of the District (near the Kern Fan banking areas) and 11 wells in the eastern portion of the District (near the Arvin-Edison/Metropolitan banking project) are also monitored on a monthly basis. Additional wells in the proximity of proposed Kern Delta/Metropolitan Program direct recharge facilities, in-lieu recharge areas, and extraction facilities will be incorporated into the monitoring network as appropriate.

In addition to Kern Delta's on-going water level measurement schedule, water levels will be measured in monitoring program wells within one-mile of direct recharge and extraction facilities. The need for more frequent measurements during recharge and extraction periods will be periodically evaluated. Kern Delta will prepare an annual monitoring report setting forth tabulations of monthly and semiannual water levels, hydrographs for representative wells showing historical water level changes, and semiannual depth to groundwater and groundwater surface elevation contour maps. The annual report will include a discussion of the comparison of actual water level changes with those predicted by the computer model of the aquifer system underlying Kern Delta.

GROUNDWATER OPERATING CRITERIA

Kern Delta's primary water supply sources include local surface water from the Kern River, imported surface water from the State Water Project (SWP), and pumped groundwater. Kern Delta diverts, on average, approximately 180,000 AF/year from the Kern River and only 18,000 AF/year from the SWP. Thus Kern Delta's surface water supplies are substantially dependent on the hydrology of the Kern River. Since 1977, the District's Kern River diversions have ranged from a low of 110,000 AF/year to a high of 230,000 AF/year. Groundwater pumping in Kern Delta is estimated to range from 140,000 AF/year in wet years to 260,000 AF/year in very dry years. Kern Delta has an estimated long-term groundwater overdraft of up to 15,000 AF/year. In addition to banking water for Metropolitan, Kern Delta anticipates using the proposed direct and in-lieu recharge facilities, in very wet Kern River years, to store high-flow local water supplies for groundwater overdraft correction.

Kern Delta authorized Boyle Engineering to develop a groundwater model to demonstrate the hydrogeologic feasibility of the Kern Delta/Metropolitan water storage and regulation program.

The groundwater basin, as modeled, includes the portions of the basin underlying the Kern River Fan banking projects, the Arvin-Edison/Metropolitan banking project, as well as the basin underlying Kern Delta.

The groundwater model was utilized to forecast water level response to a 25-year sequence of hydrologic conditions. The forecasting period hydrology was synthesized by re-sequencing hydrologic data from the calibration period to approximate a period of primarily above normal Kern River runoff (nine years) followed by an extended dry period. The Kern River hydrology for the 25-year study period averages 83 percent of the long-term means (108 years of record). This study period was specifically developed to provide a sequence of above normal (recharge) years followed by a sequence of very dry (extraction) years during which there would be significant local groundwater pumping. The model has been utilized to analyze alternative project banking and extraction scenarios and compare them to the no-project base case. Scenarios analyzed included recharge of high flow water supplies by Kern Delta for overdraft correction. The model results have been utilized in the development of the following operating criteria.

"PUT" WATER CRITERIA

- **Annual Put Quantity** – Annual "put" water quantity is 50,000 AF/year. Kern Delta, in its discretion, may approve more.
- **Bank Account** – Metropolitan bank account is limited to 250,000 AF at any one point in time.
- **Scheduling of Deliveries**
 - Metropolitan shall provide Kern Delta with a preliminary notice by January 15 and a final notice by March 15 of each year how much, if any, "put" water it will offer to Kern Delta that year.
 - Kern Delta shall advise Metropolitan within 30 days of such notice on how much "put" water it will accept.
- **Guarantee to "Put" Water** – Metropolitan guarantees that it will either provide 150,000 AF within the first four years of the program, and 250,000 AF within the first seven years of the program, or advance funds (to be credited against "put" payment obligations when Metropolitan actually provides water) as if water was provided in accordance with the maximum annual "put" quantity each year.
- **Kern Delta's Use of Facilities** -- If Kern Delta chooses to use facilities and does not accept water being provided by Metropolitan, Kern Delta will credit this quantity of water to Metropolitan's account. Once Metropolitan's account reaches 250,000 AF, if requested by Kern Delta, Metropolitan will put additional water in an amount equal to the amount refused because of Kern Delta usage of facilities.
- **Record Keeping** – Kern Delta shall maintain records, as appropriate, showing gross "put" water diverted ("Delivered Water"), put payments made in advance of water deliveries pursuant to the Guarantee to "Put" Water, allowance for losses, and net "put" water ("Regulated Water") credited to Metropolitan's bank account. Records will show the net amounts of water ("Regulated Water") banked on behalf of Metropolitan at each

direct recharge facility, and within each in-lieu service area. Records will also be maintained relative to Kern Delta's use of program facilities for its purposes.

"RETURN" WATER CRITERIA

The return water criteria will: 1) Ensure that the groundwater basin underlying Kern Delta is protected [to the maximum extent practicable], 2) Ensure that Metropolitan's groundwater account balance does not become negative, 3) Ensure that the project facilities are physically capable of returning banked water either through exchange or directly, to the California Aqueduct, and 4) Protect the groundwater basin in regards to an extended drought. Specific return water procedures and criteria are as follows:

- **Metropolitan Request** -- Metropolitan shall provide a preliminary request of the amount of banked water ("Regulated Water") to be returned from its Kern Delta groundwater account by January 15 and a final notice by March 15 of each year.
- **Kern Delta Response** -- Kern Delta shall advise Metropolitan within 30 days of such notice how much water will be returned in accordance with the return water criteria.
- **Return Delivery Schedule** -- Regulated Water shall be returned in accordance with a mutually agreeable delivery schedule.
- **Bank Account Balance** -- Metropolitan's bank account (including temporary Kern Delta's credit water) must equal or exceed the amount requested for return.
- **Maximum Annual Return Rate** -- Maximum annual rate of return is 50,000 acre-feet per year (Table 1). Kern Delta at its discretion may approve more.
- **Maximum Cumulative Return** -- During consecutive years, the maximum cumulative amount to be returned shall be as set forth in Table 1.

Number of Consecutive Years of Return	Maximum Annual Return (KAF/Yr)	Consecutive Years Maximum Cumulative Return (KAF)
1	50	50
2	50	100
3	50	140
4	50	170
5	50	195
6	50	215
7	50	235
8	50	250

The following examples demonstrates the application of the "Put" Water Criteria water provision (Table 2):

**Table 2
Put Water Examples**

Year	Example 1 Proposed Banked Supplies			Account Balance	
	Metropolitan Supplied Water (KAF/Yr)	Kern Delta Supplied Water (KAF/Yr)	Cumulative Account Balance (KAF/Yr)	Kern Delta (KAF/Yr)	Metropolitan (KAF/Yr)
	1	50	0	50	0
2	50	0	100	0	100
3	30	0	130	0	130
4	0	0	130	0	130
5	20	0	150	0	150
6	50	0	200	0	200
7	50	0	250	0	250

Year	Example 2 Proposed Banked Supplies			Account Balance	
	Metropolitan Supplied Water (KAF/Yr)	Kern Delta Supplied Water (KAF/Yr)	Cumulative Account Balance (KAF/Yr)	Kern Delta (KAF/Yr)	Metropolitan (KAF/Yr)
	1	50	0	50	0
2	50	50	100	0	100
3	30	0	130	0	150
4	0	0	130	0	150
5	20	0	150	0	150
6	50	50	200	0	200
7	50	0	250	0	250
8	50	0	300	50	250
9	50	0	350	100	250

Year	Example 3 Proposed Banked Supplies			Account Balance	
	Metropolitan Supplied Water (KAF/Yr)	Kern Delta Supplied Water (KAF/Yr)	Cumulative Account Balance (KAF/Yr)	Kern Delta (KAF/Yr)	Metropolitan (KAF/Yr)
	1	50	0	50	0
2	50	30	100	0	100
3	30	0	130	0	150
4	0	0	130	0	150
5	20	0	150	0	150
6	50	50	200	0	200
7	50	0	250	0	250
8	50	0	300	50	250
9	30	0	330	80	250

The following examples demonstrates the application of the "Return" Water Criteria water provision (Table 3):

Table 3 Return Water Examples					
Example 1					
Year	Return Requested (KAF/Yr)	Groundwater Return Criteria (Table 1)		Return to Metropolitan	
		Maximum Annual (KAF/Yr)	Maximum Cumulative (KAF)	Annual (KAF/Yr)	Cumulative (KAF)
1	50	50	50	50	50
2	50	50	100	50	100
3	50	50	140	40	140
4	50	50	170	30	170
5	50	50	195	25	195
6	50	50	215	20	215
7	50	50	235	20	235
8	15	50	250	15	250

Example 2					
Year	Return Requested (KAF/Yr)	Groundwater Return Criteria (Table 1)		Return to Metropolitan	
		Maximum Annual (KAF/Yr)	Maximum Cumulative (KAF)	Annual (KAF/Yr)	Cumulative (KAF)
1	50	50	50	50	50
2	50	50	100	50	100
3	50	50	140	40	140
4	0	50	0	0	140
5	50	50	50	50	190
6	50	50	100	50	240
7	10	50	140	10	250

Example 3					
Year	Return Requested (KAF/Yr)	Groundwater Return Criteria (Table 1)		Return to Metropolitan	
		Maximum Annual (KAF/Yr)	Maximum Cumulative (KAF)	Annual (KAF/Yr)	Cumulative (KAF)
1	30	50	50	30	30
2	50	50	100	50	80
3	50	50	140	50	130
4	50	50	170	40	170
5	50	50	195	25	195
6	50	50	215	20	215
7	50	50	235	20	235
8	15	50	250	15	250



EXHIBIT D-1

BLACK & VEATCH Corporation

METHODOLOGY FOR DETERMINING ENERGY REQUIREMENTS

Kern Delta Water District Water Banking Program
Water Banking Program
January 11, 2002

B&V Project 99241
B&V File D.2

To: L. Mark Mulkay
Project Manager

From: Steven N. Foellmi, P.E.
Technical Manager

Prepared By: Klint Reedy, P.E.
Victor Tsai

EXECUTIVE SUMMARY

PURPOSE

The purpose of this memorandum is to evaluate the energy requirements associated with the facilities required for the Kern Delta Water District Water (KDWD) Banking Program (Kern Delta Project). The estimated energy requirements associated with these facilities are based on Black & Veatch experience and record data from the operation of similar facilities by other local agencies. In addition to estimating the power requirements, a preliminary assessment of the existing local electrical distribution facilities ability to meet potential future operating demands are investigated.

BACKGROUND

As part of the Water Banking Program, five new pump stations (Kern Delta pump stations No.1 through 5) would be built along the new Kern Delta Canal to allow for conveyance of water between the Kern Water Bank Authority (KWBA) Canal and the Arvin-Edison Canal. The pumping plants would take water from a lower canal segment and lift it to the adjacent canal segment. During wet years, the proposed Kern Delta canal system would allow for

the diversion of water from the California Aqueduct to the Kern Delta agricultural canals and spreading basins.

An existing pump within the existing Arvin-Edison Forrest Frick Pump Station would also be used to meet irrigation demands in the eastern section of the Kern Delta service area through the in-lieu (pipeline) facilities. These facilities will allow the use of State Water Project (SWP) water.

The project would also include thirty-two groundwater wells to recover previously stored water in the groundwater basin. The extraction wells would be located near existing water conveyance facilities.

ENERGY ANALYSIS

The facilities requiring energy to operate the water-banking project include of five pumping stations along the proposed canal conveyance facility, thirty-two new groundwater wells which will be utilized to withdraw stored water supplies, and the existing Arvin-Edison Forrest Frick Pump Station will be used to provide SWP supplies to meet irrigation demands in lieu of current groundwater extraction operations. The canal pumping stations and groundwater extraction wells are planned as motor-operated pumps with electricity to be provided from the existing Pacific Gas and Electric Company (PG&E) facilities.

Energy Rate Schedules and Metering Requirements

Energy rate schedules have been obtained from PG&E for evaluation of the power and metering requirements relevant to the operation of the pumping stations and groundwater extraction wells. PG&E recommends using schedule AG-5B, "Large Time-of-Use Agricultural Power for the Water Banking facilities. Schedule AG-5B is used for customers with high annual operation (generally over 1,200 hours) who run 24 hours per day or can minimize electric use on sum weekdays between noon and 6 p.m.

Energy rates for this schedule vary by the summer or winter season and the time of day the energy is consumed. A seasonal demand charge and a maximum-peak-period demand charge, based on peak kW usage, is also exercised. In addition to these base charges, PG&E also has a flat surcharge rate of \$0.02953/kWh in accordance with the "Energy Procurement Surcharge Schedule (EPS)". This surcharge is applied after all other calculations are made and is applicable to all kW-hours consumed. Lastly, the customer's bill includes a customer charge, a meter charge, and a one-time installation and processing charge per meter.

A summary of the AG-5B / EPS rate schedule is provided in Table 1.

TABLE 1
PG&E "AG-5B/ EPS" RATE SCHEDULE

Charges	Summer Season (May - October)	Winter Season (November - April)
Energy Charge (per kWh per month)		
Peak (12 noon-6:00 p.m.) Mon.-Fri.	\$0.14294	-
Partial Peak (8:30 a.m.-12:00 p.m.) & (6:00 p.m.-9:30 p.m.) Mon.-Fri.	-	\$0.04661
Off-Peak	\$0.04088	\$0.03706
Demand Charges (per kW)		
Seasonal billing demand	\$6.55	\$4.40
Peak Period Demand	\$2.70	-
Surcharges (per kWh)		
EPS Rate for AG-5B Schedule	\$0.02953	\$0.02953
Monthly Base Service Charges		
Customer Charge per meter	\$16.00	\$16.00
Meter Charge per month	\$6.00	\$6.00

* Except Holidays.

Energy Analysis Model Development and Methodology

A preliminary version of the energy model has been created in Microsoft Excel using a single workbook that incorporates several worksheets. The model estimates power requirements of the proposed Water Banking facilities based on user defined operating scenarios. The following input is required by the user to perform a simulation:

1. Number of pumps operating at the five existing canal pumping stations (1 or 2 pumps @ 100 cfs each).
2. Desired flowrate for the "in lieu" element of the program (typically 25 to 30 cfs).
3. Number of groundwater wells operating during withdraw operation in dry years (between 0 to 32 groundwater wells).
4. Define seasonal operating conditions for "storage" and "withdrawal" facilities (daily hours of operation).

The total dynamic lift of each groundwater well is estimated and assumed to be consistent for each well. Electrical horsepower is calculated from the total dynamic lift, flowrate, and the overall efficiency (pump and motor). Currently the overall efficiency is estimated and a single typical value is used. However, it is anticipated that record flow rates and power

data will be available and the program will utilize specific efficiencies based on the record data.

The model estimates power requirements for each of the pumping facilities along the proposed canal conveyance facility. The output tabulates the daily, monthly, and yearly facility power requirements.

Model Assumptions

Currently, the following assumptions have been made for the pumping plant facilities:

1. Combined pump and motor efficiency is 75 percent for all pumps at all plants under all conditions.
2. Arvin-Edison Forrest Frick Pumping Station has an assumed 67 percent combined pump and motor efficiency.
3. Proposed canal pumping plants will deliver 100 cfs or 200 cfs. The model currently assumes that when a pump from a pumping station is taken off-line to accommodate decreased flows, a single pump is operating at all the other pumping stations.

The following assumptions have been made for the groundwater extraction wells:

1. Combined pump and motor efficiency is 75 percent for all groundwater pumps.
2. Since the design of the wells is at conceptual levels, the power supply requirements are calculated assuming a "typical" well, and then multiplied by the number of wells.
3. Due to the lack of specific detailed design, the length of well discharge pipeline is estimated in order to calculate losses for the "typical well".
4. Each of the wells will extract groundwater at a rate of 6.25 cfs.
5. Assume negligible groundwater level drop due to extraction.

Some of these assumptions will be modified or quantified after additional data is received.

Energy Analysis Results

Preliminary analysis has been completed assuming the facilities operate at 200 cfs, 24 hours per day, until 55,500 ac-ft is stored into the groundwater basin. The initial results are presented in the following table.

**TABLE 2
ENERGY ANALYSIS RESULTS**

	Storage Mode ⁽¹⁾⁽²⁾ 1 cycle = 64,750 Ac-Ft ⁽³⁾	Withdrawal Mode ⁽⁴⁾ 1 cycle = 55,500 Ac-Ft
Summer Costs		
\$/month		
\$/cycle	\$108,000	\$615,000
\$/ac-ft	\$648,000	\$3,690,000
Winter Costs	\$7	\$49
\$/month		
\$/cycle	\$82,500	\$445,000
\$/ac-ft	\$495,000	\$2,660,000
	\$5	\$35

- (1) Assumes canal facilities operate 24 hours per day, 7 days per week for 20 weeks, totaling 55,500 Ac-Ft.
 (2) Assumes In-Lieu facilities operate during off-peak hours, totaling 9,250 Ac-Ft.
 (3) 50,000 Ac-Ft storage + 9,250 Ft In-Lieu
 (4) Assumes groundwater facilities operate 24 hours per day, 7 days per week.

The initial analysis estimated the electrical costs associated with operating the water banking program facilities 24 hours per day, 7 days per week. As presented in Table 1, significant savings maybe realized if the facilities were operated in a manner that minimizes peak demand charges.

CONCEPTUAL ELECTRICAL ARRANGEMENT

Based on the electrical demands estimated in the energy evaluation, conceptual one-line diagrams have been prepared for the canal pumping facilities and the groundwater pumping facilities and are attached for reference. An order of magnitude cost estimate was prepared for the new electrical equipment required between the existing PG&E 12 kV distribution power line and the pumping equipment, totaling \$80,000 per site. This cost is generally accurate for both the groundwater wells and the canal pumping stations.

Typically, PG&E will install and maintain this equipment and will recover the costs in the monthly billings. Alternatively, the KDWD can install and maintain the facilities between the main distribution power line and the pumping facilities and be eligible for a "voltage discount" within their rate. Upon preliminary investigation, it is recommended that KDWD have PG&E provide, install, and maintain these facilities.

CONCLUSION

A customized spreadsheet has been developed to estimate power requirements for the Kern Delta facilities. Currently, it is assumed that all facilities operate 24 hours per day seven days per week. However, significant savings may be realized if the facilities are operated to avoid peak demand periods. It is recommended that the model presented

herein be used to evaluate the potential savings associated with minimizing peak demand charges.

BLACK & VEATCH Corporation

**METHODOLOGY FOR DETERMINING O&M COSTS &
REPLACEMENT COST**

Kern Delta Water District
Water Banking Program
January 9, 2002

B&V Project 99241
B&V File D.2

To: L. Mark Mulkey
Project Manager

From: Steven N. Foellmi, P.E.
Technical Manager

Prepared By: Klint Reedy, P.E.
Victor Tsai

EXECUTIVE SUMMARY

PURPOSE

The purpose of this memorandum is to evaluate the operations and maintenance (O&M) requirements associated with the Kern Delta Water District Water Banking Program components (Kern Delta Project). The recommended manufacturer O&M requirements and estimated replacement costs associated with operation of the major equipment components have been identified and tabulated. Actual maintenance history from similar facilities, and engineer's experience on similar projects were also utilized to define the O&M schedule for the facilities in the preferred project.

BACKGROUND

As part of the Water Banking Program, five new pump stations (Kern Delta pump stations No.1 through 5) would be built along the new Kern Delta Canal allowing conveyance of water between the Kern Water bank Authority (KWBA) Canal and the Arvin-Edison Canal. The pumping plants would take water from a lower canal segment and lift it to the adjacent

canal segment. During wet years, the proposed Kern Delta canal system would allow for the diversion of water from the California Aqueduct to the Kern Delta agricultural canals and spreading basins.

An existing pump within the existing Arvin-Edison Forrest Frick Pump Station would also be used to meet irrigation demands in the eastern section of the Kern Delta service area through the in-lieu (pipeline) facilities. These facilities will allow the use of SWP water "in-lieu" of local groundwater.

Lastly, the project includes 32 new groundwater wells to recover previously stored water in the groundwater basin. The extraction wells would be located near existing water conveyance facilities.

OPERATION AND MAINTENANCE INVESTIGATION

The water-banking project facilities that require O&M include the five pumping stations along a proposed canal conveyance facility, 32 new groundwater wells to withdraw stored supplies, and the existing pump within the Arvin-Edison Forrest Frick Pump Station.

A maintenance schedule for the preferred project components and a preliminary estimate for the corresponding O&M costs has been included. The schedule includes recommended procedures for operating the canal pump stations, groundwater pumps and motors, and the equipment within the Arvin-Edison Forrest Frick Pump Station. The procedures include placing the equipment in service and operating it under both normal and abnormal conditions.

Operation & Maintenance Schedule

The attached example O&M schedule is based on information and recommendations obtained from the equipment manufacturers, maintenance history from other agencies with similar equipment, and the engineer's experience on similar projects. The attached example schedule is intended to provide a general idea of the O&M procedures required for each of the major equipment components of the Water Banking Project. Prior to startup of these facilities, a more detailed O&M schedule should be developed based on specific manufacturer's manuals and shop drawing information.

Estimated O&M Costs

A preliminary estimate of the O&M costs associated with the recommended maintenance procedures for the proposed Water Banking equipment is summarized in Table 1.

**Table 1
Annual Operation & Maintenance Costs
(2002 Dollars)**

Description	Cost
STORAGE MODE	
Annual Power Costs	\$1,143,000
Labor (Personnel)	\$435,000
Annual Maintenance Costs ⁽¹⁾	\$54,000
Total Annual O&M Cost	\$1,632,000
5 YR Minor overhaul of canal pumps	\$25,000
20 YR Major overhaul of canal pumps	\$57,000
50 YR Major canal / spreading basin equipment replacement	\$2,400,000
Present Worth of Maintenance Costs⁽⁴⁾	\$716,817
Cost per AC-FT of Stored Water	\$14
WITHDRAWAL MODE	
Annual Power Costs	\$6,350,000
Labor (Personnel)	\$492,000
Annual Maintenance Costs ⁽²⁾	\$67,000
Total Annual O&M Cost	\$6,909,000
5 YR Minor Overhaul of GW Pumps	\$55,000
20 YR Major Overhaul of GW Pumps	\$124,000
50 YR Major groundwater pump equipment replacement	\$2,200,000
Present Worth of Maintenance Costs⁽³⁾	\$842,741
Cost per AC-FT of Recovered Water	\$53

⁽¹⁾ Maintenance costs for storage mode include idle maintenance costs for the groundwater facilities.

⁽²⁾ Maintenance costs for withdrawal mode include idle maintenance costs for the canal pumps.

⁽³⁾ Assumes 3% inflation & 6% discount factor.

The power costs presented in Table 1 are based on the results presented in the KDWD Water Banking Program "Energy Requirements" Technical Memorandum. Personnel costs associated with operating and maintaining the Water Banking facilities are based on 5 additional staff positions during the storage model and 6 positions during the withdrawal mode. It may be possible to utilize existing staff to assist with the operation of these facilities and minimize the total number of additional staff required. The estimated annual maintenance and overhaul costs are based on typical maintenance costs for similar facilities. Table 2 summarizes O&M costs by component.

Table 2
Operation & Maintenance Cost Summary By Component
(2002 Dollars)

Description	Annual Cost	
	In-Service	Idle
Canal Pumping Facilities		
Labor (Personnel) Costs	\$210,496	\$103,904
Routine Maintenance Costs	\$21,000	\$4,000
Annualized Major Equipment Overhaul & Replacement Costs	\$57,345	-
Total O&M Costs (\$ / AC-FT)	\$4	
Energy Costs per AC-FT ⁽¹⁾⁽²⁾	\$5	
Total Energy + O&M Costs per AC-FT	\$9	
Spreading Basins		
Labor (Personnel)	\$170,880	\$33,600
Routine Maintenance Costs	\$9,000	\$2,000
Annualized Major Equipment Overhaul & Replacement Costs	\$0	-
Total O&M Costs (\$ / AC-FT)	\$3	
Energy Costs per AC-FT	-	
Total Energy + O&M Costs per AC-FT	\$3	
In-lieu Facilities		
Labor (Personnel)	\$5,824	\$1,400
Routine Maintenance Costs	\$8,000	\$2,000
Annualized Major Equipment Overhaul & Replacement Costs	\$5,735	-
Total O&M Costs per AC-FT	\$2.1	
Energy Costs per AC-FT ⁽¹⁾⁽³⁾	\$6	
Total Energy + O&M Costs per AC-FT	\$8	
Well Field Facilities		
Labor (Personnel)	\$342,400	\$40,960
Routine Maintenance Costs	\$46,000	\$9,000
Annualized Major Equipment Overhaul & Replacement Costs	\$93,774	-
Total O&M Costs per AC-FT	\$7	
Energy Costs per AC-FT ⁽¹⁾⁽⁴⁾	\$35	
Total Energy + O&M Costs per AC-FT	\$42	
Canal / Pipeline Facilities		
Labor (Personnel) Costs	\$6,720	\$2,016
Routine Maintenance Costs	\$7,000	\$1,000

- (1) Reference Kern Delta Water Banking Project Energy Requirements Memorandum, dated February 27, 2002.
(2) Assumes winter demand charges, if operated in summer months additional \$5/AC-FT will be realized.
(3) Assumes winter demand charges, if operated in summer months additional \$6/AC-FT will be realized.
(4) Assumes winter demand charges, if operated in summer months additional \$35/AC-FT will be realized.

EXHIBIT E

**CERTIFICATION THAT CONDITIONS PRECEDENT
HAVE BEEN SATISFIED OR WAIVED**

Kern Delta Water Agency and The Metropolitan Water District of Southern California hereby jointly certify that:

1. All conditions precedent set forth in Section 8.1 of the Agreement titled _____, dated _____, have been satisfied or waived.
2. No Event of Default exists under the Agreement.

Capitalized terms used herein and not otherwise defined are as defined in the Agreement.

Dated: _____, 2003

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

KERN DELTA WATER AGENCY

By _____

By _____



STATE OF CALIFORNIA)
) ss.
COUNTY OF Kern)

On 05/23/03, before me, Guadalupe Gonzalez a Notary Public in and for said County and State, personally appeared J. Stanley Anton Giovanni personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Guadalupe Gonzalez
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF Kern)

On 05/23/03, before me, Guadalupe Gonzalez a Notary Public in and for said County and State, personally appeared David C. Cosyns personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Guadalupe Gonzalez
Notary Public

EXHIBIT D-2

BLACK & VEATCH Corporation

O&M COSTS, REPLACEMENT COST

Kern Delta Water District
Water Banking Program

August 4, 2004

To: L. Mark Mulkay
Project Manager

From: Steven N. Foellmi, P.E.
Technical Manager

Prepared By: Klint Reedy, P.E.

PURPOSE

The purpose of this memorandum is to evaluate the operations and maintenance (O&M) requirements associated with the Kern Delta Water District (KDWD) Water Banking and In-Lieu Supply Project (Kern Delta Project). Manufacturer's O&M requirements and estimated replacement costs associated with operation of the major equipment components have been identified and tabulated. Actual maintenance history from similar facilities, and engineer's experience on similar projects, were also utilized to define the O&M schedule for the Kern Delta Project facilities. Kern Delta's portion of the operation, maintenance, replacement, and energy costs for the Cross Valley Canal (CVC) have also been incorporated into this analysis.

BACKGROUND

Kern Delta will utilize 200 cubic feet per second (cfs) capacity rights within the first three reaches of the CVC to transfer water from the California Aqueduct to a new planned turn-out on the CVC. The first three CVC reaches include 5 pumping plants that take water from the California Aqueduct and lift it to an elevation that will allow gravity flow from the CVC to the existing Buena Vista Canal head gate at the River Canal. From this point, existing canals will be used to transfer water to new spreading basins for groundwater recharge.

EXHIBITS (ADDED IN FIRST AMENDMENT)

- D-2. Methodology for Determining O & M Costs and Replacement Cost**
- F. Map Depicting Kern Delta Boundaries and Program Facilities**
- G. Cross Valley Canal Early Implementation Agreement**

An existing pump within the existing Arvin-Edison Forrest Frick Pump Station would also be used to meet irrigation demands in the eastern section of the Kern Delta service area through the in-lieu (pipeline) facilities. These facilities will allow the use of State Water Project (SWP) water for irrigation "in-lieu" of local groundwater.

Lastly, the project includes groundwater wells to recover previously stored water in the groundwater basin. The extraction wells would be located near existing water conveyance facilities and would be used for delivery of banked water to Metropolitan and for Kern Delta's local water supply needs.

OPERATION AND MAINTENANCE INVESTIGATION

The water-banking project facilities that will incur O&M costs include shared costs of the CVC operation, groundwater wells to withdraw stored supplies, spreading basins, the existing pump within the Arvin-Edison Forrest Frick Pump Station, the in-lieu facilities, and the Buena Vista Canal Extension facilities.

Maintenance procedures for the project components and a preliminary estimate of the corresponding O&M costs have been included. The schedule includes preliminary procedures for maintaining the project facilities.

Operation & Maintenance Schedule

The recommended maintenance procedures are based on information and recommendations obtained from the equipment manufacturers, maintenance history from other agencies with similar equipment, and the engineer's experience on similar projects. The attached example procedures are intended to provide a general idea of the O&M procedures required for each of the major equipment components of the Water Banking Project. Prior to startup of these facilities, a more detailed O&M schedule should be developed based on specific manufacturer's manuals and shop drawing information.

Estimated Annual O&M Costs

A preliminary estimate of the O&M costs associated with the recommended maintenance procedures for the proposed Water Banking equipment is summarized in Table 1.

Table 1
Estimated
Annual Operation & Maintenance Costs

Description	Cost
STORAGE MODE	
Annual Power Costs ⁽¹⁾	\$2,174,600
Labor (Personnel)	\$236,000
Annual Maintenance Costs ⁽²⁾	\$229,908
Total Annual O&M Cost	\$2,640,508
5 YR Minor overhaul of canal pumps	\$0
20 YR Major overhaul of canal pumps	\$0
50 YR Major canal / spreading basin equipment replacement	\$125,000
Present Worth of Maintenance Costs ⁽⁴⁾	\$29,750
WITHDRAWAL MODE	
Annual Power Costs ⁽¹⁾	\$6,152,900
Labor (Personnel)	\$535,000
Annual Maintenance Costs ⁽³⁾	\$78,000
Total Annual O&M Cost	\$6,765,900
5 YR Minor Overhaul of GW Pumps & Canal Pumps	\$75,000
20 YR Major Overhaul of GW Pumps & Canal Pumps	\$170,000
50 YR Major groundwater pump equipment replacement	\$2,200,000
Present Worth of Maintenance Costs ⁽⁴⁾	\$959,600

⁽¹⁾ Task Authorization No. 2 Energy Requirements updated May 2004 and CVC Energy Requirements.

⁽²⁾ Maintenance Costs for storage mode include idle maintenance costs for the groundwater facilities.

⁽³⁾ Maintenance Costs for withdrawal mode include idle maintenance costs for the canal pumps.

⁽⁴⁾ Assumes 3% inflation & 6% discount factor.

The power costs presented in Table 1 are based on the results presented in the KDWD Water Banking Program "Energy Requirements" Technical Memorandum updated May 2004 and include the CVC energy requirements. Personnel costs associated with operating and maintaining the Water Banking facilities are based on 4 additional staff positions during the storage mode and 6 positions during the withdrawal mode. It may be possible to utilize existing staff to assist with the operation of these facilities and minimize the total number of additional staff required. The estimated annual maintenance and overhaul costs are based on typical maintenance costs for similar facilities.

Estimated O&M Costs by Component

Table 2 summarizes O&M costs by component for both in-service and idle operations.

Table - 2
Estimated
Operation & Maintenance Cost Summary By Component

Description	Cost per Cycle	
	In-Service	Idle
CVC Canal Shared Costs (200 cfs capacity)		
Labor (Personnel) Costs	-	-
Annualized O&M Costs	\$200,908	-
Annualized Major Equipment Overhaul & Replacement Costs	-	-
Spreading Basins (Assumes 360 Acres of Spreading Required)		
Labor (Personnel) Costs	\$75,555	\$14,870
Routine Maintenance Costs	\$4,000	\$875
Annualized Major Equipment Overhaul & Replacement Costs	-	-
Total	\$79,555	\$15,745
In-lieu Facilities (Assumes PVC Pipeline)		
Labor (Personnel) Costs	\$5,824	\$1,345
Routine Maintenance Costs	\$8,000	\$2,000
Annualized Major Equipment Overhaul & Replacement Costs	\$5,735	-
Total	\$19,560	\$3,345
Well Field Facilities (Assumes 15 Groundwater Wells)		
Labor (Personnel)	\$160,510	\$19,200
Routine Maintenance Costs	\$21,600	\$4,220
Annualized Major Equipment Overhaul & Replacement Costs	\$43,905	-
Total	\$226,015	\$23,420
Buena Vista Canal Southern Extension (Assumes 2 Pump Stations)		
Labor (Personnel) Costs	\$63,840	\$3,360
Routine Maintenance Costs	\$28,000	\$4,000
Annualized Major Equipment Overhaul & Replacement Costs	\$16,510	-
Total	\$108,350	\$7,360

Table 2 presents the estimated O&M costs considering the anticipated project facilities required to meet water banking project objectives. As shown in the table this includes 360 acres of spreading basins, 15 groundwater wells, in-lieu piping, a delivery canal (CVC Canal), and a return canal (Buena Vista Extension). The following section utilizes the above estimated costs to predict O&M costs over the life of the project.

Estimated O&M Costs per Year

Table 3 presents the anticipated schedule for water movement and the projected annual O&M costs calculated from the values in Table 2 and the anticipated water movement schedule.

**Table 3
Projected Water Movement &
Operations & Maintenance Schedule**

Year	Regulated Water Movement Acre-Feet	Transported Conveyance ⁽¹⁾	Conveyance Facilities		Infiltration Facilities		Extraction Facilities
			CVC Canal	BV Extension	Spreading Basins	In-Lieu	Wells
							Costs
	Ac- Ft	Yes/ No					
1	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
2	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
3	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
4	42,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
5		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
6	32,000	Y	\$200,908	\$108,350	\$66,685	\$3,345	\$23,420
7	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
8		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
9		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
10	-50,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$226,015
11	-50,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$226,015
12	-40,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$204,231
13	-30,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$159,028
14	-25,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$136,427
15	-20,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$113,825
16	-20,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$113,825
17	-15,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$91,223
18		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
19		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
20		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
21		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
22		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
23		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
24		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
25		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
Total	250,000	25	\$5,022,700	\$2,708,750 ⁽²⁾	\$763,615	\$83,625	\$1,668,730

(1) Yes in the transported conveyance column indicates an estimated 35,000 acre – feet of water is transported through the Buena Vista Extension to the California Aqueduct during that year.
 (2) Note, the BV Extension canal is used for both regulated water movement and transported water movement.

CONCLUSION

The above information can be used to estimate an average O&M cost per acre foot of water stored, extracted, or conveyed by the Kern Delta Water Banking Project components. Table 4 summarizes the per acre foot costs for these operations.

Spreading unit costs are based on the total cost of the infiltration facilities, both spreading basins & in-lieu facilities, divided by the total volume of water stored.

Extraction unit costs are based on the total cost of well operation divided by the total volume of water extracted.

Component	\$ / Ac - Ft
Spreading Costs	3
Extraction Cost	7
Transported Conveyance	4
Storage Program Conveyance	11

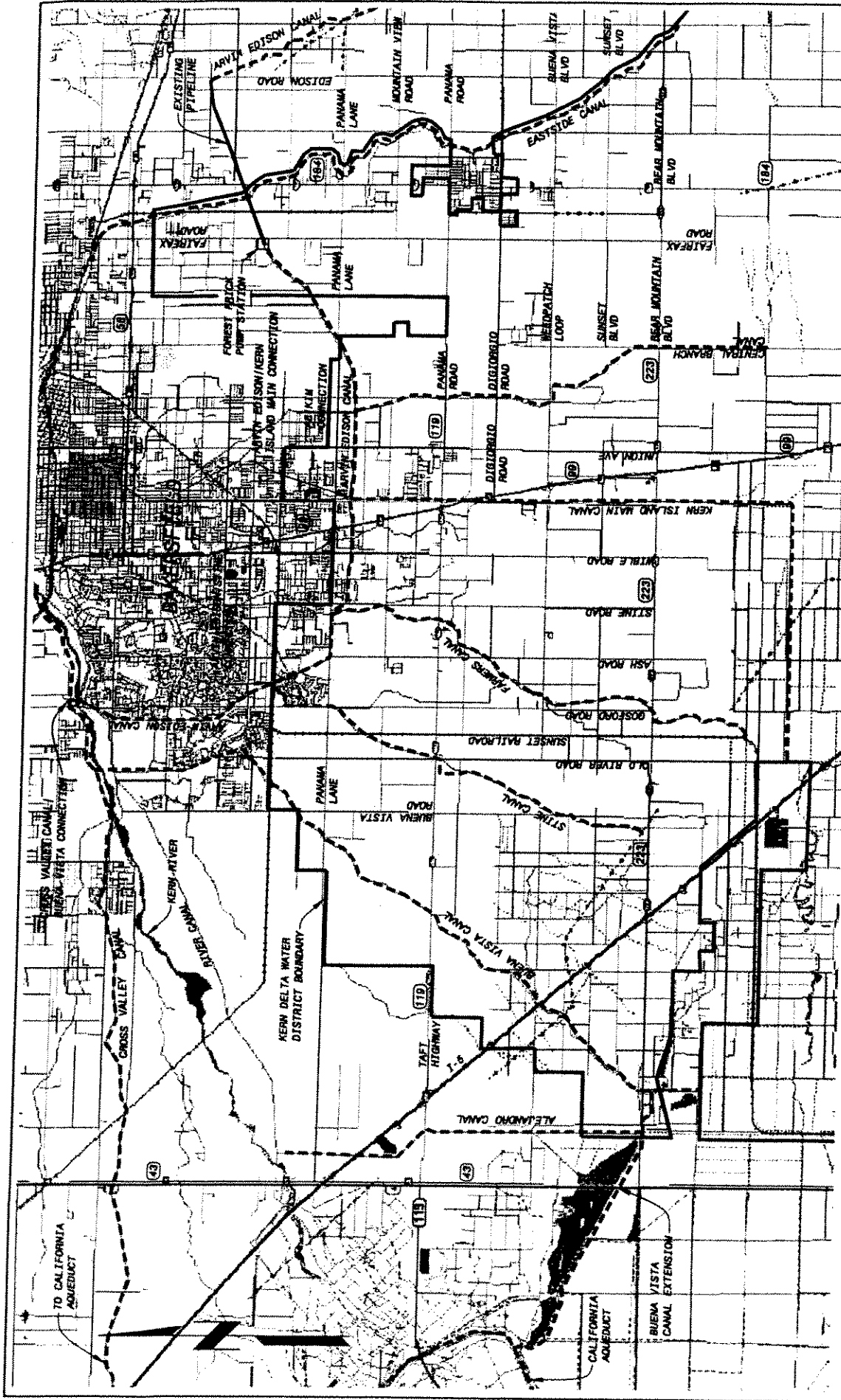
Conveyance costs are broken down by transported program conveyance and storage program conveyance.

Transported conveyance unit costs are based on the total cost to operate the Buena Vista Extension divided by the total volume of water transported. Note the total volume of water transported is estimated to be 35,000 acre feet per year for every year transported the conveyance option is exercised.

Storage program conveyance unit costs include the use of the CVC canal for delivery of water to the storage facilities and the Buena Vista Extension canal for returning water from the extraction wells to the California Aqueduct. Therefore, the storage conveyance unit costs include the total cost for operating both the CVC Canal and the Buena Vista Extension Canal divided by the volume of water transferred to storage plus the volume of water returned to the California Aqueduct under the storage program facility.

Attachment - A
Recommended Maintenance Procedures

Facility	Tasks	Frequency
Canal Pump Station		
Pumps and cables	Check operating ranges according to the manufacturers	Daily
	Discharge pressure & discharge flowrate; check for loosen cables	Monthly
Pump, rotor, impeller, mechanical seal, cables, bolts & nuts, external surface conditions	Pull & Inspect; Appearance check	Annual
Pumps	Operational problems, poor insulation, functional & performance test, mechanical seal replacement	3 Years
	Minor overhaul	5 Years
	Major overhaul	20 Years
	Repair	As Required
Canal Valves		
Butterfly valves	Exercise	Monthly
	Inspect seat, seal, and packing	5 Years
Canal Conveyance		
Canal	Earthwork/remove silts, and general housekeeping	Annual
Groundwater Wells		
Wells, pump & motor	Check water level, operation, oil and motor fluids	Weekly
	Check & clean electrical/control panels	3 Months
	Calibrate flow test, pump eff., well eff, well specific cap. calcs. Calibrate flow meter	Annual
Pump	Repair	As Required
Well	Rehabilitation	As Required
Spreading Basins		
Spreading basins	Earthwork/remove silts, and general housekeeping	6 Months
Valves and control gates	Exercise	Monthly
	Inspect seat, seal, and packing	5 Years
In-Lieu Pipelines		
Valves	Exercise	Monthly
	Inspect seat, seal, and packing	5 Years
Air/vacuum relief valves	Inspection	Monthly



**KERN DELTA WATER DISTRICT/METROPOLITAN WATER DISTRICT
WATER MANAGEMENT PROGRAM**

LEGEND
 - - - - - EXISTING CANAL

**EXHIBIT
F**

KERN DELTA BOUNDARIES AND PROGRAM FACILITIES

MEMORANDUM OF UNDERSTANDING
Regarding the Early Implementation
of the
Cross Valley Canal Expansion
Principles of Agreement

Introduction

In the context of the Cross Valley Canal (CVC) Expansion Workgroup's efforts, and in anticipation of the CVC Expansion Project completion, the CVC Participants, Kern County Water Agency (KCWA) and Kern Delta Water District agree to implement the CVC Expansion Principles of Agreement, dated March 4, 2004, ("Principles"), commencing on January 1st, 2004. It is recognized by all parties that the 500 cfs of incremental capacity has yet to be constructed and it is proposed that the Principles of Agreement be implemented until such time as the construction is completed and contracts are finalized with the following interim modifications:

Section A of Principles of Agreement

1. (A-1) Kern Delta, KCWA and Arvin-Edison (New Canal Participants) will be temporarily allocated the incremental capacity previously realized through the purchase and installation of the high performance impellers, until such time as the new capacity can be constructed, provided, however, any party to this MOU may request termination of this Memorandum of Understanding on or after March 4, 2007. Termination after March 4, 2007 shall occur if a majority vote of the voting percentages, based on Integrated Canal Capacity, of those signatory to this MOU vote in favor of such termination. This incremental capacity shall be allocated 40% to KCWA, 40% to Kern Delta and 20% to Arvin-Edison in reaches 1, 2 and that portion of reach 3 that extends to the forebay of Pumping Plant No. 6 as set forth in Attachment 1. The incremental capacity in Pumping Plant No. 6 in reach 3 shall be allocated 2/3 to Kern Delta and 1/3 to Arvin-Edison as a surrogate for the pumping plant to be constructed as noted in Section F4 of the Principles. (See Attachment 1) It is recognized that Arvin is both a New Canal Participant and an Existing Canal Participant and those rights will be administered independently.
2. (A-4) The term "Existing Canal" shall refer to the rights and obligations associated with the 736 cfs of capacity within Reach 1, and the 706 cfs of capacity within Reach 2 & 3, contractually available prior to the installation of the high performance impellers.
3. (A-4) The term "New Canal" shall refer to the rights and responsibilities associated with the 186 cfs of incremental capacity realized in Reach 1, the 137 cfs of incremental capacity realized in Reach 2, and the 166 cfs of incremental capacity realized in reach 3, resulting from the installation of the high performance impellers.
4. (A-6) The CVC Participants, KCWA and Kern Delta Water District shall be invoiced estimated CVC Expansion Program design and capital costs pursuant to the Principles.

Section E

1. (E-2) For purposes of allocating O&M budgeted costs, the Integrated Canal percent shall be defined as the percent of capacity within reaches 1 through 3 of the canal allocated to each district. (See Attachment 1, Column 10)
2. (E-2) The CVC Participants, KCWA and Kern Delta Water District shall be invoiced operating and maintenance costs during early implementation proportional to their capacity in the Existing Canal and New Canal as defined above. (See Attachment 2)

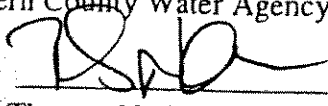
Section G

1. (G-8) For the purpose of calculating Excess Wheeling Charges, the Existing Canal Participants shall have the right to utilize their full capacity, which includes the original contractual capacity and the incremental capacity realized through the high performance impellers as identified in Attachment 3, prior to triggering the "Excess Wheeling Charge." The New Canal Participants shall have their monthly and annual acre-feet quantities calculated from their allocated capacity within the New Canal. (See Attachment 3)
2. The New Canal Participants shall pay a fee of \$1.00/af per Reach for all deliveries made through the CVC pursuant to their use of New Canal Participant rights. This fee is to be in effect until such time as the approximately 500 cfs of new capacity is constructed and available to the New Canal Participants, or until termination of this MOU provided for in Section A-1. Revenue resulting from this fee shall be allocated back to the Existing Canal Participants based upon the average of the ratios (See Attachment 4) for each Participant, in the reach in which the revenue was generated.
3. Voting rights of the Integrated Canal Participants are in proportion to their respective percentages of capacity within the Integrated Canal as shown in Column 10 of Attachment 1 to this MOU.

Furthermore, prior to execution of a final agreement implementing the foregoing and the Principles of Agreement, the parties will have completed all required environmental review on agreed components of the program, or implementation of the program shall be conditioned upon successful completion of all required environmental review. Program components which are optional, or are subject to further agreement, shall have similar environmental review requirements as part of any subsequent agreement.

Agreed to this 21 day of June, 2004.

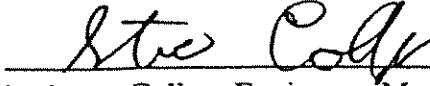
Kern County Water Agency, on behalf of itself and its Improvement District No. 4


Jay Thomas N. Clark, General Manager

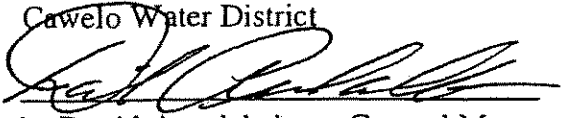
Fresno-Tulare Group


by Dan Vink, F-T Group Representative

Arvin-Edison Water Storage District


by Steve Collup, Engineer - Manager


Cawelo Water District


by David Ansolabehere, General Manager

Rosedale-Rio Bravo Water Storage District


by Hal Crossley, General Manager

Kern Tulare and Rag Gulch Water Districts


by Steve Dalke, General Manager

Kern Delta Water District


by L. Mark Mulkay, General Manager

Attachment 1

KERN COUNTY WATER AGENCY CROSS VALLEY CANAL Interim Allocation of Capacity

C.V.C. PARTICIPANTS	REACH No. 1		REACH No. 2		REACH No. 3		EXTENSION		Percent of "Integrated" CVC Capacity
	CFS	%	CFS	%	CFS	%	CFS	%	
	2	3	4	5	6	7	8	9	
FRESNO-TULARE GROUP									
Lower-Tule River I.D.	87.09	9.45%	87.09	10.33%	87.09	10.73%	0.00	0.00%	10.14%
Pixley I.D.	87.09	9.45%	87.09	10.33%	87.09	10.73%	0.00	0.00%	10.14%
County of Tulare	8.40	0.91%	8.40	1.00%	8.40	1.03%	0.00	0.00%	0.98%
County of Fresno	8.40	0.91%	8.40	1.00%	8.40	1.03%	0.00	0.00%	0.98%
Hills Valley I.D.	6.00	0.65%	6.00	0.71%	6.00	0.74%	0.00	0.00%	0.70%
Tri-Valley W.D.	2.75	0.30%	2.75	0.33%	2.75	0.34%	0.00	0.00%	0.32%
* Sub-Total "CFS"	199.73	21.66%	199.73	23.69%	199.73	24.60%	0.00	0.00%	23.25%
RAG-GULCH W.D.									
KERN-TULARE W.D.	40.00	4.34%	40.00	4.74%	40.00	4.93%	0.00	0.00%	4.66%
ARVIN-EDISON W.S.D.	114.00	12.36%	114.00	13.52%	114.00	14.04%	0.00	0.00%	13.27%
CAWELO W.D.	10.27	1.11%	10.27	1.22%	10.27	1.26%	0.00	0.00%	1.20%
IMPROVEMENT DISTR.No.4	135.00	14.64%	135.00	16.01%	135.00	16.63%	173.26	50.66%	15.72%
ROSEDALE-RIO BRAVO WSD	141.00	15.29%	141.00	16.73%	141.00	17.36%	168.74	49.34%	16.41%
* Sub-Total "CFS" Existing CVC	736.00	79.83%	706.00	83.75%	646.00	79.56%	342.00	100.00%	6.52%
KCWA									
KERN DELTA	74.40	8.07%	54.80	6.50%	66.40	8.18%	0.00	0.00%	7.59%
ARVIN-EDISON W.S.D.	74.40	8.07%	54.80	6.50%	66.40	8.18%	0.00	0.00%	7.59%
* Sub-Total "CFS" High Performance Impellers	37.20	4.03%	27.40	3.25%	33.20	4.09%	0.00	0.00%	3.80%
TOTAL "CFS"	186.00	20.17%	137.00	16.25%	166.00	20.44%	0.00	0.00%	18.98%
TOTAL "CFS"	922.00	100.00%	843.00	100.00%	812.00	100.00%	342.00	100.00%	100.00%

Attachment 2

CROSS VALLEY CANAL

PROPOSED BUDGET FOR OPERATING COSTS (\$) FOR CALENDAR YEAR 2004

ALLOCATED BY % OF REACH 1-3 "INTEGRATED" CAPACITY

	1	2	3	4	5	6
C.V.C. PARTICIPANTS	REACH No.1	REACH No.2	REACH No.3	REACH No.3	EXTENSION	TOTAL- LESS EXTENSION
FRESNO-TULARE GROUP	No.1	No.2	No.3	No.3	EXTENSION	TOTAL
Lower-Tule River I.D.	\$59,196	\$61,637	\$18,822	\$	-	\$139,655
Pixley I.D.	59,196	61,637	18,822	-	-	139,655
County of Tulare	5,710	5,945	1,815	-	-	13,470
County of Fresno	5,710	5,945	1,815	-	-	13,470
Hills Valley I.D.	4,078	4,246	1,297	-	-	9,621
Tri-Valley W.D.	1,869	1,946	594	-	-	4,410
Sub-Total "\$"	124,751	141,356	45,253	-	-	320,281
RAG-GULCH W.D.	27,188	28,310	8,645	-	-	64,143
KERN-TULARE W.D.	77,487	80,682	24,638	-	-	182,807
ARVIN-EDISON W.S.D.	6,981	7,268	2,220	-	-	16,469
CAWELO W.D.	91,761	95,545	29,176	-	172,665	389,147
IMPROVEMENT DISTRICT No.4	95,781	99,730	30,454	-	168,167	394,132
ROSEDALE-RIO BRAVO W.S.D.	38,064	39,633	12,103	-	-	89,800
Sub-Total "\$"	462,013	492,525	152,489	-	340,832	1,115,946
KERN COUNTY WATER AGENCY	44,317	46,145	14,091	-	-	104,553
KERN DELTA / ARVIN EDISON	44,317	46,145	14,091	-	-	104,553
ARVIN-EDISON W.S.D.	22,159	23,072	7,046	-	-	52,276
TOTAL "\$"	\$583,871	\$607,947	\$185,648	-	\$405,892	\$1,377,328
TOTAL "\$"						\$1,783,358

Attachment 3

INTERIM - INTEGRATED CANAL - ANNUAL AND MONTHLY QUANTITIES FOR PURPOSES OF CALCULATING EXCESS WHEELING CHARGES

Participant	Reach 1		Reach 2		Reach 3		Extension			
	cfs	af/mo	af/mo	af/yr	cfs	af/mo	af/yr	cfs	af/mo	af/yr
Tulare River ID	102.29	7,406	97.55	7,062	102.78	7,441	74,411	0.00	0	0
Edison MSD	102.29	7,406	97.55	7,062	102.78	7,441	74,411	0.00	0	0
Colusa County	9.87	714	9.41	681	9.91	718	7,177	0.00	0	0
Sutter County	9.87	714	9.41	681	9.91	718	7,177	0.00	0	0
Yuba Valley ID	7.05	510	6.72	487	7.08	513	5,129	0.00	0	0
Yuba Valley MSD	3.23	234	3.08	223	3.25	235	2,350	0.00	0	0
Total Fresno-Tulare Group	234.60	16,984	223.72	16,197	235.72	17,066	170,656	0.00	0	0
Edison MSD	49.26	3,566	38.90	2,816	39.52	2,861	28,612	0.00	0	0
Colusa MSD	46.93	3,398	44.75	3,240	47.15	3,414	34,137	0.00	0	0
Colusa County	133.90	9,694	127.69	9,245	134.54	9,740	97,405	0.00	0	0
Colusa Valley ID	158.57	11,480	151.21	10,948	159.33	11,535	115,348	0.00	0	0
Government District No. 4	214.96	15,562	205.01	14,842	216.06	15,642	156,423	173.26	12,544	125,436
Delta-Rio Bravo MSD	120.98	8,759	79.11	5,727	7.08	513	5,127	168.74	12,216	122,164
Delta MSD	74.40	5,386	54.80	3,967	54.80	3,967	39,674	0.00	0	0
Delta County	74.40	5,386	54.80	3,967	54.80	3,967	39,674	0.00	0	0
All Participants	1,108	80,217	980	70,950	949	68,705	687,055	342	24,760	247,600

Attachment 4

CROSS VALLEY CANAL AVERAGE OF THE RATIOS MAXIMUM ANNUAL ENTITLEMENT (AF) AND CAPACITY (CFS)

AVERAGE OF THE RATIOS MAXIMUM ANNUAL ENTITLEMENT (AF) AND CAPACITY (CFS)				
C.V.C. PARTICIPANTS	Reach No. 1 %	Reach No. 2 %	Reach No. 3 %	Extension %
FRESNO-TULARE GROUP				
Lower-Tule River I.D.	11.09%	11.57%	12.66%	0.00%
Pixley I.D.	11.09%	11.57%	12.66%	0.00%
County of Tulare	1.07%	1.12%	1.22%	0.00%
County of Fresno	1.07%	1.12%	1.22%	0.00%
Hills Valley I.D.	0.76%	0.80%	0.87%	0.00%
Tri-Valley W.D.	0.35%	0.37%	0.40%	0.00%
* Sub-Total * % *	25.44%	26.54%	29.03%	0.00%
ARVIN-EDISON W.S.D.	1.31%	1.36%	1.49%	0.00%
RAG-GULCH W.D.	5.09%	5.31%	5.81%	0.00%
KERN-TULARE W.D.	14.52%	15.15%	16.57%	0.00%
CAWELO W.D.	17.20%	17.94%	19.62%	50.66%
IMPROVEMENT DISTR.No.4	23.31%	24.32%	26.61%	49.34%
ROSEDALE-RIO BRAVO WSD	13.12%	9.38%	0.87%	0.00%
TOTAL * % *	100.00%	100.00%	100.00%	100.00%

NOTES:

1. TABLE REFLECTS THE SALE OF 6-CFS CAPACITY AND 2,000 AF ENTITLEMENT BY KERN-TULARE W.D. TO ROSEDALE RIO-BRAVO W.S.D. EFFECTIVE JULY 28, 1988.
 2. TABLES REFLECT THE LAST FORMAL "ASSIGNMENTS" BY AEWSD EFFECTIVE JANUARY 1, 1977 (Article 26, AEWSD Participation Contract) and THE FULL "CONVERSION" of "B" CAPACITY EFFECTIVE JANUARY 1, 1982 (Article 11(b), AEWSD Participation Contract)
- ** FROM FOX & Co. 2/29/80 FINAL COST & SETTLEMENT REPORT, PURSUANT TO ARTICLES 4(b) AND 11 OF THE CAWELO WD PARTICIPATION CONTRACT.

**NEW OR REPLACED SECTIONS OF THE
KERN DELTA AGREEMENT PER THE FIRST AMENDMENT**

1.4 “**Arvin-Edison Intake Canal**” means the Arvin-Edison Intake Canal owned and operated by the Arvin-Edison Water Storage District to the full extent of the capacity rights provided for in the Arvin-Edison MOU.

1.7 “**Buena Vista Canal**” means an unlined canal owned and operated by Kern Delta extending from headworks installed in the River Canal at approximately its intersection with Old River Road to its terminus at Pierre Road, all in Kern County, California.

1.8 “**Buena Vista Canal Extension**” means a new canal extending from a point near the terminus of the Buena Vista Canal at Pierre Road in a westerly direction to the California Aqueduct, all in Kern County, California.

1.14 “**Cross Valley Canal**” means the Cross Valley Canal owned and operated by Kern County Water Agency to the full extent of Kern Delta’s designated capacity (i.e., not including unused capacity of other participants) in the enlarged Cross Valley Canal as provided in the Cross Valley Canal Participation Agreement.

1.15 “**Cross Valley Canal Participation Agreement**” has the meaning provided in the First Amendment, Recitals Section D.

1.17 “**Delivery Canal**” means (i) the Cross Valley Canal; (ii) all interconnecting facilities from the Cross Valley Canal used to transport water to Kern Delta’s service areas; (iii) Buena Vista Canal capacity in excess of that capacity actually utilized to meet Normal and Customary uses; and (iv) the Buena Vista Canal Extension.

1.18 “**Delivery Canal Capital Fee**” means the fee specified in Subsection 5.2.1.1(iv) of Section 5.2 (Put Payments) for usage of the Delivery Canal.

1.19 “**Delivery Canal OM&R Fee**” means the fee provided in Subsection 5.7.3 of Section 5.7 (OM&R Fees) for usage of the Delivery Canal.

1.31 “**Kern Delta Transportation Facilities**” shall consist of (i) Delivery Canal; and (ii) Arvin-Edison Intake Canal. Kern Delta Transportation Facilities are shown on the map attached hereto as Exhibit F and incorporated herein by this reference. Exhibit B of the Original Agreement is stricken.



**NEW OR REPLACED SECTIONS OF THE
KERN DELTA AGREEMENT PER THE FIRST AMENDMENT
(CONTINUED)**

1.35 “Original Agreement” means that certain written agreement entitled “Agreement Between Kern Delta Water District and The Metropolitan Water District of Southern California For a Water Management Program” bearing an execution date of May 27, 2003.

6.2 “Cross Valley Canal and Arvin-Edison Transportation Rights. Metropolitan’s rights to utilize the Cross Valley Canal consist of the following: Metropolitan shall have the right, exercised by and through Kern Delta or any successor trustee, to use Kern Delta’s designated New Canal Capacity (as defined in the Cross Valley Canal Participation Agreement) in the Cross Valley Canal for Regulation Program purposes and for Transportation Program purposes, the same as if such entity was Kern Delta; provided, however, the right to use Kern Delta’s designated New Canal Capacity does not include (i) the right to use unused capacity of others, or (ii) the right to use New Canal Capacity during periods when the same is being used for transport of Article 21 water from the State Water Project, or (iii) the right to use any capacity for the benefit of third parties other than Metropolitan. Metropolitan’s rights to utilize Arvin-Edison Transportation Facilities shall be as specified in the Arvin-Edison MOU. Metropolitan’s rights to utilize the Cross Valley Canal include the rights specified in the Cross Valley Canal Early Implementation Agreement attached as Exhibit G.



**Recording Requested by
and when Recorded Return to:**

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

(Space above this line is reserved for County Recorder's use.)

**FIRST AMENDMENT TO AGREEMENT BETWEEN
KERN DELTA WATER DISTRICT
AND THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA FOR A
WATER MANAGEMENT PROGRAM**

OK
THIS FIRST AMENDMENT ("First Amendment"), dated as of
December 21ST, 2004 TO THE AGREEMENT between Kern Delta Water
District and The Metropolitan Water District of Southern California, dated as of May 27,
2003, is entered into by and between the **KERN DELTA WATER DISTRICT** ("Kern
Delta"), and **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**
("Metropolitan"). Metropolitan and Kern Delta may be referred to individually as Party or
collectively as Parties.

RECITALS

OK
A. Kern Delta and Metropolitan have heretofore entered into a written
agreement entitled "Agreement Between Kern Delta Water District and The
Metropolitan Water District of Southern California For a Water Management Program"
dated May 27, 2003 ("Original Agreement").

OK
B. The Original Agreement was and is made in furtherance of development
of a water management program ("Regulation Program") described therein being
implemented by Kern Delta and Metropolitan for the purpose of enhancing the water
supply available to both entities. The Original Agreement was and is also in furtherance
of a Transportation Program ("Transportation Program") under which Kern Delta will
provide Metropolitan certain rights to utilize Kern Delta transportation facilities as well as
obtain for the benefit of Metropolitan rights to utilize certain capacity in transportation
facilities owned by others.

okay

C. The Original Agreement contemplates, among other things, that Kern Delta will construct, own and operate, for the benefit of itself and the Regulation Program and the Transportation Program, certain facilities described as the Kern Delta Transportation Facilities consisting of (i) enhanced capacity in the Stine Canal between Gosford Road and the Arvin-Edison Intake Canal; (ii) a new delivery canal of approximately 200 cfs capacity capable of delivering water from the California Aqueduct into the Kern Delta service areas, said Canal connecting the Kern Water Bank Canal and the Arvin-Edison Intake Canal; (iii) capacity rights in an improved Kern Water Bank Canal owned and operated by the Kern Water Bank Authority; and (iv) capacity rights in an improved Arvin-Edison Intake Canal owned and operated by the Arvin-Edison Water Storage District.

okay

D. The Original Agreement and First Amendment will become effective when the certificate provided for by Section 8.1.7 (Certificate of Fulfillment or Waiver of Conditions Precedent) has been executed. Conditional upon the Certificate Execution, the parties affirm that the facilities described in Item (i) of Recital C are no longer needed and will be dropped; that the facilities described in Item (iv) of Recital C are still required and will be retained; and that, in lieu of constructing or obtaining the facilities described as items (ii) and (iii) of Recital C, Kern Delta has obtained rights to use 200 cfs in the expanded Cross Valley Canal which is owned and operated by the Kern County Water Agency ("Agency") pursuant to an agreement with the Agency entitled Memorandum of Understanding Regarding the Early Implementation of the Cross Valley Canal Expansion Principles of Agreement ("Cross Valley Canal Early Implementation Agreement") attached as Exhibit G. The Cross Valley Canal is added as a component of the "Delivery Canal" defined in Section 1.17 of this amendment.

E. The parties desire to amend the Original Agreement to make clarifying changes and reflect the foregoing changes in the Kern Delta Transportation Facilities to be constructed, owned and operated thereunder when and if the Agreement, as amended, becomes effective and, except as so modified, to reaffirm the same.

NOW THEREFORE, it is mutually agreed as follows:

1. *Except as modified herein the Original Agreement is restated and reaffirmed.*
2. *Kern Delta shall record this amendatory agreement in the Office of the County Recorder, County of Kern.*

OK
3. *Article 1 (Definitions) of the Original Agreement is amended to read as follows:*

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used.

SAME
1.1 **"Account"** means an account maintained by Kern Delta for the benefit of Metropolitan pursuant to this Agreement in which Regulated Water, which is Delivered Water less losses deducted in accordance with Article 3 (Operational Losses), is credited upon delivery to the Point of Delivery to Kern Delta and is debited upon delivery to the Point of Delivery to Metropolitan.

SAME
1.2 **"Account Balance"** means the difference between the credits and debits in the Account.

SAME
1.3 **"Agreement"** means, as of any particular time, this Agreement for a Water Management Program, as amended or supplemented by the Parties through that time.

1.4 **"Arvin-Edison Intake Canal"** means the Arvin-Edison Intake Canal owned and operated by the Arvin-Edison Water Storage District to the full extent of the capacity rights provided for in the Arvin-Edison MOU.

SAME
1.5 **"Arvin-Edison MOU"** means the agreement among Kern Delta with Arvin-Edison Water Storage District to use all or a portion of Arvin-Edison Transportation Facilities.

SAME
1.6 **"Arvin-Edison Transportation Facilities"** means Arvin-Edison Intake Canal, Forest Frick Pumping Plant, and all appurtenant facilities and structures as specified in the Arvin-Edison MOU.

1.7 **"Buena Vista Canal"** means an unlined canal owned and operated by Kern Delta extending from headworks installed in the the River Canal at approximately its intersection with Old River Road to its terminus at Pierre Road, all in Kern County, California.

1.8 **"Buena Vista Canal Extension"** means a new canal extending from a point near the terminus of the Buena Vista Canal at Pierre Road in a westerly direction to the California Aqueduct, all in Kern County, California.

1.9 **"Buena Vista Spreading Facilities"** means the Buena Vista Spreading Facilities described in Exhibit A, Section 1.3.3 (Spreading Facilities).

SAME

1.10 "Capital Put Payment" means the amount of money paid by Metropolitan to Kern Delta for the first 280,899 acre-feet of Delivered Water as full compensation for regulation program implementation costs (i.e., design, construction, inspection, administration and right of way) determined on a per acre-foot basis by dividing such costs by 280,899 which amount is \$105.00 per acre foot, subject to adjustment pursuant to Section 5.5 (Adjustment of Rates) hereof.

SAME

1.11 "Combined Recharge System" means the facilities described in Exhibit A, Section 1.3.4 (Combined Recharge System).

SAME

1.12 "Contract Priority Right" means the right of Metropolitan specified in Section 6.1 (Transportation Program—General).

CHANGES

1.13 "Contract Priority Right Facilities" means Kern Delta Transportation Facilities and Arvin-Edison Transportation Facilities.

1.14 "Cross Valley Canal" means the Cross Valley Canal owned and operated by the Kern County Water Agency to the full extent of Kern Delta's designated capacity (i.e., not including unused capacity of other participants) in the enlarged Cross Valley Canal as provided in the Cross Valley Canal Participation Agreement.

1.15 "Cross Valley Canal Participation Agreement" has the meaning provided for in First Amendment, Recitals Section D.

SAME

1.16 "Delivered Water" means water which Metropolitan makes available to Kern Delta at the Point of Delivery to Kern Delta pursuant to this Agreement.

1.17 "Delivery Canal" means (i) the Cross Valley Canal; (ii) all interconnecting facilities from the Cross Valley Canal used to transport water to Kern Delta's service areas; (iii) Buena Vista Canal capacity in excess of that capacity actually utilized to meet Normal and Customary Uses. ; and (iv) the Buena Vista Canal Extension.

1.18 "Delivery Canal Capital Fee" means the fee specified in Subsection 5.2.1.1(iv) of Section 5.2 (Put Payments) for usage of the Delivery Canal.

1.19 "Delivery Canal OM&R Fee" means the fee provided in Subsection 5.7.3 of Section 5.7 (OM&R Fees) for usage of the Delivery Canal.

SAME

1.20 "DWR" means the Department of Water Resources of the State of California.

SAME

1.21 "Effective Date" means the date determined pursuant to Section 8.1.7 (Certificate of Fulfillment or Waiver of Conditions Precedent).

SAME

1.22 "Execution Date" means the date set forth on the first line of this Agreement.

1.23 "Financial Account" means the Account provided in Subsection 5.2.3 of Section 5.2 (Put Payments).

SAME

1.24 "In Lieu Water Distribution Facilities" means the facilities described in Exhibit A, Section 1.3.2 ("In Lieu" Water Distribution Facilities).

SAME

1.25 "KCWA" means the Kern County Water Agency.

SAME

1.26 "Kern Delta Basin" means that portion of the southern San Joaquin Valley groundwater basin underlying the lands within the boundaries of Kern Delta.

SAME

1.27 "Kern Delta Facilities" means Kern Delta Regulation Program Facilities and Kern Delta Transportation Facilities.

SAME

1.28 "Kern Delta Regulation Program Facilities" means Kern Delta Initial Regulation Program Facilities and Kern Delta Supplemental Regulation Program Facilities.

SAME

1.29 "Kern Delta Initial Regulation Program Facilities" means the facilities described in Subsection 2.8.2 of Section 2.8 (Provision of and Construction of Kern Delta Regulation Program Facilities).

SAME

1.30 "Kern Delta Supplemental Regulation Program Facilities" means the facilities described in Subsection 2.8.3 of Section 2.8 (Provision of and Construction of Kern Delta Regulation Program Facilities).

1.31 "Kern Delta Transportation Facilities" shall consist of (i) Delivery Canal; and (ii) Arvin-Edison Intake Canal. Kern Delta Transportation Facilities are shown on the map attached hereto as Exhibit F and incorporated herein by this reference. Exhibit B of the Original Agreement is stricken.

SAME

1.32 "Late Arising Claim" shall have the meaning set forth in Section 11.4 (Pending and Late Arising Claims).

SAME

1.33 "Normal and Customary Uses" means (i) deliveries to meet historic demands, as existing prior to Execution Date, of water users within Kern Delta's surface water service areas as provided at Subsection 4.2.2 of Section 4.2 (Conditions On Return of Regulated Water), (ii) historic transfers (including exchanges) and transfers similar to the type historically existing prior to Execution Date, entered into by Kern Delta with other entities, and (iii) operational conditions and criteria which would exist and/or be employed with or without the Regulation Program (for example spreading programs, energy load management, aquatic pest control and the like).

SAME

1.34 "Operating Plan" means the Groundwater Monitoring Program and Operating Criteria attached as Exhibit C (Groundwater Monitoring and Operating Criteria).

1.35 "Original Agreement" means that certain written agreement entitled "Agreement Between Kern Delta Water District and The Metropolitan Water District of Southern California For a Water Management Program" bearing an execution date of May 27, 2003.

CHANGE

1.36 "Point of Delivery to Kern Delta" means the California Aqueduct turnout to the Cross Valley Canal; or other turnout mutually agreed upon by the parties such as the Arvin-Edison Transportation Facilities and the Buena Vista Canal Extension.

CHANGE

1.37 "Point of Delivery to Metropolitan" means the California Aqueduct at or between Reaches 12E and 14A, or any other point of delivery mutually agreed upon by the parties.

SAME

1.38 "Put Payment" means, for the first 280,899 acre-feet of Delivered Water, the Capital Put Payment and operation, maintenance and replacement costs determined on a per acre-foot basis in accordance with Subsections 5.2.1.1(ii) through (iv) of Section 5.2 (Put Payments), and for Delivered Water in excess of 280,899 acre-feet, the amounts determined in accordance with Subsection 5.2.2 of Section 5.2 (Put Payments).

SAME

1.39 "Recovery Facilities" means the facilities described in Exhibit A, Section 1.3.5 (Recovery Facilities).

SAME

1.40 "Regulated Water" means Delivered Water less losses deducted in accordance with Article 3 (Operational Losses), credited pursuant to Section 2.5 (Regulation of Water).

SAME

1.41 "Regulation Program" means the water management program provided for in this Agreement.

SAME

1.42 "Regulation Trust Property" has the meaning set forth in Subsection 10.1.3 of Section 10.1 (Declaration of Regulation Trust).

SAME

1.43 "Regulatory Change" shall have the meaning set forth in Section 14.10 (Regulatory Change).

SAME

1.44 "Spreading Facilities" means the Buena Vista Spreading Facilities and other facilities described in Exhibit A, Section 1.3.3 (Spreading Facilities).

S

1.45 "Take Payment" means the amount of money paid by Metropolitan to Kern Delta for each acre foot of Regulated Water returned to Metropolitan pursuant to this Agreement, which amount is specified in Section 5.3 (Take Payments) hereof.

SAME

1.46 "Transportation Facilities Trust Property" has the meaning set forth in Subsection 10.2.2 of Section 10.2 (Declaration of Transportation Facilities Trust).

CHANGES

1.47 "Transportation Program" means those facilities, agreements, including the Delivery Canal; Cross Valley Canal Participation Agreement; Arvin-Edison MOU; and operational activities necessary to provide Metropolitan with a Contract Priority Right to convey Transported Water for the benefit of Metropolitan to and from the California Aqueduct as provided for in Article 6 (Contract Priority Right for Transportation of Water (Transportation Program)).

CHANGES

1.48 "Transported Water" means Metropolitan water conveyed in Kern Delta Transportation Facilities and Arvin-Edison Transportation Facilities pursuant to the Transportation Program.

SAME

1.49 "Year" means a calendar year commencing on January 1 and ending on December 31.

S

4.

Subsection 2.8.2 of the Original Agreement is amended to read as follows:

CHANGES

2.8.2 For purposes of this Agreement, Kern Delta shall make all reasonable efforts to construct and enforce agreements to utilize (a) Kern Delta Initial Regulation Program Facilities, which consist of the following Facilities on the following schedule: (i) Delivery Canal (except the Buena Vista Canal Extension) within 36 months; (ii) Phase 1, groundwater recharge facilities, Buena Vista Spreading Facilities, Buena Vista Canal Extension within 60 months; (iii) Phase 1 of the Kern Delta Program Recovery Facilities (15 new wells) completion within 48 months; (iv) Phase 2 of the Kern Delta Program Recovery Facilities (8 new wells) to be completed within 60 months.

D/L

5. *The Parties strike Subsection 5.1.3 of Section 5.1 (Construction Costs) of the Original Agreement because it is agreed that Metropolitan has satisfied the obligations therein imposed.*

CHANGES

6. *Subsection 5.2.1.1. of Section 5.2 (Put Payment) of the Original Agreement is amended to state:*

5.2.1.1 Metropolitan shall pay Kern Delta for each acre foot of the first 280,899 acre-feet of Delivered Water a Put Payment which shall consist of (i) Capital Put Payment as set forth in Section 5.4 (Capital Put Payments); plus (ii) an amount equal to actual costs per acre foot of operation, maintenance and replacement of Kern Delta Facilities used to regulate Delivered Water determined in accordance with Section 5.7 (OM&R Fees); plus (iii) an amount sufficient to pay all energy costs associated with the delivery, distribution, and recharge of each acre foot of Delivered Water determined in accordance with Section 5.6 (Power & Energy Costs); plus (iv) a Delivery Canal Capital Fee of \$12.50.

7. *Subsection 5.2.1.2 of Section 5.2 (Put Payment) of the Original Agreement is amended to State:*

CHANGES

5.2.1.2 The number of acre-feet used to calculate the Capital Put Payment, the Delivery Canal OM&R Fee for Delivered Water, and the Delivery Canal Capital Fee for the first, third and sixth Years from Effective Date shall be an amount determined as follows:

(a) For the first Year, the minimum amount shall be the higher of (i) the amount of Delivered Water necessary to result in a credit of 60,000 acre-feet of Regulated Water to the Account or (ii) the actual amount of Delivered Water.

(b) For the third Year, the minimum amount shall be the higher of (i) the amount of Delivered Water necessary to result in a total credit of 160,000 acre-feet of Regulated Water to the Account or (ii) the actual amount of Delivered Water.

6
CHANGES
(c) For the sixth Year, the minimum amount shall be the higher of (i) the amount of Delivered Water necessary to result in a total credit of 250,000 acre-feet to the Account or (ii) the actual amount of Delivered Water.

8. *Subsection 5.7.3 of Section 5.7 (OM&R Fees) of the Original Agreement is amended to state:*

CHANGES
5.7.3 Delivery Canal OM&R Fee for each acre foot conveyed by Kern Delta for the Program is \$11.00 per acre-foot of Delivered Water (upon delivery into storage), and \$11.00 per acre-foot of Regulated Water (upon return of Regulated Water), and \$4.00 per acre-foot of Transportation Water delivered to Metropolitan.

- OK 9. *Subsection 5.7.4 of Section 5.7 (OM&R Fees) of the Original Agreement is deleted.*

- OK 10. *Exhibit D-2 (Methodology for Determining O&M Costs and Replacement Cost) of original agreement is replaced by Exhibit D-2 to this First Amendment.*

11. *Section 6.2 of the Original Agreement is amended to state:*

6.2 **Cross Valley Canal and Arvin-Edison Transportation Rights.** Metropolitan's rights to utilize the Cross Valley Canal consist of the following: Metropolitan shall have the right, exercised by and through Kern Delta or any successor trustee, to use Kern Delta's designated New Canal Capacity (as defined in the Cross Valley Canal Participation Agreement) in the Cross Valley Canal for Regulation Program purposes and for Transportation Program purposes, the same as if such entity was Kern Delta; provided, however, the right to use Kern Delta's designated New Canal Capacity does not include (i) the right to use unused capacity of others, or (ii) the right to use New Canal Capacity during periods when the same is being used for transport of Article 21 water from the State Water Project, or (iii) the right to use any capacity for the benefit of third parties other than Metropolitan. Metropolitan's rights to utilize Arvin-Edison Transportation Facilities shall be as specified in the Arvin-Edison MOU. Metropolitan's rights to utilize the Cross Valley Canal include the rights specified in the Cross Valley Canal Early Implementation Agreement attached as Exhibit G.

12. *Section 6.5 of the Original Agreement is amended to state:*

CHANGES
6.5 **Scheduling of Transported Water.** Metropolitan shall schedule with Kern Delta the conveyance of Transported Water through Contract Priority Right Facilities by providing Kern Delta with a preliminary notice of Metropolitan's intent to convey Transported Water by March 15, which may thereafter be

modified from time to time up until May 1. Such delivery schedule shall state the amount of Transported Water to be conveyed in the noticed Year as expressed in total acre-feet through Kern Delta Transportation Facilities. Kern Delta shall be responsible for scheduling deliveries through Arvin-Edison Transportation Facilities and the Delivery Canal. Kern Delta shall review the delivery schedule and, within 30 days, after receipt of Metropolitan's preliminary notice, inform Metropolitan of any known difficulties in complying with the schedule for conveyance of Transported Water pursuant to the Contract Priority Right. Conveyance of such Transported Water will be scheduled in such a fashion so as to maximize Kern Delta's operational flexibility and water supply reliability, to the greatest extent practicable consistent with Kern Delta's obligations under this Agreement. The parties may mutually agree to amend the delivery schedule at any time.

- biz 13. *The parties strike Subsection 8.1.2 of Section 8.1 (Conditions Precedent) of the Original Agreement because it is agreed that said condition precedent has been satisfied. Section 8.1 of the Original Agreement is amended to state:*

SAME 8.1 **Conditions Precedent.** The obligations of the Parties under this Agreement are subject to the satisfaction of the following conditions (each a condition precedent) by no later than 24 months of Execution Date of First Amendment.

SAME 8.1.1 Execution of the following, in form Reasonably Acceptable To Each Party: (i) the Arvin-Edison MOU.

SAME 8.1.2 Commitment, in form reasonably acceptable by each Party, of the California Department of Water Resources and the Kern County Water Agency, to cooperate in Agreement implementation.

8.1.3 For purposes of Subsections 8.1.1 and 8.1.2-of this Section 8.1 (Conditions Precedent), "reasonably acceptable to each party" includes, but is not limited to, assurance that the agreements shall not be changed during the term of this Agreement, that Metropolitan shall be named as direct third party beneficiary and that the Agreement shall not be amended in a manner affecting Metropolitan without its written approval.

CHANGES

8.1.4 Opinion of Kern Delta Counsel. Metropolitan have received an opinion from Kern Delta's counsel in form and substance reasonably satisfactory to Metropolitan that: (i) as respects the effectiveness of this Agreement, all submissions required of Kern Delta to federal, state and local governmental authorities have been made, all necessary approvals have been obtained, all conditions imposed by approvals are satisfied or will be (and may be) satisfied; (ii) Kern Delta, acting as lead agency (as defined in CEQA) has adopted a Final Environmental Impact Report and Notice of Determination for this project pursuant to Section CEQA; and (iii) this Agreement has been duly authorized, executed and delivered by Kern Delta and, assuming due authorization, execution and delivery by the other Parties, thereto, constitutes the legally valid and binding obligation of Kern Delta, enforceable against Kern Delta in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally, or by the application of equitable principles, including concepts of materiality, reasonableness, good faith and fair dealing, and the possibility of the unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

CHANGES

8.1.5 Opinion of Metropolitan Counsel. Kern Delta have received an opinion from Metropolitan's counsel in form and substance reasonably satisfactory to Kern Delta that: (i) as respects the effectiveness of this Agreement, all submissions required of Metropolitan to federal, state and local governmental authorities have been made, all necessary approvals have been obtained, all conditions imposed by approvals are satisfied or will be (and may be) satisfied; (ii) this Agreement has been duly authorized, executed and delivered by Metropolitan and, assuming due authorization, execution and delivery by the other Parties, thereto, constitutes the legally valid and binding obligation of Metropolitan, enforceable against Metropolitan in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally, or by the application of equitable principles, including concepts of materiality, reasonableness, good faith and fair dealing, and the possibility of the unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

SAME

8.1.6 No Litigation. No litigation, proceeding or investigation shall be pending or threatened which does or would bind or relate to the activities, parties or facilities necessary to consummate the transactions contemplated by this Agreement, directly or indirectly, which, individually or in the aggregate, if adversely determined, might materially and adversely affect the ability of the Parties, or any of them, to perform their respective obligations under this Agreement or which raises a question as to the validity of this Agreement, or any action to be taken hereunder. Without limiting the generality of the foregoing, no

challenge to the Parties' or Kern Delta's compliance with CEQA shall be pending.

SAME
8.1.7 Certificate of Fulfillment or Waiver of Conditions Precedent.
The Agreement shall become effective at such time as the Parties execute a Certificate in the form attached as Exhibit E (Certification That Conditions Precedent Have Been Satisfied or Waived).

SAME
8.1.8 Recording. This Agreement shall have been recorded in the Office of the County Recorder, County of Kern.

14. *Article 10 is revised to state:*

ARTICLE 10. DECLARATIONS OF TRUSTS

10.1 Declaration of Regulation Trust.

SAME AS ORIG AGMT
10.1.1 Metropolitan hereby appoints Kern Delta to hold, and Kern Delta hereby accepts such appointment and agrees to hold, in trust the Regulation Trust Property (as defined below), for the use and benefit of Metropolitan, as beneficiary, upon the terms set forth in this Agreement. This trust shall be designated the "Regulation Trust."

"SAME "
10.1.2 Kern Delta acknowledges and agrees that all Regulated Water will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Kern Delta in its capacity as trustee for Metropolitan with respect to the Regulated Water and the rights relating to the Regulated Water as set forth below. Metropolitan has herein authorized Kern Delta, as trustee, to commingle, exchange or otherwise dispose of the Regulated Water as permitted under this Agreement.

"SAME "
10.1.3 Metropolitan hereby grants to the Regulation Trust the Capital Put Payments deposited into Financial Account pursuant to Subsection 5.2.3 of Section 5.2 (Put Payments) and the Regulated Water. Kern Delta has granted, and does hereby grant, to the Regulation Trust, for the use and benefit of Metropolitan, as beneficiary, the Kern Delta Regulation Program Facilities and all appurtenant facilities and structures and any rights, easements, lands or facilities it acquires for the purpose of regulating Regulated Water. The rights and interests granted by Metropolitan and Kern Delta to the Regulation Trust pursuant to this Subsection 10.1.3 shall collectively be referred to herein as the "Regulation Trust Property."

" SAME "

10.1.4 Metropolitan acknowledges that Metropolitan's Regulated Water may be commingled with other water. At all times during the term of this Agreement, an amount of water in the Basin equal to the amount of the Metropolitan's Account Balance shall be deemed to be Metropolitan's Regulated Water. So long as water in the amount of Metropolitan's Account Balance remains in the Basin, Kern Delta, as trustee, shall be deemed to remove Metropolitan's Regulated Water from storage only as and when expressly requested by Metropolitan to do so, and any other removal of water from the Basin shall be deemed to be the removal of water that is not Metropolitan's Regulated Water.

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REFLECTS CHANGES

10.1.5 The Regulation Trust created under this paragraph exists only for the purpose of protecting: (i) Metropolitan's interest in a quantity of water equivalent to the Regulated Water, if Kern Delta fails or refuses to return such water when required to do so by this Agreement; and (ii) Metropolitan's right, also held in trust by Kern Delta for Metropolitan, to recover from the Kern Delta Basin and return to Metropolitan through the Delivery Canal and at the Intertie Canal of the Arvin-Edison Transportation Facilities, a quantity of water equal to the Regulated Water, such rights to be exercised by Kern Delta, as trustee, through the lands, facilities, rights and interests of Kern Delta, including but not limited to rights pursuant to the Arvin-Edison MOU and the Cross Valley Canal Participation Agreement, or by its successor in interest in and to the Regulation Trust Property, all in accordance with the terms of this Agreement.

" SAME "

10.1.6 The creation of the Regulation Trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Kern Delta performs its obligations as provided in this Agreement, Kern Delta will not be deemed or construed to have breached any fiduciary duty to Metropolitan arising out of the Regulation Trust. The trust relationship created by the Declaration of Regulation Trust in this Agreement is not otherwise intended to apply to or affect the obligations of Kern Delta or Metropolitan hereunder, or the remedies in the event of default. Notwithstanding creation of this Regulation Trust under this Agreement, Kern Delta may benefit from the Regulation Program and Transportation Program set forth in this Agreement.

" SAME "

10.1.7 Subject to the priorities of use stated in Section 6.4 (Kern Delta Priorities) and the conditions contained in Section 4.2 (Conditions on Return of Regulated Water), the Parties agree that the Delivery Canal of Kern Delta Regulation Program Facilities is to be held by Kern Delta for purposes of both the Regulation Trust and the Transportation Facilities Trust.

SAME

10.2 Declaration of Transportation Facilities Trust.

10.2.1 Metropolitan and Kern Delta hereby appoint Kern Delta to hold, and Kern Delta hereby accepts such appointment and agrees to hold, in trust, for the use and benefit of Metropolitan, as beneficiary, the Transportation Facilities Trust Property (as defined below), upon the terms set forth in this Agreement. This trust shall be designated the "Transportation Facilities Trust."

UNDERScoreD LANG REFLECTS CHANGES

10.2.2 In exchange for the rights Metropolitan has granted Kern Delta pursuant to Section 10.1 (Declaration of Regulation Trust) and in addition to the grant to the Regulation Trust, Kern Delta does hereby grant and contribute to the Transportation Facilities Trust the Transportation Facilities Trust Property.

As used herein, the "Transportation Facilities Trust Property" means: (i) all appurtenant facilities and structures and any rights, easements, lands or facilities Kern Delta acquires for the purpose of conveying Transported Water to the California Aqueduct initially using monies in the Financial Account (ii) the Delivery Canal of Kern Delta Regulation Program Facilities; (iii) Contract Priority Rights held pursuant to the Arvin-Edison MOU and the Cross Valley Canal Participation Agreement; and (iv) any additional rights, easements, lands or facilities needed to complete the construction of facilities that are acquired or constructed by Kern Delta or the Transportation Facilities Trust initially using monies in the Financial Account.

10.2.3 The purposes for which the Transportation Facilities Trust is created are to convey to Kern Delta to hold in trust, for the use and benefit of Metropolitan easements and Contract Priority Rights in the Kern Delta Transportation Facilities and Arvin Edison Transportation Facilities, to the extent necessary to convey Transported Water to the California Aqueduct for delivery to Metropolitan therein pursuant to the terms of this Agreement for purposes of both the Regulation Program and the Transportation Program.

SAME

10.2.4 The creation of the Transportation Facilities Trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Kern Delta performs its obligations as provided in this Agreement, Kern Delta will not be deemed or construed to have breached any fiduciary duty to Metropolitan arising out of the Transportation Facilities Trust. The trust relationship created by the Transportation Facilities Trust in this Agreement is not otherwise intended to apply to or affect the obligations of Kern Delta or Metropolitan hereunder, or the remedies in the event of default. Notwithstanding creation of this Transportation Facilities Trust under this Agreement, Kern Delta may benefit from the Regulation Program and Transportation Program set forth in this Agreement.

15. Section 12.2 is revised to state:

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REFLECTS
CHANGES

12.2 Remedies in the Event of Metropolitan's Voluntary Failure to Perform. If Metropolitan has not substantially performed according to the terms of this Agreement, and notice has been provided to Metropolitan pursuant to Section 14.4 (Waiver/Cure of Defaults) and Metropolitan has failed to cure the alleged breach within the time provided in Section 14.4 (Waiver/Cure of Defaults), Kern Delta may at its election, at any time thereafter while the default is continuing, either (i) suspend further performance (except that Kern Delta shall continue to hold in trust the Regulation Trust Property and the Transportation Facilities Trust Property and Metropolitan shall continue to hold its rights in the Delivery Canal and the Intertie Canal of the Arvin-Edison Transportation Facilities) and thereafter seek relief under Article 9 (Dispute Resolution), recommencing performance once Metropolitan complies with the Agreement, or (ii) terminate this Agreement. If Kern Delta elects to terminate this Agreement, any Regulated Water remaining in Metropolitan's Account shall be transferred to Kern Delta at no cost to Kern Delta. In such event, Kern Delta shall have no further responsibility for repayment of funds advanced by Metropolitan under Article 5 (Compensation). Metropolitan may challenge at any time, through Article 9 (Dispute Resolution), whether in fact there has been a breach of this Agreement by Metropolitan.

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EXECUTED the day and year first hereinabove written.

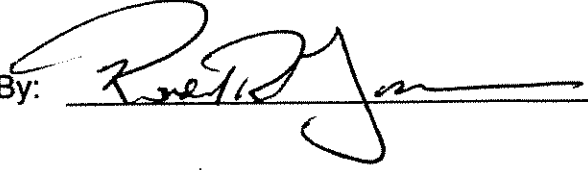
APPROVED AS TO FORM:

Jeffery Kightlinger
General Counsel

By: 
Date: 12/17/04

THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA

Ronald R. Gastelum
Chief Executive Officer

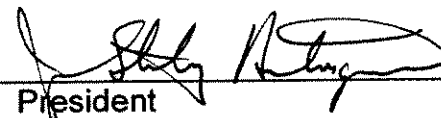
By: 
Date: 12/17/04

APPROVED AS TO FORM:

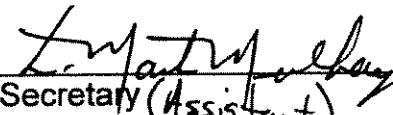
By: 
General Counsel

Date 12/21/04

KERN DELTA WATER DISTRICT

By: 
President

Date: December 21, 2004

By: 
Secretary (Assistant)

Date: 12/21/04

EXHIBITS

- D-2. Methodology for Determining O & M Costs and Replacement Cost**
- F. Map Depicting Kern Delta Boundaries and Program Facilities**
- G. Cross Valley Canal Early Implementation Agreement**

EXHIBIT D-2

BLACK & VEATCH Corporation

O&M COSTS, REPLACEMENT COST

Kern Delta Water District
Water Banking Program

August 4, 2004

To: L. Mark Mulkay
Project Manager

From: Steven N. Foellmi, P.E.
Technical Manager

Prepared By: Klint Reedy, P.E.

PURPOSE

The purpose of this memorandum is to evaluate the operations and maintenance (O&M) requirements associated with the Kern Delta Water District (KDWD) Water Banking and In-Lieu Supply Project (Kern Delta Project). Manufacturer's O&M requirements and estimated replacement costs associated with operation of the major equipment components have been identified and tabulated. Actual maintenance history from similar facilities, and engineer's experience on similar projects, were also utilized to define the O&M schedule for the Kern Delta Project facilities. Kern Delta's portion of the operation, maintenance, replacement, and energy costs for the Cross Valley Canal (CVC) have also been incorporated into this analysis.

BACKGROUND

Kern Delta will utilize 200 cubic feet per second (cfs) capacity rights within the first three reaches of the CVC to transfer water from the California Aqueduct to a new planned turn-out on the CVC. The first three CVC reaches include 5 pumping plants that take water from the California Aqueduct and lift it to an elevation that will allow gravity flow from the CVC to the existing Buena Vista Canal head gate at the River Canal. From this point, existing canals will be used to transfer water to new spreading basins for groundwater recharge.

An existing pump within the existing Arvin-Edison Forrest Frick Pump Station would also be used to meet irrigation demands in the eastern section of the Kern Delta service area through the in-lieu (pipeline) facilities. These facilities will allow the use of State Water Project (SWP) water for irrigation "in-lieu" of local groundwater.

Lastly, the project includes groundwater wells to recover previously stored water in the groundwater basin. The extraction wells would be located near existing water conveyance facilities and would be used for delivery of banked water to Metropolitan and for Kern Delta's local water supply needs.

OPERATION AND MAINTENANCE INVESTIGATION

The water-banking project facilities that will incur O&M costs include shared costs of the CVC operation, groundwater wells to withdraw stored supplies, spreading basins, the existing pump within the Arvin-Edison Forrest Frick Pump Station, the in-lieu facilities, and the Buena Vista Canal Extension facilities.

Maintenance procedures for the project components and a preliminary estimate of the corresponding O&M costs have been included. The schedule includes preliminary procedures for maintaining the project facilities.

Operation & Maintenance Schedule

The recommended maintenance procedures are based on information and recommendations obtained from the equipment manufacturers, maintenance history from other agencies with similar equipment, and the engineer's experience on similar projects. The attached example procedures are intended to provide a general idea of the O&M procedures required for each of the major equipment components of the Water Banking Project. Prior to startup of these facilities, a more detailed O&M schedule should be developed based on specific manufacturer's manuals and shop drawing information.

Estimated Annual O&M Costs

A preliminary estimate of the O&M costs associated with the recommended maintenance procedures for the proposed Water Banking equipment is summarized in Table 1.

**Table 1
 Estimated
 Annual Operation & Maintenance Costs**

Description	Cost
STORAGE MODE	
Annual Power Costs ⁽¹⁾	\$2,174,600
Labor (Personnel)	\$236,000
Annual Maintenance Costs ⁽²⁾	\$229,908
Total Annual O&M Cost	\$2,640,508
5 YR Minor overhaul of canal pumps	\$0
20 YR Major overhaul of canal pumps	\$0
50 YR Major canal / spreading basin equipment replacement	\$125,000
Present Worth of Maintenance Costs ⁽⁴⁾	\$29,750
WITHDRAWAL MODE	
Annual Power Costs ⁽¹⁾	\$6,152,900
Labor (Personnel)	\$535,000
Annual Maintenance Costs ⁽³⁾	\$78,000
Total Annual O&M Cost	\$6,765,900
5 YR Minor Overhaul of GW Pumps & Canal Pumps	\$75,000
20 YR Major Overhaul of GW Pumps & Canal Pumps	\$170,000
50 YR Major groundwater pump equipment replacement	\$2,200,000
Present Worth of Maintenance Costs ⁽⁴⁾	\$959,600

⁽¹⁾ Task Authorization No. 2 Energy Requirements updated May 2004 and CVC Energy Requirements.

⁽²⁾ Maintenance Costs for storage mode include idle maintenance costs for the groundwater facilities.

⁽³⁾ Maintenance Costs for withdrawal mode include idle maintenance costs for the canal pumps.

⁽⁴⁾ Assumes 3% inflation & 6% discount factor.

The power costs presented in Table 1 are based on the results presented in the KDWD Water Banking Program "Energy Requirements" Technical Memorandum updated May 2004 and include the CVC energy requirements. Personnel costs associated with operating and maintaining the Water Banking facilities are based on 4 additional staff positions during the storage mode and 6 positions during the withdrawal mode. It may be possible to utilize existing staff to assist with the operation of these facilities and minimize the total number of additional staff required. The estimated annual maintenance and overhaul costs are based on typical maintenance costs for similar facilities.

Estimated O&M Costs by Component

Table 2 summarizes O&M costs by component for both in-service and idle operations.

Table - 2
Estimated
Operation & Maintenance Cost Summary By Component

Description	Cost per Cycle	
	In-Service	Idle
CVC Canal Shared Costs (200 cfs capacity)		
Labor (Personnel) Costs	-	-
Annualized O&M Costs	\$200,908	-
Annualized Major Equipment Overhaul & Replacement Costs	-	-
Spreading Basins (Assumes 360 Acres of Spreading Required)		
Labor (Personnel) Costs	\$75,555	\$14,870
Routine Maintenance Costs	\$4,000	\$875
Annualized Major Equipment Overhaul & Replacement Costs	-	-
Total	\$79,555	\$15,745
In-lieu Facilities (Assumes PVC Pipeline)		
Labor (Personnel) Costs	\$5,824	\$1,345
Routine Maintenance Costs	\$8,000	\$2,000
Annualized Major Equipment Overhaul & Replacement Costs	\$5,735	-
Total	\$19,560	\$3,345
Well Field Facilities (Assumes 15 Groundwater Wells)		
Labor (Personnel)	\$160,510	\$19,200
Routine Maintenance Costs	\$21,600	\$4,220
Annualized Major Equipment Overhaul & Replacement Costs	\$43,905	-
Total	\$226,015	\$23,420
Buena Vista Canal Southern Extension (Assumes 2 Pump Stations)		
Labor (Personnel) Costs	\$63,840	\$3,360
Routine Maintenance Costs	\$28,000	\$4,000
Annualized Major Equipment Overhaul & Replacement Costs	\$16,510	-
Total	\$108,350	\$7,360

Table 2 presents the estimated O&M costs considering the anticipated project facilities required to meet water banking project objectives. As shown in the table this includes 360 acres of spreading basins, 15 groundwater wells, in-lieu piping, a delivery canal (CVC Canal), and a return canal (Buena Vista Extension). The following section utilizes the above estimated costs to predict O&M costs over the life of the project.

Estimated O&M Costs per Year

Table 3 presents the anticipated schedule for water movement and the projected annual O&M costs calculated from the values in Table 2 and the anticipated water movement schedule.

**Table 3
Projected Water Movement &
Operations & Maintenance Schedule**

Year	Regulated Water Movement Acre-Feet	Transported Conveyance ⁽¹⁾ Yes/ No	Conveyance Facilities		Infiltration Facilities		Extraction Facilities
			CVC Canal	BV Extension	Spreading Basins	In-Lieu	Wells Costs
	Ac- Ft						
1	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
2	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
3	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
4	42,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
5		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
6	32,000	Y	\$200,908	\$108,350	\$66,685	\$3,345	\$23,420
7	44,000	Y	\$200,908	\$108,350	\$79,555	\$3,345	\$23,420
8		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
9		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
10	-50,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$226,015
11	-50,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$226,015
12	-40,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$204,231
13	-30,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$159,028
14	-25,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$136,427
15	-20,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$113,825
16	-20,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$113,825
17	-15,000	Y	\$200,908	\$108,350	\$15,745	\$3,345	\$91,223
18		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
19		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
20		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
21		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
22		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
23		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
24		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
25		Y	\$200,908	\$108,350	\$15,745	\$3,345	\$23,420
Total	250,000	25	\$5,022,700	\$2,708,750 ⁽²⁾	\$763,615	\$83,625	\$1,668,730

(1) Yes in the transported conveyance column indicates an estimated 35,000 acre – feet of water is transported through the Buena Vista Extension to the California Aqueduct during that year.
(2) Note, the BV Extension canal is used for both regulated water movement and transported water movement.

CONCLUSION

The above information can be used to estimate an average O&M cost per acre foot of water stored, extracted, or conveyed by the Kern Delta Water Banking Project components. Table 4 summarizes the per acre foot costs for these operations.

Spreading unit costs are based on the total cost of the infiltration facilities, both spreading basins & in-lieu facilities, divided by the total volume of water stored.

Extraction unit costs are based on the total cost of well operation divided by the total volume of water extracted.

Component	\$ / Ac - Ft
Spreading Costs	3
Extraction Cost	7
Transported Conveyance	4
Storage Program Conveyance	11

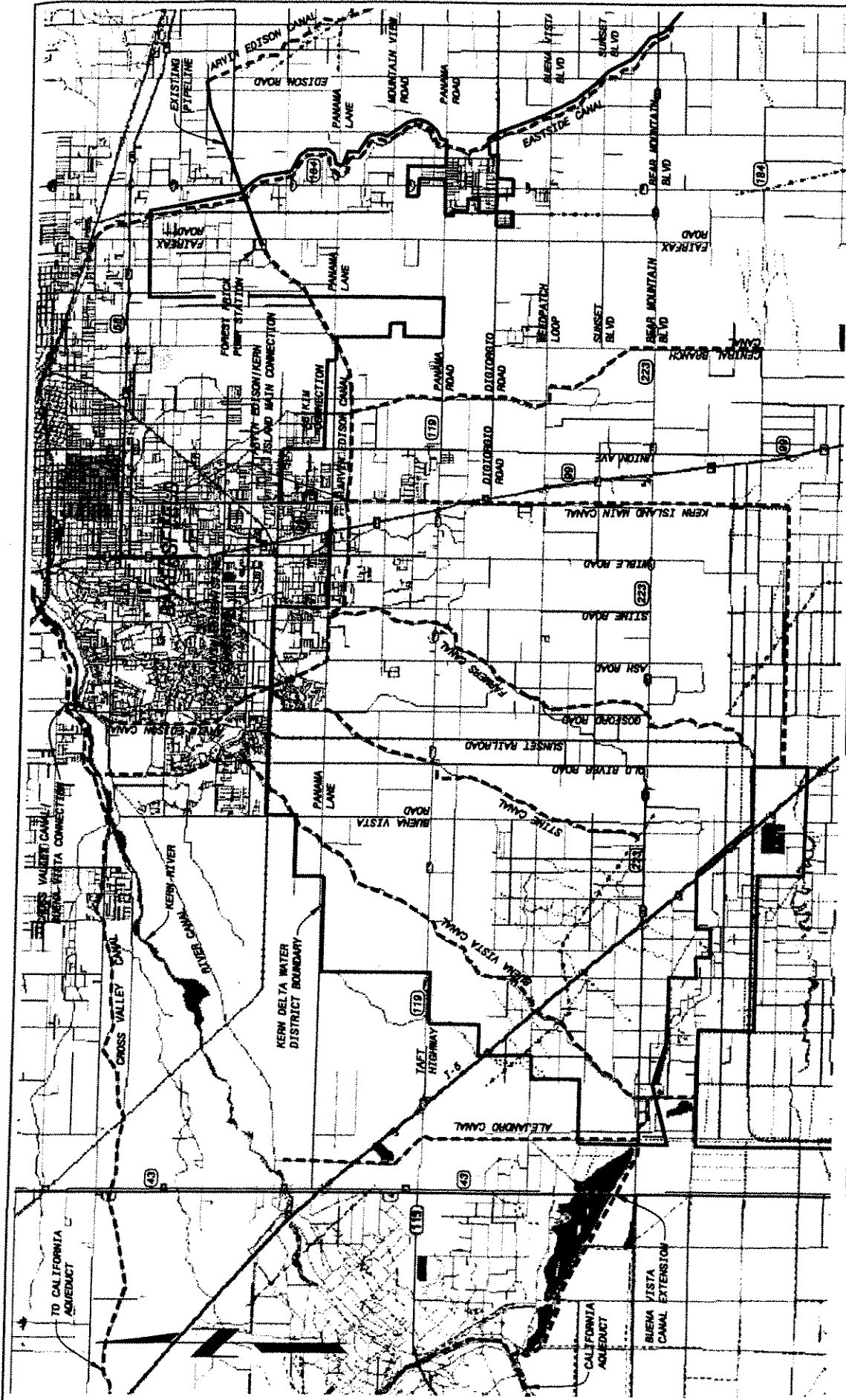
Conveyance costs are broken down by transported program conveyance and storage program conveyance.

Transported conveyance unit costs are based on the total cost to operate the Buena Vista Extension divided by the total volume of water transported. Note the total volume of water transported is estimated to be 35,000 acre feet per year for every year transported the conveyance option is exercised.

Storage program conveyance unit costs include the use of the CVC canal for delivery of water to the storage facilities and the Buena Vista Extension canal for returning water from the extraction wells to the California Aqueduct. Therefore, the storage conveyance unit costs include the total cost for operating both the CVC Canal and the Buena Vista Extension Canal divided by the volume of water transferred to storage plus the volume of water returned to the California Aqueduct under the storage program facility.

Attachment - A
Recommended Maintenance Procedures

Facility	Tasks	Frequency
Canal Pump Station		
Pumps and cables	Check operating ranges according to the manufacturers	Daily
	Discharge pressure & discharge flowrate; check for loosen cables	Monthly
Pump, rotor, impeller, mechanical seal, cables, bolts & nuts, external surface conditions	Pull & Inspect; Appearance check	Annual
Pumps	Operational problems, poor insulation, functional & performance test, mechanical seal replacement	3 Years
	Minor overhaul	5 Years
	Major overhaul	20 Years
	Repair	As Required
Canal Valves		
Butterfly valves	Exercise	Monthly
	Inspect seat, seal, and packing	5 Years
Canal Conveyance		
Canal	Earthwork/remove silts, and general housekeeping	Annual
Groundwater Wells		
Wells, pump & motor	Check water level, operation, oil and motor fluids	Weekly
	Check & clean electrical/control panels	3 Months
	Calibrate flow test, pump eff., well eff, well specfic cap. calcs. Calibrate flow meter	Annual
	Repair	As Required
Pump	Rehabilitation	As Required
Well		
Spreading Basins		
Spreading basins	Earthwork/remove silts, and general housekeeping	6 Months
Valves and control gates	Exercise	Monthly
	Inspect seat, seal, and packing	5 Years
In-Lieu Pipelines		
Valves	Exercise	Monthly
	Inspect seat, seal, and packing	5 Years
Air/vacuum relief valves	Inspection	Monthly



**KERN DELTA WATER DISTRICT/METROPOLITAN WATER DISTRICT
WATER MANAGEMENT PROGRAM**

KERN DELTA BOUNDARIES AND PROGRAM FACILITIES

**EXHIBIT
F**

MEMORANDUM OF UNDERSTANDING
Regarding the Early Implementation
of the
Cross Valley Canal Expansion
Principles of Agreement

Introduction

In the context of the Cross Valley Canal (CVC) Expansion Workgroup's efforts, and in anticipation of the CVC Expansion Project completion, the CVC Participants, Kern County Water Agency (KCWA) and Kern Delta Water District agree to implement the CVC Expansion Principles of Agreement, dated March 4, 2004, ("Principles"), commencing on January 1st, 2004. It is recognized by all parties that the 500 cfs of incremental capacity has yet to be constructed and it is proposed that the Principles of Agreement be implemented until such time as the construction is completed and contracts are finalized with the following interim modifications:

Section A of Principles of Agreement

1. (A-1) Kern Delta, KCWA and Arvin-Edison (New Canal Participants) will be temporarily allocated the incremental capacity previously realized through the purchase and installation of the high performance impellers, until such time as the new capacity can be constructed, provided, however, any party to this MOU may request termination of this Memorandum of Understanding on or after March 4, 2007. Termination after March 4, 2007 shall occur if a majority vote of the voting percentages, based on Integrated Canal Capacity, of those signatory to this MOU vote in favor of such termination. This incremental capacity shall be allocated 40% to KCWA, 40% to Kern Delta and 20% to Arvin-Edison in reaches 1, 2 and that portion of reach 3 that extends to the forebay of Pumping Plant No. 6 as set forth in Attachment 1. The incremental capacity in Pumping Plant No. 6 in reach 3 shall be allocated 2/3 to Kern Delta and 1/3 to Arvin-Edison as a surrogate for the pumping plant to be constructed as noted in Section F4 of the Principles. (See Attachment 1) It is recognized that Arvin is both a New Canal Participant and an Existing Canal Participant and those rights will be administered independently.
2. (A-4) The term "Existing Canal" shall refer to the rights and obligations associated with the 736 cfs of capacity within Reach 1, and the 706 cfs of capacity within Reach 2 & 3, contractually available prior to the installation of the high performance impellers.
3. (A-4) The term "New Canal" shall refer to the rights and responsibilities associated with the 186 cfs of incremental capacity realized in Reach 1, the 137 cfs of incremental capacity realized in Reach 2, and the 166 cfs of incremental capacity realized in reach 3, resulting from the installation of the high performance impellers.
4. (A-6) The CVC Participants, KCWA and Kern Delta Water District shall be invoiced estimated CVC Expansion Program design and capital costs pursuant to the Principles.

Section E

1. (E-2) For purposes of allocating O&M budgeted costs, the Integrated Canal percent shall be defined as the percent of capacity within reaches 1 through 3 of the canal allocated to each district. (See Attachment 1, Column 10)
2. (E-2) The CVC Participants, KCWA and Kern Delta Water District shall be invoiced operating and maintenance costs during early implementation proportional to their capacity in the Existing Canal and New Canal as defined above. (See Attachment 2)

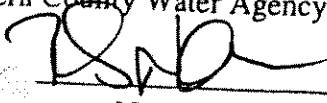
Section G

1. (G-8) For the purpose of calculating Excess Wheeling Charges, the Existing Canal Participants shall have the right to utilize their full capacity, which includes the original contractual capacity and the incremental capacity realized through the high performance impellers as identified in Attachment 3, prior to triggering the "Excess Wheeling Charge." The New Canal Participants shall have their monthly and annual acre-feet quantities calculated from their allocated capacity within the New Canal. (See Attachment 3)
2. The New Canal Participants shall pay a fee of \$1.00/af per Reach for all deliveries made through the CVC pursuant to their use of New Canal Participant rights. This fee is to be in effect until such time as the approximately 500 cfs of new capacity is constructed and available to the New Canal Participants, or until termination of this MOU provided for in Section A-1. Revenue resulting from this fee shall be allocated back to the Existing Canal Participants based upon the average of the ratios (See Attachment 4) for each Participant, in the reach in which the revenue was generated.
3. Voting rights of the Integrated Canal Participants are in proportion to their respective percentages of capacity within the Integrated Canal as shown in Column 10 of Attachment 1 to this MOU.

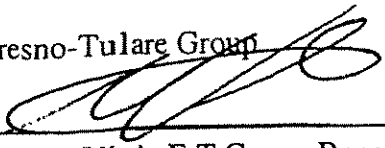
Furthermore, prior to execution of a final agreement implementing the foregoing and the Principles of Agreement, the parties will have completed all required environmental review on agreed components of the program, or implementation of the program shall be conditioned upon successful completion of all required environmental review. Program components which are optional, or are subject to further agreement, shall have similar environmental review requirements as part of any subsequent agreement.

Agreed to this 21 day of June, 2004.

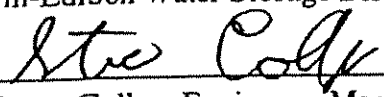
Kern County Water Agency, on behalf of itself and its Improvement District No. 4


Thomas N. Clark, General Manager

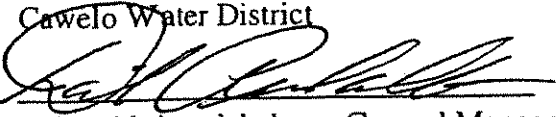
Fresno-Tulare Group


by Dan Vink, F-T Group Representative

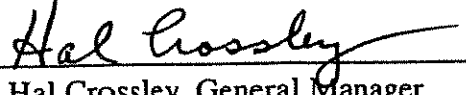
Arvin-Edison Water Storage District


by Steve Collup, Engineer - Manager

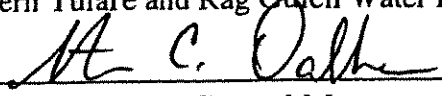
Cawelo Water District


by David Ansolabehere, General Manager

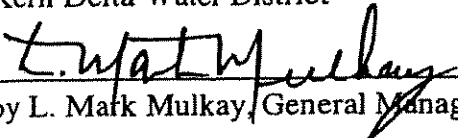
Rosedale-Rio Bravo Water Storage District


by Hal Crossley, General Manager

Kern Tulare and Rag Gulch Water Districts


by Steve Dalke, General Manager

Kern Delta Water District


by L. Mark Mulkay, General Manager

Attachment 1

KERN COUNTY WATER AGENCY CROSS VALLEY CANAL Interim Allocation of Capacity

C.V.C. PARTICIPANTS	PARTICIPANT CAPACITY IN CUBIC FEET per SECOND (CFS) & "INTEGRATED PERCENT CAPACITY"										
	REACH No. 1		REACH No. 2		REACH No. 3		EXTENSION		Percent of "Integrated" CVC Capacity		
	CFS	%	CFS	%	CFS	%	CFS	%	CFS	%	
FRESNO-TULARE GROUP Lower-Tule River I.D. Pixley I.D. County of Tulare County of Fresno Hills Valley I.D. Tri-Valley W.D.	87.09	9.45%	87.09	10.33%	87.09	10.73%	0.00	0.00%	0.00	0.00%	10.14%
	87.09	9.45%	87.09	10.33%	87.09	10.73%	0.00	0.00%	0.00	0.00%	10.14%
	8.40	0.91%	8.40	1.00%	8.40	1.03%	0.00	0.00%	0.00	0.00%	0.98%
	8.40	0.91%	8.40	1.00%	8.40	1.03%	0.00	0.00%	0.00	0.00%	0.98%
	6.00	0.65%	6.00	0.71%	6.00	0.74%	0.00	0.00%	0.00	0.00%	0.70%
	2.75	0.30%	2.75	0.33%	2.75	0.34%	0.00	0.00%	0.00	0.00%	0.32%
* Sub-Total "CFS"	199.73	21.66%	199.73	23.69%	199.73	24.60%	0.00	0.00%	0.00	0.00%	23.25%
RAG-GULCH W.D. KERN-TULARE W.D. ARVIN-EDISON W.S.D. CAWELO W.D. IMPROVEMENT DISTR.No.4 ROSEDALE-RIO BRAVO WSD	40.00	4.34%	40.00	4.74%	40.00	4.93%	0.00	0.00%	0.00	0.00%	4.66%
	114.00	12.36%	114.00	13.52%	114.00	14.04%	0.00	0.00%	0.00	0.00%	13.27%
	10.27	1.11%	10.27	1.22%	10.27	1.26%	0.00	0.00%	0.00	0.00%	1.20%
	135.00	14.64%	135.00	16.01%	135.00	16.63%	173.26	50.66%	173.26	50.66%	15.72%
	141.00	15.29%	141.00	16.73%	141.00	17.36%	168.74	49.34%	168.74	49.34%	16.41%
* Sub-Total "CFS" Existing CVC	96.00	10.41%	66.00	7.83%	6.00	0.74%	0.00	0.00%	0.00	0.00%	6.52%
	736.00	79.83%	706.00	83.75%	646.00	79.56%	342.00	100.00%	342.00	100.00%	81.02%
KCWA KERN DELTA ARVIN-EDISON W.S.D.	74.40	8.07%	54.80	6.50%	66.40	8.18%	0.00	0.00%	0.00	0.00%	7.59%
	74.40	8.07%	54.80	6.50%	66.40	8.18%	0.00	0.00%	0.00	0.00%	7.59%
* Sub-Total "CFS" High Performance Impellers	37.20	4.03%	27.40	3.25%	33.20	4.09%	0.00	0.00%	0.00	0.00%	3.80%
	186.00	20.17%	137.00	16.25%	166.00	20.44%	0.00	0.00%	0.00	0.00%	18.98%
TOTAL "CFS"	922.00	100.00%	843.00	100.00%	812.00	100.00%	342.00	100.00%	342.00	100.00%	100.00%

Attachment 2

CROSS VALLEY CANAL

PROPOSED BUDGET FOR OPERATING COSTS (\$) FOR CALENDAR YEAR 2004

ALLOCATED BY % OF REACH 1-3 "INTEGRATED" CAPACITY

	2	3	4	5	6
	REACH No.1	REACH No.2	REACH No.3	EXTENSION	TOTAL-LESS EXTENSION
C.V.C.PARTICIPANTS					TOTAL
FRESNO-TULARE GROUP					
Lower-Tule River I.D.	\$59,196	\$61,637	\$18,822	\$ -	\$139,655
Pixley I.D.	59,196	61,637	18,822	-	139,655
County of Tulare	5,710	5,945	1,815	-	13,470
County of Fresno	5,710	5,945	1,815	-	13,470
Hills Valley I.D.	4,078	4,246	1,297	-	9,621
Tri-Valley W.D.	1,869	1,946	594	-	4,410
Sub-Total "\$"	124,751	141,356	45,253	-	320,281
KERN-GULCH W.D.					
KERN-TULARE W.D.	27,188	28,310	8,645	-	64,143
ARVIN-EDISON W.S.D.	77,487	80,682	24,638	-	182,807
CAMELO W.D.	6,981	7,268	2,220	-	16,469
IMPROVEMENT DISTRICT No.4	91,761	95,545	29,176	172,665	389,147
ROSEDALE-RIO BRAVO W.S.D.	95,781	99,730	30,454	168,167	394,132
Sub-Total "\$"	462,013	492,525	152,489	340,832	1,115,946
KERN COUNTY WATER AGENCY					
KERN DELTA / ARVIN EDISON	44,317	46,145	14,091	-	104,553
ARVIN-EDISON W.S.D.	22,159	23,072	7,046	-	52,276
TOTAL "\$"	\$583,871	\$607,947	\$185,648	\$405,892	\$1,783,358

Attachment 3

INTERIM - INTEGRATED CANAL - ANNUAL AND MONTHLY QUANTITIES FOR PURPOSES OF CALCULATING EXCESS WHEELING CHARGES

Participant	Reach 1		Reach 2		Reach 3		Extension			
	cfs	af/mo	af/mo	af/yr	cfs	af/mo	af/yr	cfs	af/mo	af/yr
Lower-Tule River ID	102.29	7,406	97.55	7,062	102.78	7,441	0.00	0.00	0	0
Yuba County	102.29	7,406	97.55	7,062	102.78	7,441	0.00	0.00	0	0
Yuba County	9.87	714	9.41	681	9.91	718	0.00	0.00	0	0
Yuba Valley ID	9.87	714	9.41	681	9.91	718	0.00	0.00	0	0
Yuba Valley ID	7.05	510	6.72	487	7.08	513	0.00	0.00	0	0
Yuba Valley ID	3.23	234	3.08	223	3.25	235	0.00	0.00	0	0
Subtotal Fresno-Tulare Group	234.60	16,984	223.72	16,197	235.72	17,066	0.00	0.00	0	0
Edison MSD	49.26	3,566	38.90	2,816	39.52	2,861	0.00	0.00	0	0
Edison MSD	46.93	3,398	44.75	3,240	47.15	3,414	0.00	0.00	0	0
Edison MSD	133.90	9,694	127.69	9,245	134.54	9,740	0.00	0.00	0	0
Edison MSD	158.57	11,480	151.21	10,948	159.33	11,535	173.26	12,544	125,436	0
Edison MSD	214.96	15,562	205.01	14,842	216.06	15,642	168.74	12,216	122,164	0
Edison MSD	120.98	8,759	79.11	5,727	7.08	513	0.00	0.00	0	0
Total Edison Group	74.40	5,386	54.80	3,967	54.80	3,967	0.00	0.00	0	0
Edison MSD	74.40	5,386	54.80	3,967	54.80	3,967	0.00	0.00	0	0
Total Participants	1,108	80,217	980	70,950	949	68,705	342	24,760	247,600	0

Attachment 4

CROSS VALLEY CANAL AVERAGE OF THE RATIOS MAXIMUM ANNUAL ENTITLEMENT (AF) AND CAPACITY (CFS)

C.V.C. PARTICIPANTS	AVERAGE OF THE RATIOS MAXIMUM ANNUAL ENTITLEMENT (AF) AND CAPACITY (CFS)			
	Reach No. 1 %	Reach No. 2 %	Reach No. 3 %	Extension %
FRESNO-TULARE GROUP				
Lower-Tule River I.D.	11.09%	11.57%	12.66%	0.00%
Pixley I.D.	11.09%	11.57%	12.66%	0.00%
County of Tulare	1.07%	1.12%	1.22%	0.00%
County of Fresno	1.07%	1.12%	1.22%	0.00%
Hills Valley I.D.	0.76%	0.80%	0.87%	0.00%
Tri-Valley W.D.	0.35%	0.37%	0.40%	0.00%
* Sub-Total * % *	25.44%	26.54%	29.03%	0.00%
ARVIN-EDISON W.S.D.	1.31%	1.36%	1.49%	0.00%
RAG-GULCH W.D.	5.09%	5.31%	5.81%	0.00%
KERN-TULARE W.D.	14.52%	15.15%	16.57%	0.00%
CAWELO W.D.	17.20%	17.94%	19.82%	50.66% **
IMPROVEMENT DISTR.No.4	23.31%	24.32%	26.61%	49.34% **
ROSEDALE-RIO BRAVO WSD	13.12%	9.38%	0.87%	0.00%
TOTAL * % *	100.00%	100.00%	100.00%	100.00%

NOTES:

1. TABLE REFLECTS THE SALE OF 6-CFS CAPACITY AND 2,000 AF ENTITLEMENT BY KERN-TULARE W.D. TO ROSEDALE RIO-BRAVO W.S.D. EFFECTIVE JULY 28, 1988.
 2. TABLES REFLECT THE LAST FORMAL "ASSIGNMENTS" BY AEWSD EFFECTIVE JANUARY 1, 1977 (Article 26, AEWSD Participation Contract) and THE FULL "CONVERSION" of "B" CAPACITY EFFECTIVE JANUARY 1, 1982 (Article 11(b), AEWSD Participation Contract)
- ** FROM FOX & Co. 2/29/80 FINAL COST & SETTLEMENT REPORT, PURSUANT TO ARTICLES 4(b) AND 11 OF THE CAWELO WD PARTICIPATION CONTRACT.





**Memorandum of Understanding
for
Joint Use of AE Intake Canal
Between Arvin-Edison Water Storage District and Kern Delta
Water District**

Whereas, the Arvin-Edison Water Storage District (AE) is the sole owner and operator of the AE Intake Canal Facilities consisting of approximately 13 miles of concrete lined canal rated at 1,000 cfs capacity, a 26,000 hp pumping plant capable of lifting the entire 1,000 cfs, and a 3 mile long 11 foot diameter discharge line to deliver the Intake Canal flow into the District's North Canal and service area. Said canal currently has a 1,000 cfs turnout from the Friant-Kern Canal, a 400 cfs turnout from the Cross Valley Canal (CVC), and a 400 cfs turnout from the Kern River (KR) Carrier Canal. The Intake Canal can also deliver up to 400 cfs directly into the Cross Valley Canal. The AE Intake Canal is located almost entirely within the boundaries of Kern Delta Water District (KD) and intersects 4 of the 5 primary KD canals. Once through the Intake canal and pumping plant the District's North Canal, South Canal, and Intertie Pipeline can transport water through the District and into the California Aqueduct. AE has paid for, and maintains, all its conveyance systems at its sole expense.

Whereas, KD is the sole owner and operator of the Stine, Farmers, Kern Island Main, and Kern Island Central Canals consisting of approximately 100 miles of unlined gravity facilities which intersect the AE Intake Canal at key locations. The KD facilities range in capacity from 100 cfs to 550 cfs. KD owns and maintains all of its facilities at its sole expense. KD desires to design and construct Intertie structures between the AE Intake Canal and KD facilities to allow for the transportation and exchange of water between AE and KD. KD owns and manages certain Kern River water rights and has under contract with the Kern County Water Agency approximately 25,500 af of SWP entitlement.

Whereas, the KD, AE, and Kern County Water Agency are investing in expanding water conveyance facilities to transport water to and from the California Aqueduct consistent with the "Cross Valley Canal Expansion Principles of Agreement" (CVC Principles) dated March 4, 2004 and the "Memorandum of Understanding Regarding the Early Implementation of the Cross Valley Canal Expansion Principles of Agreement", dated June 21, 2004, (Early Implementation), both of which will be subject to the final "Contract Between Kern County Water Agency and Various Parties for the Expansion and Operation of the Cross Valley Canal and Extension" (CVC Agreement) when said agreement is fully executed. Said CVC Principles, Early Implementation, and CVC Agreement give KD and AE specific rights in an expanded Cross Valley Canal to transport water through the Canal. Said rights consist of a KD/AE first, second, and third priority rights to an estimated 300 cfs, 200 cfs, and 900 cfs, respectively (estimated capacities), and provide for joint use of the KD/AE capacity as specified in those CVC Principles. This Memorandum of Understanding (MOU),

along with the CVC Principles, Early Implementation, and CVC Agreement, will allow for direct delivery of water from the California Aqueduct to KD on a long term basis.

Whereas, KD, through an exchange entitled "First Amended Exchange Agreement Between Kern Delta Water District and Improvement District No. 4 of the Kern County Water Agency" dated February 25, 2004, has acquired rights to a long term exchange of KR water for SWP water in the Aqueduct of up to 50,000 AF per year.

Whereas, both AE and KD have already, or are currently investing in water banking facilities to firm up their water supplies for their respective Districts, and to provide water management services to other water districts and agencies, including, but not limited to, the Metropolitan Water District of Southern California (MWD).

Whereas, both AE and KD desire eventually to enter into other agreements for joint use of conveyance facilities, water banking facilities, and exchange capabilities consistent with the Arvin-Edison Water Storage District Resolution 01-25 dated October 9, 2001 (attached) which, among other things, directs AE staff to investigate mutually beneficial activities that may be implemented with KD.

Whereas, at this time KD wishes to utilize the AE Intake Canal facilities to transport water supplies for or to its benefit from the CVC to the KD service areas in furtherance of its water management programs and goals with MWD and others.

NOW, THEREFORE, the parties agree to the following terms and conditions for KD to utilize the AE Intake Canal facilities and related matters:

1. **KD's Transportation of MWD supplies.** Transportation of any and all MWD related supplies in AE facilities shall be in accordance with the "Agreement between Arvin-Edison Water Storage District and the Metropolitan Water District of Southern California for a Water Management Program" dated December 19, 1997 (AE-MWD Agreement) and related documents.
2. **KD's Transportation of other supplies.** KD may transport water in the AE Intake Canal, subject to any and all uses by AE, which shall maintain first priority. AE's use includes, but is not limited to, direct deliveries to AE landowners, spreading, transfers, exchanges and implementing its own programs with others, including the program under the AE-MWD Agreement. AE will endeavor to meet KD's requested use of the AE

Intake Canal, consistent with the foregoing priority for use by AE, and subject to the following conditions:

- a. **Scheduling.** AE shall have the right to approve, disapprove, or modify any delivery schedule proposed by KD.
 - b. **Article 21 Water.** AE will make its best effort to accommodate the submitted schedule and delivery of KD Article 21 water within available capacity excess to AE's needs in recognition of the limited availability of those supplies.
 - c. **Losses.** AE shall assess 3% losses to KD for all water transported in the AE Intake Canal on behalf of KD. It is understood and agreed that KD may claim those losses as groundwater banking within their boundaries.
 - d. **OM&R Fee.** AE shall assess a pass through O&M fee equal to 30% of the fee as described and escalated in Sections 6.7.4 and 6.4 of the AE-MWD Agreement.
 - e. **Use Fee.** AE may assess a Use Fee. The Use Fee, if any, will be determined in future discussions with KD and after giving due consideration to reciprocal use fees, if any, to be charged by KD to AE for AE's use of KD conveyance facilities, banking facilities, and exchange capabilities.
 - f. **Water Quality Fee.** In recognition that CVC water is generally of poorer quality than Friant-Kern supplies and Kern River supplies AE receives, if and when KD is transporting CVC water (does not apply to Kern River supplies) in the AE Intake Canal, KD shall pay AE a \$2.50/AF Water Quality fee for the KD water being blended with AE water. This is a 2004 rate and said rate will be escalated as per item d. above and consistent with Section 6.4 of the AE-MWD Agreement.
3. **Intertie Structures.** KD will have a right to build bi-directional intertie structures connecting the AE Intake Canal and KD canals. KD may also build facilities to facilitate reverse flow of the Intake Canal. The locations and specifications of all facilities are subject to approval by AE. KD shall pay the capital cost to construct the new facilities. All facilities on AE Right-of-Way (R/W) shall be owned and operated by AE, which may, at its discretion, delegate operation to KD from time to time. Insofar as KD is constructing facilities upon or operating facilities on any portion of AE's R/W, KD shall execute AE's standard License to Encroach agreements.

4. **Groundwater Wells.** KD will have a right to construct groundwater recovery wells on the AE Intake Canal RW, subject to negotiation and execution of a separate joint construction, ownership, and operating agreement to address all issues associated with this element of joint use of facilities.
5. **Term.** This MOU shall be effective immediately when signed and shall remain effective through November 4, 2035, provided however, this MOU shall terminate if both the Early Implementation is terminated and the CVC Agreement is not executed. This MOU may be renewed upon mutually agreeable terms and conditions.
6. **Complete Agreement/Incorporation Into Banking Agreements.** This agreement constitutes the whole and complete agreement of the parties regarding KD's use of AE's Intake Canal as herein provided.
7. **Notice Clause.** All notices required by this agreement shall be sent via first class United States mail to the following and shall be deemed delivered three days after deposited in the mail:

Steven C. Collup
Arvin-Edison Water Storage District
P. O. Box 175
Arvin, CA 93203-0175

L. Mark Mulkay
Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

Notice of changes in the representative or address of a Party shall be given in the same manner.

8. **California Law Clause.** All provisions of this agreement and all rights and obligations of the parties hereto shall be interpreted and construed according to the laws of the State of California.
9. **Successors and Assigns.** This agreement shall bind and inure to the benefit of the successors and assigns of the parties.
10. **Severability.** The rights and privileges set forth in this agreement are severable and the failure or invalidity of any particular provision of this agreement shall not invalidate the other provisions of this agreement; rather all other provisions of this agreement shall continue and remain in full force and effect notwithstanding such partial failure or invalidity.
11. **Force Majeure.** All obligations of the parties shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or

causes beyond the control of the parties. In no event shall any liability accrue against a party, or its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this paragraph.

IN WITNESS WHEREOF the parties have executed this agreement this 21st day of December, 2004 at Bakersfield, California.

ARVIN-EDISON WATER STORAGE DISTRICT

By: Steve Collup
Engineer-Manager Steven C. Collup

KERN DELTA WATER DISTRICT

By: L. Mark Mulkey
General Manager L. Mark Mulkey

BEFORE THE BOARD OF DIRECTORS OF
ARVIN-EDISON WATER STORAGE DISTRICT

IN THE MATTER OF:

RESOLUTION NO. 01-25

AUTHORIZING THE INVESTIGATION OF WATER MANAGEMENT
OPPORTUNITIES WITH KERN DELTA WATER DISTRICT

WHEREAS, Arvin-Edison Water Storage District (Arvin-Edison) and Kern Delta Water District (Kern Delta) are special districts, organized under the laws of the State of California, serving Kern County, with service areas of approximately 132,000 acres and 125,000 acres, respectively; and

WHEREAS, the goals of both districts are to provide a reliable, affordable water supply to landowners and to improve groundwater conditions; and

WHEREAS, the districts are located adjacent to one another, share a common boundary, and overly a contiguous groundwater basin; and

WHEREAS, water service within both districts are dependent upon conjunctive use of the underlying groundwater supplies and imported surface water supplies to meet their predominantly agricultural areas; and

WHEREAS, Arvin-Edison has contracted for a Friant-Kern Central Valley Project supply of up to 351,675 acre-feet per year, and Kern Delta has contracted for a State Water Project supply of up to 25,500 acre-feet per year and administers pre-1914 Kern River water rights under which it has historically imported up to 225,000 acre-feet per year; and

WHEREAS, the districts combined, operate various water conveyance facilities totaling approximately 180 miles of canals and 180 miles of pipelines, with interties with the California Aqueduct, Cross Valley Canal, Friant-Kern Canal, and Kern River, and

WHEREAS, both districts have constructed or are in the process of constructing groundwater banking facilities to be operated for the benefit of district landowners and third parties, with Arvin-Edison's capability to bank and/or extract at 150,000 acre-feet per year and Kern Delta's capacity to bank and/or extract projected to be at 60,000 acre-feet per year; and

WHEREAS, Arvin-Edison has contracted with Metropolitan Water District of Southern California (MWD) to provide water banking services to MWD and Kern Delta is currently negotiating a contract to also provide water banking services to MWD; and

WHEREAS, the districts have the combined capability to transfer or exchange water and/or otherwise pursue opportunities to coordinate water management activities with

various State, Federal, and local agencies, as well as environmental groups, and private parties throughout the State of California; and

WHEREAS, the districts desire to investigate programs of mutual benefit, which will further enhance their individual and collective abilities to manage their various water supplies and reduce their costs.

NOW, THEREFORE, BE IT RESOLVED that this Board of Directors has directed staff and consultants to explore, investigate, and identify mutually beneficial activities that may be implemented with Kern Delta within the following broad categories:

- a) **Coordinated Use of Groundwater Basin:** Coordinated use of the groundwater basin underlying the two districts to meet existing and future water supply needs for the districts' landowners and joint use of groundwater banking facilities for the districts' mutual benefit, as well as benefits for third parties.
- b) **Joint Regulation of Surface Water Supplies:** Transfers/Exchanges between the two districts of available water resources to maximize the water supply reliability and groundwater benefit while minimizing cost; and
- c) **Facilities Use and Interconnections:** Use existing and proposed conveyance facilities throughout and between the two districts to enhance water delivery operations, reduce losses, maximize deliveries and minimize cost.

All the foregoing being on motion of Director Valpredo, seconded by Director Moore, and authorized by the following vote, to wit:

AYES: Directors' Frick, Moore, Fanucchi, Fry, Johnston, Valpredo, and Lehr.

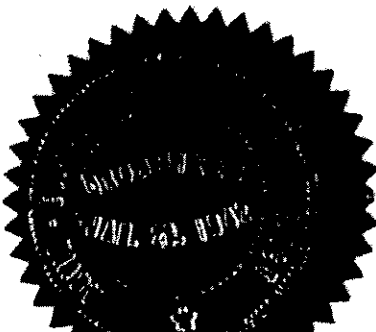
NOES: None

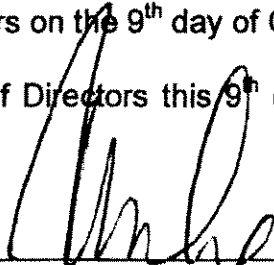
ABSTAIN: None

ABSENT: Directors' Giumarra and Camp.

I HEREBY CERTIFY that the foregoing resolution is the resolution of said District as duly passed and adopted by said Board of Directors on the 9th day of October 2001.

WITNESS my hand and seal of said Board of Directors this 9th day of October 2001.





JOHN C. MOORE
Secretary-Treasurer
of the Board of Directors



State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

POINT OF DELIVERY AGREEMENT AMONG
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AND
KERN COUNTY WATER AGENCY
FOR THE
KERN DELTA WATER DISTRICT
WATER MANAGEMENT PROGRAM

SWPAO #03019

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

POINT OF DELIVERY AGREEMENT AMONG
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AND
KERN COUNTY WATER AGENCY
FOR THE
KERN DELTA WATER DISTRICT
WATER MANAGEMENT PROGRAM

THIS AGREEMENT (#03019) is made this 30th day of August, 2004, pursuant to the provisions of the California Water Resources Development Bond Act, and other applicable laws of the State of California, among the Department of Water Resources, herein referred to as the "DEPARTMENT," the Kern County Water Agency, herein referred to as the "AGENCY," a political subdivision of the State of California created by an Act of the California State Legislature (Statutes 1961, Chapter 1003 or as amended), and the Metropolitan Water District of Southern California, herein referred to as "METROPOLITAN," a metropolitan water district incorporated pursuant to an Act of the California State Legislature (Statutes 1969, Chapter 209 as amended). DEPARTMENT, AGENCY and METROPOLITAN may be referred to individually by name as "Party" or collectively as "Parties."

RECITALS

- A. The DEPARTMENT and METROPOLITAN have entered into a water supply contract, dated November 4, 1960, providing that the DEPARTMENT shall supply certain quantities of water to METROPOLITAN, and providing that

METROPOLITAN shall make certain payments to the DEPARTMENT, and setting forth the terms and conditions of such payment (hereinafter the "METROPOLITAN Water Supply Contract").

- B. The DEPARTMENT and AGENCY have entered into a water supply contract, executed November 15, 1963, providing that the DEPARTMENT shall supply certain quantities of water to AGENCY, and providing that AGENCY shall make certain payments to the DEPARTMENT, and setting forth the terms and conditions of such payment (hereinafter the "AGENCY Water Supply Contract").
- C. METROPOLITAN has entered into an agreement with the Kern Delta Water District, herein referred to as "Kern Delta," an independent public water district within the AGENCY service area boundary, entitled "Agreement Between Kern Delta Water District and The Metropolitan Water District of Southern California for a Water Management Program," executed May 27, 2003 and attached hereto as Exhibit A. Said agreement, hereinafter referred to as the "METROPOLITAN/Kern Delta Program Agreement," provides for, among other things, terms and conditions between METROPOLITAN and Kern Delta for storage and recovery, in the groundwater basin underlying Kern Delta, of METROPOLITAN's water and other water acquired by Kern Delta on METROPOLITAN's behalf.
- D. Based on a historic exchange between Kern Delta and Buena Vista Water Storage District, herein referred to as "Buena Vista," METROPOLITAN's water may, at times, be delivered to Buena Vista's turnouts in Reaches 10A, 12E, and

- 13B, in which case a like amount of Buena Vista's Kern River water will be delivered to Kern Delta for storage in the groundwater basin or for in-lieu water supply.
- E. The DEPARTMENT and AGENCY have entered into an agreement entitled "Agreement Among Department of Water Resources, State of California, and Kern County Water Agency for Introduction of Local Water into the California Aqueduct" executed December 15, 1998 and attached hereto as Exhibit D. Said agreement, herein referred to as the "AGENCY CVC Turn-in Agreement" provides for the terms and conditions between the DEPARTMENT and AGENCY for the introduction of Local Water into the California Aqueduct from the Cross Valley Canal Turnout.
- F. Pursuant to Article 15(a) of the METROPOLITAN Water Supply Contract, the DEPARTMENT hereby finds that the delivery and temporary storage of water outside METROPOLITAN's service area under the METROPOLITAN/Kern Delta Program Agreement and this Agreement will not materially impair METROPOLITAN's capacity to make payments to the DEPARTMENT and consents to such delivery and temporary storage in accordance with this Agreement and related agreements.
- G. The Parties recognize that a legal challenge to the Monterey Amendment (Amendment 25 to the METROPOLITAN Water Supply Contract and Amendment 23 to the AGENCY Water Supply Contract) is pending and intend that this Agreement be implemented based on the Water Supply Contracts as

they existed prior to the Monterey Amendment, and without regard to the outcome of the litigation on the Monterey Amendment.

- H. Compliance with the California Environmental Quality Act for this Agreement and related agreements consists of an Environmental Impact Report prepared by Kern Delta acting as lead agency. Kern Delta approved the Environmental Impact Report and adopted Findings of Fact, a Statement of Overriding Considerations and a Mitigation and Monitoring Program on November 12, 2002, prior to entering into the METROPOLITAN/Kern Delta Program Agreement on November 19, 2002. METROPOLITAN, acting as a responsible agency, considered and approved the Environmental Impact Report on November 19, 2002. The DEPARTMENT, as responsible agency, reviewed and considered Kern Delta's EIR and findings prior to entering into this Agreement.

AGREEMENT

The DEPARTMENT approves delivery into and out of the California Aqueduct of a portion of METROPOLITAN's approved State Water Project (SWP) supplies that may be or have been delivered for storage and later recovery in the groundwater basin underlying Kern Delta in accordance with the METROPOLITAN/Kern Delta Program Agreement and the AGENCY CVC Turn-in Agreement under the following terms and conditions:

1. PURPOSE

The purpose of this agreement, hereinafter "Point of Delivery Agreement" is to set forth provisions governing the delivery of METROPOLITAN's approved SWP supplies for storage in the groundwater basin underlying Kern Delta and for the return of such water from the AGENCY's CVC Turnout in Reach 12E, any future Agency turn-in facility authorized by a separate agreement with the DEPARTMENT, and/or by exchange of METROPOLITAN's stored water for a like amount of AGENCY's approved SWP supplies or other water delivered to Agency's service area through the California Aqueduct utilizing these turnouts pursuant to a DEPARTMENT-approved conveyance agreement.

2. TERM

Upon execution, this Point of Delivery Agreement shall be effective as of December 30, 2003, and shall terminate upon expiration of the term of either the METROPOLITAN or AGENCY Water Supply Contracts, which ever occurs first.

3. USE OF STORAGE WATER

- a. Water delivered by the DEPARTMENT on behalf of METROPOLITAN under this Point of Delivery Agreement will not be sold to Kern Delta but will be temporarily stored for later delivery to METROPOLITAN's service area. The specific provisions for storage and recovery of METROPOLITAN's water within the Kern Delta service area boundary portion of the AGENCY's service area are governed by the METROPOLITAN/Kern Delta Program Agreement. As provided in

Article 3 of said agreement, 89 percent of METROPOLITAN's water delivered to Kern Delta for storage will be returned to METROPOLITAN for use in METROPOLITAN's service area in future years, unless METROPOLITAN and Kern Delta agree that actual losses are different than the assumed 11 percent as therein provided.

- b. In the event return water is delivered to METROPOLITAN by exchange, the Parties acknowledge that Kern Delta shall be entitled to an equivalent amount of METROPOLITAN's water previously stored in Kern Delta.

4. USE OF CALIFORNIA AQUEDUCT CAPACITY FOR STORAGE/RETURN WATER

- a. Conveyance of the storage and return water in the California Aqueduct shall be in accordance with a schedule which has been reviewed and approved by the DEPARTMENT pursuant to applicable provisions of the AGENCY's and METROPOLITAN's Water Supply Contracts.
- b. Kern Delta has entered into agreements with the Buena Vista Water Storage District, entitled "Water Exchange Agreement," executed October 27, 1972 and "Water Exchange Agreement No. 2," executed March 16, 1975 and attached hereto as Exhibits B and C. Said Agreements provide for a long-term exchange whereby Kern Delta's State Water Project water is delivered to Buena Vista and like amounts of Buena Vista's Kern River Water is delivered to Kern Delta. Under certain conditions, METROPOLITAN's water may be delivered to Buena Vista's turnouts in Reaches 10A, 12E, and 13B, and like amounts of Buena

Vista's Kern River water will be delivered to Kern Delta for storage in the groundwater basin or for in-lieu water supply in accordance with the terms of these agreements.

- c. Charges for the conveyance of the storage and return water shall be determined as set forth in this Point of Delivery Agreement.

METROPOLITAN shall be responsible for any adverse impacts that may result from deliveries under this Point of Delivery Agreement as determined by the DEPARTMENT. In itself, an increase or change in timing of deliveries to METROPOLITAN as a result of this Point of Delivery Agreement shall not be considered as an adverse impact.

5. DELIVERY SCHEDULES FOR STORAGE WATER

- a. DEPARTMENT Approval of Delivery Schedules: In coordination with the AGENCY, METROPOLITAN shall be responsible for scheduling with the DEPARTMENT delivery of the water to be placed into storage. All water delivery schedules and revisions shall be in accordance with Article 12 of METROPOLITAN's Water Supply Contract with the DEPARTMENT.
- b. AGENCY Approval of Delivery Schedules: As part of coordinating delivery schedules with the AGENCY, METROPOLITAN shall submit a delivery schedule of the water to be placed into storage to the AGENCY and Kern Delta for review and approval. The AGENCY and Kern Delta shall review the proposed schedule with METROPOLITAN, and after consultation with Kern Delta, the AGENCY agrees to inform METROPOLITAN of its

decision to either approve, propose modifications or withhold approval as promptly as possible. The AGENCY agrees that it shall not arbitrarily withhold approval or propose modifications. The AGENCY may withhold approval or propose modifications to the delivery schedule if the proposed deliveries would interfere with the AGENCY's water management activities including its finances, water supply or operations. The AGENCY may deny approval of, or propose modification to METROPOLITAN's deliveries under this Point of Delivery Agreement if, on the basis of a with and without analysis, the AGENCY determines that such deliveries would adversely impact the AGENCY's water management activities, finances, water supply or operations, and METROPOLITAN or Kern Delta do not agree to mitigate for such impacts. The base case (without analysis) shall be those conditions estimated to occur in the absence of the METROPOLITAN/Kern Delta Program. In itself, an increase or change in timing of deliveries to METROPOLITAN as a result of this Point of Delivery Agreement shall not be considered as an adverse impact. Upon receipt of the AGENCY's approval, METROPOLITAN shall submit the delivery schedule to the DEPARTMENT. The DEPARTMENT shall not approve a METROPOLITAN schedule which is not approved by the AGENCY.

6. APPROVED TABLE A WATER

Table A water shall mean the amount of project water set forth in Table A of the METROPOLITAN and AGENCY Water Supply Contracts that the DEPARTMENT makes available for delivery to the contractor at the delivery structures provided for such contractor. Water returned to METROPOLITAN under this Point of Delivery Agreement after storage by Kern Delta shall not be considered by the DEPARTMENT in the determination of approved annual Table A water under Article 18 or allocation of other SWP water to METROPOLITAN under Article 21(a) of METROPOLITAN's Water Supply Contract.

7. DELIVERY SCHEDULES FOR RETURN WATER

METROPOLITAN and Kern Delta shall, as soon as practicable, submit a schedule to the AGENCY specifying: (1) the quantity of METROPOLITAN's previously stored water to be returned by exchange of approved SWP supplies or other supplies scheduled for delivery to AGENCY's service area through the California Aqueduct pursuant to a DEPARTMENT-approved conveyance agreement; and (2) the quantity of such water that will be returned by direct delivery into the California Aqueduct. Said schedule shall also include a comprehensive summary of water previously stored and returned under the METROPOLITAN/Kern Delta Program and indicate loss factors associated with storage of this water. If delivered by exchange, the AGENCY and Kern Delta shall provide the DEPARTMENT with copies of all necessary agreements. The AGENCY may propose modifications to the proposed schedule for the return of

METROPOLITAN's previously stored water if, on the basis of a with and without analysis, the AGENCY determines that such scheduled deliveries will adversely impact the AGENCY's water management activities, finances, water supply or operations and METROPOLITAN or Kern Delta do not agree to mitigate for such impacts. The base case (without analysis) shall be those conditions estimated to occur in the absence of the METROPOLITAN/Kern Delta Program. In itself, an increase or change in timing of deliveries to METROPOLITAN as a result of this Point of Delivery Agreement shall not be considered as an adverse impact.

8. RETURN WATER DELIVERED INTO AQUEDUCT

Water delivered from Kern Delta into the California Aqueduct for return to METROPOLITAN shall meet the DEPARTMENT's water quality standards in effect when water is returned. Any turn-in facility used to return water to the Aqueduct must be authorized by a separate agreement with the DEPARTMENT such as the AGENCY CVC Turn-in Agreement (Exhibit D).

9. STORAGE/RETURN WATER RECORDS

METROPOLITAN shall certify to the DEPARTMENT's SWP Analysis Office by January 31, of each year the following monthly information for the previous calendar year:

- a. the quantity of water delivered to Kern Delta under this Point of Delivery Agreement and the aqueduct reach to which it was delivered;
- b. the quantity of water stored for METROPOLITAN under the METROPOLITAN/Kern Delta Program Agreement;

- c. the actual losses of stored water, if METROPOLITAN and Kern Delta agree that actual losses are different than the eleven percent assumed in the METROPOLITAN/Kern Delta Program Agreement;
- d. the quantity of water returned to METROPOLITAN under the AGENCY CVC Turn-in Agreement or any other approved turn-in agreement and;
- e. the quantity of water returned to METROPOLITAN by exchange for the AGENCY's approved SWP supplies.

10. CHARGES

- a. Water delivered to storage: METROPOLITAN shall pay the DEPARTMENT the same costs (including adjustments) for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as it pays for the transportation of approved Table A water to the AGENCY's turnouts in Reach 10A, KWB Turnout in Reach 13B, or the AGENCY's CVC Turnout in Reach 12E. In addition, METROPOLITAN shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the DEPARTMENT. Incremental costs shall mean those non-power costs which would not be incurred if such water were scheduled for or delivered to METROPOLITAN's service area instead of to interim storage outside the service area. Since METROPOLITAN is a participating contractor in the repayment of the SWP facilities to be used, METROPOLITAN shall not pay a use of

facilities charge for use of a reach for the delivery of water to, or return of water from, interim storage.

- b. Water delivered from storage: For any stored water returned to a SWP transportation facility for final delivery to its service area, METROPOLITAN shall pay the DEPARTMENT the same costs for power resources (including on-aqueduct, off-aqueduct, and any other power) incurred in the transportation of such water as calculated from the point of return to the aqueduct to the turn-out in METROPOLITAN's service area. In addition, METROPOLITAN shall pay all incremental operation, maintenance, and replacement costs, and any other incremental costs, as determined by the DEPARTMENT. Incremental costs shall mean those nonpower costs which would not be incurred if such water were scheduled for or delivered to METROPOLITAN's service area instead of to and from interim storage outside the service area. Since METROPOLITAN is a participating contractor in the repayment of the SWP facilities to be used, METROPOLITAN shall not pay a use of facilities charge for the delivery of water to, or return of water from, interim storage.
- c. Water delivered by exchange: If the AGENCY provides return water to Metropolitan by exchange, i.e. by releasing approved SWP supplies or other approved supplies available in the California Aqueduct for delivery to METROPOLITAN, the AGENCY shall only be charged for power resources as if the water were conveyed to the AGENCY through Banks

Pumping Plant and Dos Amigos Pumping Plant to a delivery point in Reach 10A, 12E or 13B. METROPOLITAN shall be responsible for all costs beyond Reach 10A, 12E or 13B, pursuant to Paragraph 10(b) above.

- d. When return water is delivered into the California Aqueduct pursuant to Paragraph 10(b), the AGENCY shall not be charged for power resources for such return water.
- e. In addition to the charges identified above, METROPOLITAN agrees to pay to the DEPARTMENT any additional identified increased non-power costs that the DEPARTMENT or other SWP contractors would otherwise incur as a result of the DEPARTMENT providing service under this Point of Delivery Agreement.
- f. Charges and payment terms shall be in accordance with METROPOLITAN's and the AGENCY's Water Supply Contracts as amended in the future.

11. APPROVALS

The delivery of water under this Point of Delivery Agreement shall be contingent on and subject to any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable regulations in effect at the time of delivery or return. METROPOLITAN shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order. METROPOLITAN shall furnish to the DEPARTMENT

copies of all approvals acquired for the delivery and storage of water under this Point of Delivery Agreement.

12. LIABILITY

- a. The DEPARTMENT shall provide water delivery service only and assumes no liability beyond the point of delivery from the California Aqueduct to storage in the groundwater basin underlying Kern Delta, or before return water enters the SWP system from designated turn-in facilities.
- b. In the event a claim of liability against the DEPARTMENT or the AGENCY or their officers or their employees, individually or severally, arises as a result of this Point of Delivery Agreement or other related agreements, METROPOLITAN shall defend, indemnify, and hold the AGENCY, the DEPARTMENT, and any of their officers or employees harmless from any such claim.

13. NO MODIFICATION OF CONTRACTS

This Point of Delivery Agreement shall not be interpreted to modify the terms or conditions of the AGENCY Water Supply Contract, as amended, or the METROPOLITAN Water Supply Contract, as amended. Unless expressly provided herein, the terms and conditions of the METROPOLITAN Water Supply Contract and the AGENCY Water Supply Contract, including, but not limited to, Article 18 (f) and future amendments, apply to this Point of Delivery Agreement.

14. CLAIMS DISPUTE

In the event of dispute regarding interpretation or implementation of this Agreement, the Director of the Department of Water Resources, the Chief Executive Officer of METROPOLITAN, and the general manager of the AGENCY shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, the Parties shall use the service of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may at its option pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

15. ASSIGNMENT OF AGREEMENT

Without the prior written consent of the DEPARTMENT, AGENCY and METROPOLITAN, this Point of Delivery Agreement is not assignable by the AGENCY or METROPOLITAN in whole or in part.

16. PARAGRAPH HEADINGS

The paragraph headings of this Point of Delivery Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

17. TERMS TO BE REASONABLE

Where the terms of this Point of Delivery Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

18. FIVE YEAR REVIEW

Every five years the Parties shall evaluate this Agreement, related agreements, and then-existing conditions from operational, water management, legal, and environmental perspectives. Modifications based on changed circumstances may be suggested by any Party and with the consent of all parties, incorporated into this Agreement as appropriate.


19. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Point of Delivery Agreement on behalf of the party for whom they sign. A copy of the resolution or other documentation authorizing the AGENCY and

METROPOLITAN to enter into this Point of Delivery Agreement shall be delivered to the DEPARTMENT before water may be introduced into the California Aqueduct under this Point of Delivery Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into this Point of Delivery Agreement.

Approved as to legal form
and Sufficiency


Chief Counsel
DEPARTMENT OF WATER RESOURCES

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES


Deputy Director

8-30-04
Date


KERN COUNTY WATER AGENCY


Name

General Manager
Title

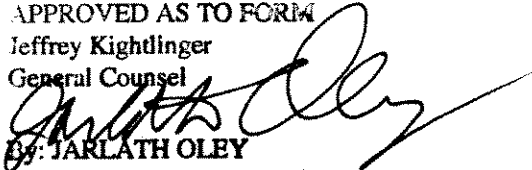
March 22, 2004
Date

METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA


Name

CEO
Title

3/12/04
Date

APPROVED AS TO FORM
Jeffrey Kightlinger
General Counsel

By: JARLATH OLEY
Sr. Deputy General Counsel





GENE R. McMURTREY
ROBERT W. HARTSOCK
JAMES A. WORTH
DANIEL N. RAYTIS

LAW OFFICES
McMURTREY, HARTSOCK & WORTH
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BAKERSFIELD, CALIFORNIA 93301

AREA CODE 661
TELEPHONE 322-4417
FAX 322-8123

December 22, 2004

The Metropolitan Water District
of Southern California
P. O. Box 54153
Los Angeles, CA 90054-0153

Re: Opinion of Counsel

To The Metropolitan Water District of Southern California:

This office has acted as legal counsel to Kern Delta Water District (Kern Delta) with regard to the Agreement Between Kern Delta Water District And The Metropolitan Water District of Southern California For A Water Management Program dated May 27, 2003 and the First Amendment To Agreement Between Kern Delta Water District And The Metropolitan Water District of Southern California For A Water Management Program dated December 21, 2004, collectively referred to as the "Agreement."

In rendering our opinion we have examined such documents and records as we have deemed necessary for the purposes of the opinion herein expressed. We have also relied upon information provided to us by Kern Delta. We express no opinion with respect to the effect of any law other than the laws of the State of California and the federal laws of the United States.

In acting in our capacity as legal counsel to Kern Delta, we have formed, and provide to The Metropolitan Water District of Southern California our opinion that: (i) as respects the effectiveness of the Agreement, all submissions required of Kern Delta to federal, state and local governmental authorities have been made, all necessary approvals have been obtained, and all conditions imposed by approvals are satisfied or will be (and may be) satisfied; (ii) Kern Delta, acting as lead agency, as defined in the California Environmental Quality Act (CEQA) has adopted a Final Environmental Impact Report and Notice of Determination for this project pursuant to CEQA; and (iii) the Agreement has been duly authorized, executed and delivered by Kern Delta and, assuming due authorization, execution and delivery by The Metropolitan Water District of Southern California, constitutes the legally valid and binding obligation of Kern Delta, enforceable against Kern Delta in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditors' rights generally, or by the application of equitable principles, including



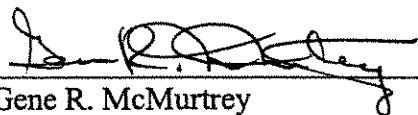
The Metropolitan Water District
of Southern California
December 22, 2004
Page 2

concepts of materiality, reasonableness, good faith and fair dealing, and the possibility of the unavailability of specific performance or injunctive relief, regardless of whether considered in a proceeding in equity or at law.

The foregoing opinions shall not be relied upon by any party other than The Metropolitan Water District of Southern California, its successors and/or assigns, and their respective counsel.

Sincerely,

McMURTREY, HARTSOCK & WORTH

By: 
Gene R. McMurtrey

GRM:gg

cc: Kern Delta Water District







Kern Delta Water District

501 TAFT HIGHWAY
BAKERSFIELD, CALIFORNIA 93307-8247
TELEPHONE (661) 834-4656
FAX (661) 836-1705

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District Engineer
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Attorneys-at-Law
Boyle Engineering
Consulting Engineers

December 23, 2004

Mr. Dirk Reed
The Metropolitan Water District
of Southern California
P. O. Box 54153
Los Angeles, CA 90054-0153

Re: Kern Delta Water District Banking Project


Dear Dirk:

On December 22, 2004 I forwarded to you, under cover letter, various documents regarding the Conditions Precedent to the Agreement regarding the above referenced banking project. Included with the submittal were four (4) Certifications that Conditions Precedent Have Been Satisfied or Waived. The letter also conditioned delivery of the Certifications upon Kern Delta receiving Metropolitan's Counsel's Opinion as required by section 8.1.5. Specifically the letter stated:

Section 8.1.7: Enclosed herewith please find four (4) Certifications That Conditions Precedent Have Been Satisfied or Waived as required by this section. Please note all four (4) Certifications have been executed by Kern Delta. Upon your receipt and concurrence, please have someone from Metropolitan execute all four and return two of the original Certifications to Kern Delta. Please also note that the delivery of these Certifications to Metropolitan is contingent upon receipt, by Kern Delta, of Metropolitan's Counsel's Opinion as required in Section 8.1.5.

Please be advised that Kern Delta, by this letter, eliminates the contingency stated above and unconditionally delivers the Certifications That Conditions Precedent Have Been Satisfied or Waived to Metropolitan.

Sincerely,


L. Mark Mulkay
General Manager
Kern Delta



Kern Delta Water District

501 TAFT HIGHWAY
BAKERSFIELD, CALIFORNIA 93307-6247
TELEPHONE (661) 834-4656
FAX (661) 836-1705



BOARD OF DIRECTORS

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David L. Kaiser, *Vice President*
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L. Mark Mulkay
General Manager
Sunny Kapoor
Asst. General Manager/Controller
Sheridan Nicholas
District Engineer
McMurtrey, Hartssock & Worth
Attorneys-at-Law
Boyle Engineering
Consulting Engineers

December 22, 2004

Mr. Dirk Reed
The Metropolitan Water District
of Southern California
P. O. Box 54153
Los Angeles, CA 90054-0153

Re: Kern Delta Water District Banking Project

Dear Dirk:

I have completed a review of the Conditions Precedent as set forth in the First Amendment to Agreement Between Kern Delta Water District and The Metropolitan Water District of Southern California For a Water Management Program and provide the following comments with respect to same:

Section 8.1.1: I am enclosing a copy of the Arvin-Edison Memorandum of Understanding (MOU) and documents relating thereto. It is my understanding this MOU is acceptable to The Metropolitan Water District.

Section 8.1.2: It is my understanding that the commitment to cooperate in Agreement implementation as discussed in this paragraph is as set forth in the Point of Delivery Agreement which is already in the possession of Metropolitan.

Section 8.1.3: See 8.1.2 above.

Section 8.1.4: Enclosed herewith is the original Opinion of Kern Delta's counsel as required by this section.

Section 8.1.5: Kern Delta awaits the Opinion of Metropolitan's counsel as required by this section.



Mr. Dirk Reed
The Metropolitan Water District
of Southern California
December 22, 2004
Page 2

Section 8.1.6: Although no certification or documentation is required by Kern Delta pursuant to this section, please be advised that Kern Delta is not aware of any litigation, proceeding, or investigation, either pending or threatened which relates to the activities, parties or facilities contemplated by the above-referenced agreement. This representation specifically includes the fact that Kern Delta is not aware of any challenge pertaining to Kern Delta's CEQA process.

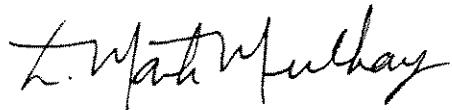
Section 8.1.7: Enclosed herewith please find four (4) Certifications That Conditions Precedent Have Been Satisfied or Waived as required by this section. Please note all four (4) Certifications have been executed by Kern Delta. Upon your receipt and concurrence, please have someone from Metropolitan execute all four and return two of the original Certifications to Kern Delta. Please also note that the delivery of these Certifications to Metropolitan is contingent upon receipt, by Kern Delta, of Metropolitan's Counsel's Opinion as required in Section 8.1.5.

Section 8.1.8: As you are aware, the Agreement was filed in the Kern County Recorder's Office on June 20, 2003. Kern Delta is in the process of having the First Amendment also recorded.

It is my understanding that Metropolitan Water District's concurrence and execution of the above-referenced documents meets all of the Conditions Precedent as set forth in the agreement and allows Kern Delta to submit its first invoice to Metropolitan. Such invoice will be submitted under separate cover.

Of course, should you have any questions, comments or concerns, please contact me at your very earliest convenience.

Sincerely,



L. Mark Mulkey, General Manager

LMM:gg

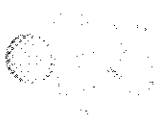
Enclosures

cc: McMurtrey, Hartsock & Worth









MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

December 23, 2004

Mr. L. Mark Mulkay
Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

Dear Mr. Mulkay:

Kern Delta/Metropolitan Water Management Program

I am writing in response to your letters, dated December 22 and 23, 2004. In accordance with Section 8.1 (Conditions Precedent) of the Water Management Agreement (Agreement) between Kern Delta Water District (Kern Delta) and The Metropolitan Water District of Southern California, Metropolitan concurs with Kern Delta that the Conditions Precedent have been satisfied or waived.

Enclosed for your file is Metropolitan's executed copy of Exhibit E, Certification that Conditions Precedent have been Satisfied or Waived. If you should have any comments or concerns, please contact Mr. Russ Ryan of my staff at (213) 217-6625.

Very truly yours,

ROR Ronald R. Gastelum
Chief Executive Officer

RER:adminwrm
o:\s\c\RER_Kern Delta Metropolitan Water Management Prgrm.doc

Enclosure



EXHIBIT E

**CERTIFICATION THAT CONDITIONS PRECEDENT
HAVE BEEN SATISFIED OR WAIVED**

Kern Delta Water District and The Metropolitan Water District of Southern California hereby jointly certify that:

1. All conditions precedent set forth in Section 8.1 of the Agreement titled First Amendment to Agreement Between Kern Delta Water District and the Metropolitan Water District of Southern California for a Water Management Program, dated December 21, 2004, have been satisfied or waived.
2. No Event of Default exists under the Agreement.

Capitalized terms used herein and not otherwise defined are as defined in the Agreement. This Certification may be executed in counterparts.

Dated: December 22, 2004

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By: *Della C. Merri*

KERN DELTA WATER DISTRICT

By: *L. Mantel*



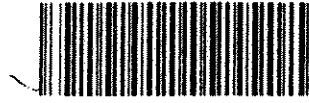




Recorded at the request of
Public

DOC#: 0203122030

Stat Types: 1 Pages: 92



Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Kern Delta Water District
501 Taft Highway
Bakersfield, California 93307

(Space above this line is reserved for County Recorder's use.)

Agreement #58053

**AGREEMENT BETWEEN
KERN DELTA WATER DISTRICT
AND THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA FOR A
WATER MANAGEMENT PROGRAM**

THIS AGREEMENT ("Agreement"), dated as of MAY 27, 2003,

is entered into by and between the **KERN DELTA WATER DISTRICT** ("Kern Delta"), and
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
("Metropolitan"). Metropolitan and Kern Delta may be referred to individually as Party or
collectively as Parties.

PREAMBLE

This Agreement is in furtherance of development of a water management program
("Regulation Program") generally described in the "Principles For An Agreement Between The
Metropolitan Water District of Southern California And Kern Delta Water District," a copy of



Recorded at the request of
Public

**Recording Requested by
and when Recorded Return to:**

Kern Delta Water District
501 Taft Highway
Bakersfield, CA 93307

DOC#: 0205001250



Stat Types: 1 Pages: 34

Fees	0.00
Taxes	0.00
Others	0.00
PAID	\$0.00

(Space above this line is reserved for County Recorder's use.)

**FIRST AMENDMENT TO AGREEMENT BETWEEN
KERN DELTA WATER DISTRICT
AND THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA FOR A
WATER MANAGEMENT PROGRAM**

THIS FIRST AMENDMENT ("First Amendment"), dated as of December 21, 2004 **TO THE AGREEMENT** between Kern Delta Water District and The Metropolitan Water District of Southern California, dated as of May 27, 2003, is entered into by and between the **KERN DELTA WATER DISTRICT** ("Kern Delta"), and **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA** ("Metropolitan"). Metropolitan and Kern Delta may be referred to individually as Party or collectively as Parties.

RECITALS

A. Kern Delta and Metropolitan have heretofore entered into a written agreement entitled "Agreement Between Kern Delta Water District and The Metropolitan Water District of Southern California For a Water Management Program" dated May 27, 2003 ("Original Agreement") recorded as Document #0203122030 recorded June 20, 2003.

B. The Original Agreement was and is made in furtherance of development of a water management program ("Regulation Program") described therein being implemented by Kern Delta and Metropolitan for the purpose of enhancing the water supply available to both entities. The Original Agreement was and is also in furtherance of a Transportation Program ("Transportation Program") under which Kern Delta will provide Metropolitan certain rights to utilize Kern Delta transportation facilities as well as obtain for the benefit of Metropolitan rights to utilize certain capacity in transportation facilities owned by others.



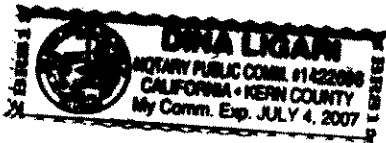
State of California
County of KERN

Title of Document ^{1st} Amendment to Agreement between
KDWD & Metro Political Union

On 22 Dec. 2004, before me, Dina Ligari personally
appeared L. Mark Mulkey and J. Stanley Antognolanni [] personally known to me -
OR -

[] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(s) acted, executed the instrument.

WITNESS my hand and seal.



Dina Ligari

SIGNATURE OF NOTARY



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of LOS ANGELES

On December 17, 2004 before me, Susan S. Kuwaye
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared RONALD R. GASTELUM
Name(s) of Signer(s)

personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Susan S. Kuwaye
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: First Amendment to Agreement Between Kern Delta Water District and the Metropolitan Water District of Southern California for a Water Management
Document Date: December 21, 2004 Number of Pages: 32 Program

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

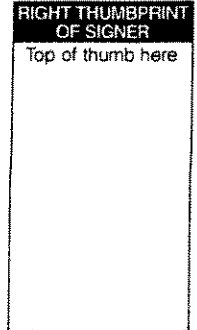
- Individual
- Corporate Officer
- Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

Signer's Name: _____

- Individual
- Corporate Officer
- Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:



**SECOND AMENDED
AGREEMENT BETWEEN
MOJAVE WATER AGENCY
AND
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
FOR A WATER STORAGE PROGRAM**

THIS SECOND AMENDED AGREEMENT BETWEEN MOJAVE WATER AGENCY AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA FOR A WATER STORAGE PROGRAM (“**Agreement**”), dated and effective as of July 14, 2011 is entered into by and between the **MOJAVE WATER AGENCY** (“**Mojave**”), and **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA** (“**Metropolitan**”). Metropolitan and Mojave may be referred to individually as Party or collectively as Parties. Excluding final resolution of payments pending under prior versions, this Agreement completely supersedes all prior versions, including the initial agreement, effective October 20, 2003, and the First Amendment, effective October 1, 2005 for deliveries made after January 1, 2011.

RECITALS

A. Mojave is a water agency formed pursuant to Act 9095 of Deering’s Water Uncodified Acts, Chapter 2146 of Statutes of 1959, as amended. It includes approximately 4,900 square miles within its boundaries. Mojave has, among other things, contracted (“**State Water Contract**”) for a water supply with the California Department of Water Resources (“**DWR**”) providing for delivery to Mojave of Table A Water from the California State Water Project (“**Table A Water**”).

B. Metropolitan is a public agency formed under the Metropolitan Water District Act (Act 9129b of Deering's Water Uncodified Acts). Metropolitan provides imported water to 26 member public agencies to supplement local water supplies within its six county service area located in southern California's coastal plain. Metropolitan obtains its water supplies from the Colorado Aqueduct, the State Water Project, pursuant to a State Water Contract similar to that of Mojave, and other sources. Metropolitan seeks to enter into a program to augment its dry year water supplies by arranging for delivery to Mojave of SWP water ("Storage Water") that is available to Metropolitan and the return by Mojave of a like quantity of SWP water ("Return Water") to Metropolitan from Mojave's Table A Water at the beginning of Reach 23 of the California Aqueduct in subsequent years.

C. Metropolitan and Mojave entered into a mutually beneficial Demonstration Water Exchange Program in 2003. Since the program's inception, Metropolitan successfully delivered and recovered through exchange 44,874 acre-feet of State Water Project supplies. By coordinating each Parties' State Water Project supplies, Metropolitan was able to enhance its dry-year reliability while Mojave was able to reduce its State Water Project operational costs. This Agreement will build upon the success of the Demonstration Exchange Program. This Agreement improves financial accounting of return supplies, defines the return yield of the program, and extends the operational flexibility for the continued benefit of both Parties. Metropolitan and Mojave agree it is mutually advantageous to continue a water storage program as provided in this Agreement, whereby Mojave will accept Storage Water on Metropolitan's behalf and furnish Return Water to Metropolitan upon request.

D. Consistent with the California Environmental Quality Act (CEQA) Mojave, acting as the Lead Agency, completed a Final Environmental Impact Report (FEIR) on January

26, 2006, for the Mojave Water Agency Water Supply Reliability and Groundwater Replenishment Program. Mojave's Board of Directors, on January 26, 2006 held a noticed public hearing, considered, approved and certified the Final EIR by adoption of Resolution No. 818-06, as being in compliance with CEQA and also adopted Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program. Metropolitan's Board of Directors, acting as a responsible agency, on July 12, 2011, also considered and approved the same, and a Notice of Determination to proceed with the Program was posted with the San Bernardino County Clerk of the Board.

ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used.

1.1 **"Agreement"** means, as of any particular time, this Second Amended Agreement Between Mojave Water Agency and the Metropolitan Water District of Southern California for a Water Storage Program, as amended or supplemented by the Parties through that time.

1.2 **"DWR"** means the Department of Water Resources of the State of California.

1.3 **"Storage Account"** means an account maintained by Mojave for the benefit of Metropolitan pursuant to this Agreement in which Storage Water is credited, without loss, upon delivery to the Point of Delivery to Mojave and is debited, without loss, upon delivery of Return Water to the Point of Delivery to Metropolitan.

1.4 **"Storage Account Balance"** means the difference between the credits and debits in the Storage Account.

1.5 **“Storage Water”** means State Project Water which Metropolitan makes available to Mojave at the Point of Delivery to Mojave pursuant to this Agreement which is to be credited pursuant to Section 2.5 (Storage Account and Return Water).

1.6 **“Late Arising Claim”** shall have the meaning set forth in Section 6.2 (Pending and Late Arising Claims).

1.7 **“Mojave Basin Area Adjudication”** means *City of Barstow, et al. v. City of Adelanto, et al.*, Riverside County Superior Court Case No. 208568.

1.8 **“Mojave Basin”** means the groundwater basin underlying the lands within the boundaries of Mojave, which is the same basin referred to as Mojave Basin Area, as described in the Mojave Basin Area Adjudication.

1.9 **“Point of Delivery to Metropolitan”** means the California Aqueduct at the beginning of Reach 23 or another point of delivery agreed to by the Parties.

1.10 **“Point of Delivery to Mojave”** means the California Aqueduct turnout at Reaches 22B and 24, or any other point of delivery agreed to by the Parties.

1.11 **“Program”** means the storage of water provided for in this Agreement.

1.12 **“Return Water”** means State Project Water which Mojave makes available to Metropolitan at the Point of Delivery to Metropolitan, pursuant to this Agreement, which is to be debited pursuant to Section 2.5 (Storage Account and Return Water). Return Water is to be delivered using capacity in the California Aqueduct available to Metropolitan under its State Water Contract after the Point of Delivery to Metropolitan.

1.13 **“State Water Contract”** means the long-term water supply contracts entered into by Metropolitan and Mojave, respectively, with DWR.

1.14 “**Surface Delivery Demands**” means the annual delivery obligation of Mojave to the signatories to the “Agreement for Construction, Operation and Financing of the Morongo Basin Pipeline Project”, with said obligation up to 7,257 acre-feet per year; an annual entitlement exchange with the Antelope Valley-East Kern Water Agency of approximately 1,500 acre-feet per year; and, deliveries to a power generation facility within the City of Victorville of approximately 3,000 acre-feet per year. Surface Delivery Demands vary depending upon local conditions and the Table A Allocation approved by the Department of Water Resources for that year. There may also be specific obligations of Mojave under *City of Barstow et al. v. City of Adelanto et al.* (County of Riverside Superior Court Case No. 208568) that would constitute Surface Delivery Demand.

1.15 “**Warren Basin**” means the groundwater basin underlying lands within the boundaries of Mojave referred to as the Warren Valley Basin as described in *Hi-Desert Water District v. Yucca Water Company Ltd., et al.* (San Bernardino County Superior Court Case No. 172103).

1.16 “**Year**” means a calendar year commencing on January 1 and ending on December 31.

ARTICLE 2. STORAGE AND RETURN WATER

2.1 Source of Water.

Metropolitan shall provide Storage Water at the Point of Delivery to Mojave to be credited to Metropolitan’s Storage Account.

2.2 Storage Water Amounts.

In any year in which Metropolitan offers Storage Water to Mojave and Mojave accepts delivery, a like amount of water will be credited to the Storage Account. Unless mutually agreed by the Parties, the total amount of Storage Water Metropolitan may make available to Mojave under this Agreement is 390,000 acre-feet.

2.3 Scheduling of Storage Water.

Metropolitan shall submit an initial proposed schedule to Mojave for delivery of Storage Water. Mojave, at its sole discretion, may accept or reject the proposed schedule. Upon Mojave's concurrence, no later than thirty (30) days in advance of the date Metropolitan proposes to commence delivery, Metropolitan shall submit a final proposed schedule to Mojave and DWR for delivery of Storage Water for that Year. The Parties can agree, with the DWR's concurrence, that any of Mojave's SWP supplies delivered to Mojave during 2011 may be reclassified as Metropolitan SWP supplies delivered to Mojave for storage under the terms of the Agreement.

2.4 Return Water Amounts, Scheduling and Delivery.

2.4.1 Upon request by Metropolitan, Mojave shall be responsible for scheduling delivery of Return Water to the Point of Delivery to Metropolitan and Metropolitan shall be responsible for scheduling delivery from the Point of Delivery to Metropolitan. Return Water shall be scheduled by Mojave exclusively from the California Aqueduct.

2.4.2 Mojave's obligation to deliver Return Water shall be the lesser of (i) the amount requested by Metropolitan or (ii) the amount calculated by the following formulas, as appropriate:

2.4.2.1 During the period 2011 through 2021, inclusive, Return Amount = (SWP Allocation x Mojave Table A Amount) – (Mojave Table A Amount x 10%).

2.4.2.2 During the period 2022 through 2035, inclusive, Return Amount = (SWP Allocation x Mojave Table A Amount) – (Mojave Table A Amount x 20%).

2.4.2.3 Notwithstanding the above, during any year in which SWP allocations are greater than 60 percent, Return Amount = (SWP Allocation x Mojave Table A Amount) – (Mojave Table A Amount x 20%).

For example, if in 2012 the SWP allocation is 40% and Mojave’s Table A Amount is 82,800 AF, Metropolitan would be able to recover 24,840 acre-feet $((40\% \times 82,800 \text{ AF} = 33,120 \text{ AF}) - (82,800 \text{ AF} \times 0.10 = 8,280) = 24,840 \text{ AF})$. This formula recognizes and reserves to Mojave (i) the amount of water necessary to comply with Surface Delivery Demands and (ii) the amount of water necessary to comply with Mojave obligations under “Water Exchange Agreement Between Mojave Water Agency and Solano County Water Agency” dated November 13, 1997. This formula may be amended upon mutual agreement by both Parties.

2.5 Storage Account and Return Water.

2.5.1 Mojave shall establish a Storage Account. Mojave shall take control and possession of Storage Water at the Point of Delivery to Mojave and shall credit Storage Account in an amount equal to the water so delivered. Metropolitan shall not receive storage rights within Mojave as a result of this Agreement.

2.5.2 Mojave shall accurately maintain the Storage Account and prepare and maintain adequate supporting records. All records shall be subject to audit, review and approval by Metropolitan at Metropolitan's exercise upon reasonable notification to Mojave.

2.5.3 Mojave shall return one acre-foot of Return Water for each acre-foot of Storage Water delivered to it. Upon delivery of Return Water to the Point of Delivery to Metropolitan, Mojave shall debit the Storage Account in an amount equal to the water so delivered.

2.6 Representations and Warranties of Mojave.

As a material inducement to Metropolitan to enter into this Agreement, Mojave represents, warrants and covenants that (i) it has the legal authority to enter into this Agreement, and (ii) that litigation relating to the Mojave Basin, including but not limited to, the Mojave Basin Area Adjudication, does not (a) affect its ability to perform its obligations under this Agreement, (b) impair the validity of this Agreement, or (c) impair the rights of any entity described in subsection (c) of Section 4.1 (Mojave Responsibilities).

ARTICLE 3. COMPENSATION

3.1 Payment Obligations.

3.1.1 Metropolitan shall be responsible for making payments to DWR for delivery of each of acre-foot of (a) Storage Water to the Point of Delivery to Mojave; and (b) Return Water delivered to the Point of Delivery to Metropolitan.

3.1.2 For any Storage Water Metropolitan delivers to Mojave in 2011, Mojave shall pay Metropolitan \$63 for each acre-foot of Storage Water delivered. In subsequent years

that Metropolitan delivers Storage Water to Mojave, this payment will be adjusted upward annually at a rate compounded at four percent (4%) each year. For example, if Metropolitan delivers Storage Water in 2012, Mojave's payment would be \$65.52 for each acre-foot of Storage Water delivered ($\$63 \times 1.04 = \65.52). The Parties may revise the amount of Mojave's payment or the process to establish the payment upon mutual agreement.

3.2 Payment Schedule.

For payment obligations incurred pursuant to Subsection 3.1.2 (Payment Obligations), Metropolitan may only invoice Mojave after Metropolitan delivers Storage Water to Mojave at the Point of Delivery. In all events, Metropolitan may only invoice Mojave annually after January 1 of any year for payments under this Agreement for water delivered in the prior year. Payments shall be due Metropolitan and shall become delinquent forty-five (45) days after Mojave receives the invoice under the terms of this Agreement. Data supporting the amounts invoiced shall be provided upon the request of Mojave.

3.3 Delinquencies.

In addition to other amounts payable, delinquencies shall bear interest at the rate of one percent (1%) per month.

ARTICLE 4. DIVISION OF RISK RESPONSIBILITIES

Mojave and Metropolitan agree to cooperate in reducing, to the greatest extent practicable, the risk from claims arising against any of the Parties from implementation of this Agreement. In the event of claims by third parties relating to this Agreement, the responsibilities of Mojave and Metropolitan shall be divided as follows:

4.1. Mojave Responsibilities.

Mojave shall defend, indemnify and hold harmless Metropolitan and its directors, officers, agents, employees and volunteers against any and all losses, claims, demands and causes of action (herein collectively referred to as “claims”) and shall assume responsibility for payment of any settlements, judgments, costs and attorneys’ fees arising from claims concerning the following:

- (a) Control, carriage, transportation, handling, use, disposal, or distribution of Storage Water once furnished by Metropolitan to the Point of Delivery to Mojave;
- (b) Control, carriage, transportation, handling, use disposal, or distribution of Return Water to the Point of Delivery to Metropolitan;
- (c) Any contest or dispute by any water purveyor; landowner; water user or groundwater rights holder within the Mojave service area or within or overlying the Mojave or Warren groundwater basin concerning any disposition of the Storage Water by Mojave;
- (d) Actions of Mojave’s officers, employees or agents; and
- (e) Any other activities under the exclusive control of Mojave.

If Metropolitan is named in any such action, it may submit its defense to Mojave, which shall bear the full cost of defense, except to the extent that Metropolitan utilizes its own counsel for such defense. Metropolitan shall not be entitled to any indemnification from Mojave except as set forth in this Section 4.1 (Mojave Responsibilities).

4.2 Metropolitan Responsibilities.

Metropolitan shall defend, indemnify and hold harmless Mojave and its respective directors, officers, agents, employees and volunteers, against any and all claims and shall assume

responsibility for payment of any settlements, judgments, costs or attorneys' fees arising from claims concerning the following:

(a) Control, carriage, transportation, handling, use, disposal or distribution of Storage Water to the Point of Delivery to Mojave and Return Water from the Point of Delivery to Metropolitan;

(b) Any claim or dispute by a landowner, resident, public agency or other entity within the service area of, or otherwise served by, Metropolitan challenging the exchange, storage, or this Agreement directly or indirectly;

(c) Operation of the facilities of or the actions of the officers, employees or agents of Metropolitan; and

(d) Any other activities under the exclusive control of Metropolitan.

If Mojave is named in any such action, it may submit its defense to Metropolitan involved, in which event Metropolitan shall bear the full cost of defense, except to the extent Mojave utilizes its own counsel for such defense. Mojave shall not be entitled to any indemnification from Metropolitan except as set forth in this Section 4.2 (Metropolitan Responsibilities).

4.3 Multiple Claims.

In the event that payments are made in settlement of a claim, in satisfaction of a judgment or for defense costs where the claim arises from issues applying to both Mojave and Metropolitan, payments shall be divided in proportion to the relative liability of each arising from the common claim. If the Parties cannot agree on the proportion, then the share to be paid by each of Mojave and Metropolitan shall be submitted to arbitration as provided at Article 7 hereof.

ARTICLE 5. DISPUTE RESOLUTION

5.1 Informal Mediation.

In the event of a dispute regarding the interpretation or implementation of this Agreement, or if the Parties are unable to agree upon a matter as to which their agreement is provided for hereunder, the Parties will endeavor to resolve the dispute by using the services of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties.

5.2 Arbitration.

5.2.1 If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter shall be resolved by arbitration as provided in this Article 5 and in the California Arbitration Act (Part 3 [commencing with § 1280], Tit. 9, Calif. Code Civ. Proc.), including Section 1283.05. The Parties agree to be bound by the majority decision of a three-member panel to be selected as follows: (i) one member shall be selected by Metropolitan; (ii) one member shall be selected by Mojave; and (iii) the third member shall be selected by the other two (2) members. If the two (2) members selected by Metropolitan and Mojave are unable to agree on the selection of a third member, either Party may petition a court to appoint the third member pursuant to Code of Civil Procedure Section 1281.6. Each Party shall be responsible for any fees and expenses of the member of the panel appointed by that Party, and the fees and expenses of the third member of the panel shall be shared fifty percent (50%) by Mojave and fifty percent (50%) by Metropolitan.

5.2.2 If a Party asserts that another Party has breached obligations under this Agreement, it may request that the arbitration panel order the other Party to comply with this Agreement. Upon the panel finding that a Party has in fact breached this Agreement, the panel shall order compliance. The panel may order any other equitable relief permitted by California law, including declaratory or injunctive relief, applicable to the matter before the panel for resolution. If termination is sought by a Party pursuant to the terms hereof, the panel may determine the issues of whether a default has occurred or other condition precedent to the termination alleged has been satisfied and, if so, may issue orders implementing that termination. The orders of the panel shall be judicially enforceable. The panel may order that the effective date of its order be the date of the breach, if appropriate. The panel may not order any damages (including consequential or punitive damages) beyond those provided for or permitted under this Agreement.

ARTICLE 6. TERM OF AGREEMENT

6.1 Agreement Termination.

6.1.1 This Agreement shall terminate on December 31, 2035 unless extended pursuant to Section 6.2 (Pending and Late Arising Claims); or Section 8.7 (Force Majeure).

6.1.2 Return of Water on Termination. Notwithstanding Section 6.1.1, if all of the Return Water has not been returned by the date provided for in Section 6.1.1, the applicable provisions of this Agreement shall continue in full force and effect for such additional time as is necessary for Metropolitan to receive the Return Water.

6.2 Pending and Late Arising Claims.

If a claim arising under or with respect to one or more terms of this Agreement has not been resolved when such term terminates, or if such a claim is brought after this Agreement has terminated but within the period of time for bringing such a claim under California law (“Late Arising Claim”), the provisions of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

6.3 Renewals of Agreement.

This Agreement may be renewed by mutual agreement of the Parties, which renewal shall, unless otherwise agreed, effect a continuation of both Parties’ rights and duties under this Agreement.

ARTICLE 7. REMEDIES

7.1 Remedies in the Event of Mojave’s Failure to Perform.

7.1.1 If Mojave has not substantially performed according to the terms of this Agreement and notice has been provided to Mojave pursuant to Section 8.3 (Waiver/Cure of Defaults) and Mojave has failed to cure the alleged breach within the time provided in Section 8.3 (Waiver/Cure of Defaults), Metropolitan may at its election, at any time thereafter while the default is continuing, either suspend further performance and thereafter seek relief under Article 5 (Dispute Resolution), recommencing performance once Mojave complies with the Agreement, or (ii) terminate this Agreement. Mojave may challenge at any time, through Article 5 (Dispute Resolution), whether in fact there has been a breach of or default under this Agreement by Mojave.

7.1.2 If Mojave fails to provide Return Water for or to Metropolitan at Metropolitan's request under circumstances where such return is not excused by the terms of this Agreement, and Metropolitan elects to terminate this Agreement, Mojave shall reimburse Metropolitan for payments made to DWR pursuant to Section 3.1.1 for the water remaining in the Storage Account, with interest accruing at a rate equal to the Local Agency Investment Fund rate over the period from the date of the earliest delivery of water remaining in the Storage Account to the time of reimbursement. Once payment of the reimbursement has been made, this Agreement shall be fully terminated except for Articles 1 (Definitions); 5 (Dispute Resolution); 6 (Term of Agreement); 7 (Remedies); and 8 (Miscellaneous Provisions).

7.2 Remedies in the Event of Metropolitan's Failure to Perform.

7.2.1 If Metropolitan has not substantially performed according to the terms of this Agreement, and notice has been provided to Metropolitan pursuant to Section 8.3 (Waiver/Cure of Defaults) and Metropolitan has failed to cure the alleged breach within the time provided in Section 8.3 (Waiver/Cure of Defaults), Mojave may at its election, at any time thereafter while the default is continuing, either (i) suspend further performance and thereafter seek relief under Article 5 (Dispute Resolution), recommencing performance once Metropolitan complies with the Agreement, or (ii) terminate this Agreement. Metropolitan may challenge at any time, through Article 5 (Dispute Resolution), whether in fact there has been a breach of this Agreement by Metropolitan.

7.2.2 If Metropolitan fails to request the full amount of Return Water to which it is entitled under this Agreement by January 1, 2031, Metropolitan must, in 2031 and each year thereafter, request return of at least twenty percent (20%) of the Return Water remaining in the Storage Account as of January 1, 2031 until the Storage Account is reduced to zero acre-feet. If

during the period 2031 through 2035 Mojave fails to deliver Return Water in amounts sufficient to reduce the Storage Account to zero acre-feet by December 31, 2035, at Metropolitan's option the remedy provided in Section 7.1.2 shall be triggered or the Agreement shall be extended consistent with Section 6.1.2. During any extension, Metropolitan must request the lesser of twenty percent (20%) of the Return Water remaining in the Storage Account as of January 1, 2031 or the amount of Return Water actually remaining in the Storage Account until the Storage Account is reduced to zero acre-feet.

ARTICLE 8. MISCELLANEOUS PROVISIONS

8.1 Successors and Assigns.

This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

8.2 No Modification of Existing Contracts.

This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between DWR and Metropolitan and between DWR and Mojave.

8.3 Waiver/Cure of Defaults.

The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

8.4 Construction of Agreement.

The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the Parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and shall not be used in construing it. The recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "herein," "hereof" and "hereunder" and similar words shall refer to the Agreement generally and not merely to the provision in which such term is used; the word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "Metropolitan" and "Mojave" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "including," "include" or "includes" shall be interpreted in a non-exclusive manner as though the

words “but [is] not limited to” or “but without limiting the generality of the foregoing” immediately followed the same; the word “month” shall mean calendar month; and the term “business day” shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

8.5 Entire Agreement.

This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral, pertaining between the Parties relating to the matters provided for herein. In the event of inconsistency between and among (i) other documents, (ii) Exhibits to this Agreement, and (iii) the remaining provisions of this Agreement, the remaining provisions of this Agreement shall control.

8.6 Severability.

In the event that a court of competent jurisdiction or an arbitration panel as provided at Article 5 (Dispute Resolution) determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The

time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement, which were not found to be legally invalid or unenforceable in the final decision, shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section 7.2 (Remedies in the Event of Metropolitan's Failure to Perform).

8.7 Force Majeure.

All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 8.7. All time limits to perform and the term of the Agreement shall be extended by period equivalent to the length of suspension.

8.8 Notices.

All notices, requests and demands hereunder ("Notices") shall be in writing, including electronic communications, and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Mojave shall be sent to the General

Manager of Mojave at 13846 Conference Center Drive, Apple Valley, CA 92307. Notices for Metropolitan shall be sent to the General Manager of Metropolitan at Post Office Box 54153, Los Angeles, CA 900540153 if mailed or emailed and otherwise to the General Manager at the offices of Metropolitan at 700 No. Alameda Street, Los Angeles, California 90012. Each Party hereto (a "Recipient") who receives from another Party hereto (a "Sender") by electronic facsimile transmission (telecopier) any writing or email which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile transmission or email agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

8.9 Further Assurances.

Each Party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

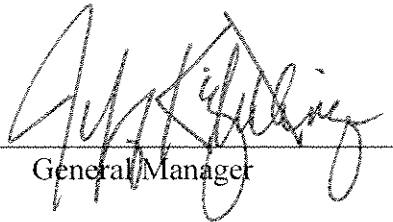
8.10 Counterparts.

This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall

constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the Party against whom enforcement is sought.

Executed the day and year first hereinabove written.

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By  _____
General Manager

MOJAVE WATER AGENCY

By  _____
General Manager

APPROVED AS TO FORM:

By  _____
General Counsel

By: _____
JAMES F. ROBERTS
Chief Deputy General Counsel

APPROVED AS TO FORM:

By  _____
General Counsel

**AGREEMENT BETWEEN
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA AND SEMITROPIC WATER
STORAGE DISTRICT AND ITS IMPROVEMENT DISTRICTS
FOR A METROPOLITAN-SEMITROPIC
WATER BANKING AND EXCHANGE PROGRAM**

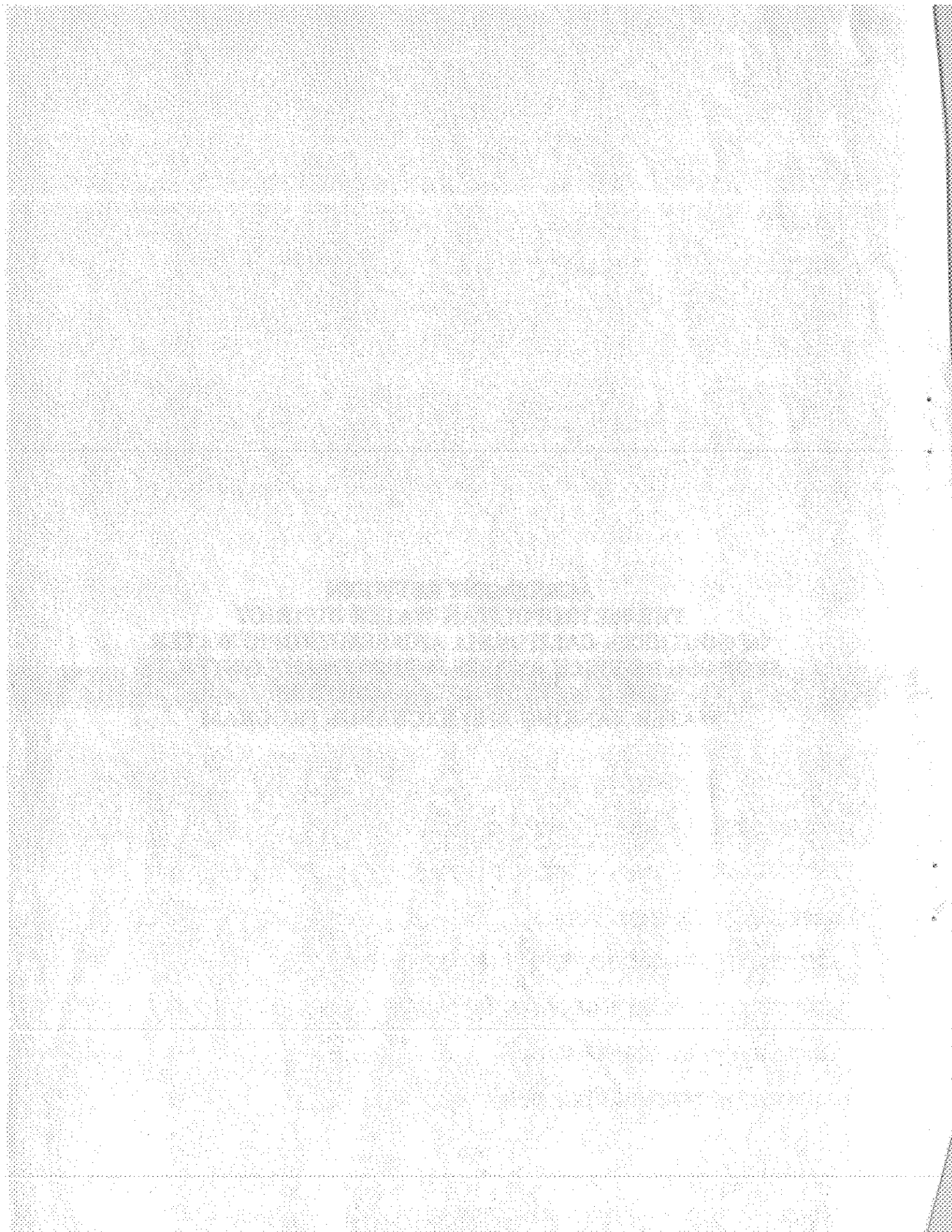


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3
4 **AGREEMENT BETWEEN**
5 **THE METROPOLITAN WATER DISTRICT OF**
6 **SOUTHERN CALIFORNIA AND SEMITROPIC**
7 **WATER STORAGE DISTRICT AND ITS**
8 **IMPROVEMENT DISTRICTS FOR A**
9 **METROPOLITAN-SEMITROPIC WATER**
10 **BANKING AND EXCHANGE PROGRAM**
11
12

13 **THIS AGREEMENT** (this "Agreement"), dated as of December 12, 1994,
14
15 is entered into by and between **THE METROPOLITAN WATER DISTRICT OF SOUTHERN**
16 **CALIFORNIA** ("Metropolitan"), and the **SEMITROPIC WATER STORAGE DISTRICT** and
17 **SEMITROPIC IMPROVEMENT DISTRICT, BUTTONWILLOW IMPROVEMENT**
18 **DISTRICT** and **POND-POSO IMPROVEMENT DISTRICT** of the **SEMITROPIC WATER**
19 **STORAGE DISTRICT** (collectively called "Semitropic"). Metropolitan and Semitropic may be
20 referred to individually as Party or collectively as Parties.
21

22 **RECITALS**
23

24 A. Metropolitan obtains water from the State Water Project ("SWP") through its
25 contract with the California Department of Water Resources ("DWR"), executed on November 4,
26 1960, and presently providing for a total contract entitlement of 2,011,500 acre-feet per year. From
27 time-to-time, Metropolitan will have water available that it desires to deliver to Semitropic for
28 storage and eventual return or other disposition pursuant to this Agreement.
29

1 B. Semitropic obtains water from the SWP through its contracts with the Kem County
2 Water Agency ("Agency") under the Agency's master contract with DWR, executed on November
3 15, 1963, and presently providing for a total contract entitlement of 1,153,400 acre-feet per year.
4 Semitropic's contracts with the Agency were originally executed December 9, 1976 (Buttonwillow
5 Improvement District), December 9, 1976 (Pond-Poso Improvement District), and January 9, 1969
6 (Semitropic Water Storage District) and provide for a combined contract entitlement of 158,000
7 acre-feet per year. Semitropic Improvement District was formed in 1991, its boundaries are
8 coterminous with the boundaries of Buttonwillow Improvement District and Pond Poso
9 Improvement District and, among other things, it serves as agent for Buttonwillow Improvement
10 District and Pond-Poso Improvement District. A total of approximately 136,370 acres of land
11 within Semitropic is irrigated with a total annual demand of approximately 477,000 acre-feet based
12 on current cropping patterns and irrigation practices. Semitropic has entered into contracts with
13 individual landowners comprising 42,328 acres of land which is designated as the Surface Water
14 Service Area ("SWSA"). Semitropic has commitments to deliver 145,240 acre-feet per year to the
15 SWSA. Additional lands outside the SWSA, in the amount of approximately 24,500 acres, have
16 also been connected to Semitropic's distribution system so such lands may receive surface water
17 when available. These additional lands are designated as the Temporary Water Service Area
18 ("TWSA"), and may sometimes be referred to as the Non-Contract Service Area. Total landowner
19 demand within the SWSA and TWSA for surface water supplies is greater than water available
20 under Semitropic's entitlement for Agency SWP water and other surface water supplies. The
21 construction of additional distribution facilities by Semitropic, as contemplated by this Agreement,
22 will allow Semitropic to take delivery of additional imported water delivered to Semitropic by
23 Metropolitan pursuant to this Agreement.

1 C. Semitropic has constructed a seventy-eight inch (78") pumpback pipeline that is
2 capable of conveying water withdrawn from the groundwater basin underlying the area within
3 Semitropic's boundaries (the "Semitropic Basin") directly to the California Aqueduct at a
4 maximum rate of 300 cubic feet per second ("CFS") upon installation of additional pumps by
5 Semitropic, as contemplated by this Agreement. Pumpback operations to return stored water will
6 take place primarily during the "off-peak" irrigation season, when groundwater pumping and
7 conveyance capacity are available. Semitropic has also constructed an energy project, including,
8 but not limited to, a hydroelectric generator, gas generators, and a 12 kilovolt transmission system,
9 to provide a portion of the electric power required for Semitropic's pumping operations.

10
11 D. Metropolitan and Semitropic find that it will be mutually advantageous to enter into
12 a groundwater banking and exchange program whereby Semitropic will hold in trust for
13 Metropolitan the water deposited by Metropolitan hereunder (or its equivalent), together with (i)
14 an easement and right to withdraw from lands owned or controlled by Semitropic an amount of
15 water equal to Metropolitan's Stored Water on deposit with Semitropic, and (ii) an easement and
16 right to transport such water from the Semitropic Basin to the California Aqueduct for delivery to
17 Metropolitan, all in accordance with the terms of this Agreement. This Agreement will provide
18 additional groundwater storage for Metropolitan, resulting in better utilization of its SWP supplies,
19 and will provide improved reliability of supplies and overall higher groundwater levels for
20 Semitropic.

1 E. This Agreement is consistent with the goal of making optimum use of water and
2 facilities and is consistent with conservation objectives of Metropolitan, Semitropic, Agency and
3 DWR.
4

5 F. Consistent with the California Environmental Quality Act ("CEQA"), Semitropic,
6 acting as lead agency, and Metropolitan, acting as a responsible agency, have jointly completed
7 an environmental impact report concerning the proposed water banking and exchange program (the
8 "EIR"). Semitropic's Board of Directors, on July 13, 1994, certified the EIR as being in
9 compliance with CEQA, and Metropolitan's Board of Directors on August 19, 1994, reviewed and
10 considered the EIR. Semitropic will also be responsible for implementing and monitoring the
11 mitigation measures defined in "Findings and Mitigation Monitoring Plan" dated July 1994,
12 adopted as part of the Final EIR.
13

14 G. Semitropic has also entered into a Memorandum of Understanding ("MOU") with
15 neighboring districts, dated September 14, 1994, to implement in part said monitoring and
16 mitigation measures, which this Agreement is subject to. The MOU is on file with both
17 Metropolitan and Semitropic.
18

19 H. The Semitropic Water Banking and Exchange Program authorized in the above-
20 referenced EIR (the "Program") has a defined total storage capacity of 1,000,000 acre-feet. The
21 estimated absorptive capacity, based on the approximately 23,000 acres of In-Lieu Service Area
22 (as defined in Article 1 below) and the current cropping patterns and irrigation efficiencies, is
23 80,500 acre-feet per year. An estimated additional 10,000 acre-feet per year of absorptive capacity

1 is anticipated as a result of Semitropic improving the delivery capability of the distribution system
2 to the existing SWSA and TWSA, as contemplated by the Program. The estimated withdrawal
3 capacity is 90,000 acre-feet per year, at a maximum flow rate of 300 CFS, through the pumpback
4 facility. In addition, Stored Water (as defined in Article 1) may be returned from any Semitropic
5 SWP Entitlement Water allocation in excess of 25,000 acre-feet, as described in Exhibit A hereto.
6 Facilities necessary to accomplish the foregoing will increase the absorptive and withdrawal
7 capabilities of Semitropic over and above the pre-Program conditions. Metropolitan's participation
8 may not fully utilize these capacities. Therefore, Semitropic has developed and will be offering
9 other potential Banking Partners (as defined in Article 1) the opportunity to participate in the
10 Program on substantially the same terms and conditions as Metropolitan. Metropolitan has
11 reviewed the terms and conditions of that certain document entitled "Semitropic Groundwater
12 Banking Program Payment and Banking Capacity Rights Options" dated August 1, 1994, setting
13 forth the terms on which other parties may participate in the Program as Banking Partners (the
14 "Program Options"). A copy of that document is on file with both Semitropic and Metropolitan.
15 Metropolitan has agreed that anyone who is a party to an agreement with Semitropic which
16 includes one or more of options 1 through 4 of the Program Options and which does not violate
17 any of the requirements of this Agreement will be a Banking Partner.

18
19 I. As a part of this Agreement, Semitropic, as trustee, will hold in trust for
20 Metropolitan, in accordance with the terms of this Agreement, the water deposited by Metropolitan
21 (or its equivalent), together with the right to withdraw it and to deliver it to the California
22 Aqueduct. The parties create this trust relationship for the purpose of protecting Metropolitan's
23 ability to recover Stored Water, and Semitropic's fiduciary duty is limited to Semitropic's

1 responsibilities as set forth in this Agreement. In addition, Semitropic, in a non-fiduciary capacity,
2 will provide such water resource management services as are necessary to implement and operate
3 the Program. Semitropic's non-fiduciary obligations include taking such actions, including the
4 construction of facilities, securing agreements and entering into operational arrangements, as are
5 necessary to receive from Metropolitan water delivered by Metropolitan for storage hereunder and
6 to return equivalent water to Metropolitan in accordance with the terms of the Agreement. The
7 Program, as implemented with respect to Metropolitan by this Agreement, when combined with
8 other necessary actions undertaken by Metropolitan, will thus allow the delivery of Stored Water
9 to Metropolitan during Metropolitan's peak demand periods. When such services are provided by
10 Semitropic, Metropolitan will make payments to Semitropic, as provided for in this Agreement,
11 to compensate Semitropic for its services and expenses. These include: payments when water is
12 stored, as provided in Section 6.2; payments under certain conditions when water is left in storage
13 for more than five years, as provided in Section 6.4; payments when water is returned from
14 storage, as provided in Section 6.3; payments with respect to energy used to recover water from
15 the groundwater basin and to deliver that water to the California Aqueduct, as provided in Section
16 6.3; and payments for operation and maintenance expenses under certain circumstances, as
17 provided in Section 6.7.

18
19 Although Metropolitan does not guarantee its level of participation in the Program,
20 it is anticipated that Metropolitan will acquire at least 35 percent of the Program's capabilities,
21 rights and capacities described in Recital H and elsewhere in this Agreement. Until that has
22 occurred (that is, until such time as Metropolitan's Permanent Storage Allocation is Fully Vested
23 (as those terms are defined in Section 1.7)), Metropolitan will pay \$90 per acre-foot to store water,

1 and such payments shall continue to the extent that Metropolitan has elected to acquire additional
2 Permanent Storage Allocation as provided in Section 6.6. After Metropolitan's Permanent Storage
3 Allocation is Fully Vested, Metropolitan will pay \$50 per acre-foot to store water. Until
4 Metropolitan has recovered all of the water it stored at \$90 per acre-foot, Metropolitan will pay
5 \$40 per acre-foot for water recovered. After all such water has been recovered, Metropolitan will
6 pay \$50 per acre-foot for water recovered. In addition, until Metropolitan's Permanent Storage
7 Allocation is Fully Vested, Metropolitan will pay \$20 per acre-foot for water left in storage for
8 more than five years, and such payments shall continue to the extent that Metropolitan has elected
9 to acquire additional Permanent Storage Allocation as provided in Section 6.6. Thereafter,
10 Metropolitan will no longer pay this cost for water left in storage. If, after the first 10 years of
11 this Agreement, Metropolitan's Permanent Storage Allocation has not become Fully Vested, and
12 Semitropic elects to no longer provide interim Program capabilities, capacities and rights as
13 described below, Metropolitan will pay \$50 per acre-foot for any additional water stored by
14 Metropolitan and thereafter Metropolitan will not pay the \$20.00 fee provided for in Section 6.4.

15
16 Metropolitan will acquire a proportionate share of total Program capabilities,
17 capacities and rights for the term of this Agreement as Metropolitan's Permanent Storage Allocation
18 "vests," as provided in Section 1.7 (the amounts credited for purposes of determining
19 Metropolitan's Permanent Storage Allocation including: (i) all payments for the storage of water
20 made pursuant to Section 6.2.1 (the "\$90 Per Acre-Foot Storage Payments"), (ii) all payments
21 made pursuant to Section 6.4 with respect to certain water stored for more than five years (the
22 "\$20 Per Acre-Foot Long-Term Storage Payments"), and (iii) an amount (the "Withdrawal
23 Credit") equal to the amount that has been paid and will be due pursuant to Section 6.3.1 when

1 Stored Water for which \$90 Per Acre-Foot Storage Payments was made is returned. After
2 Metropolitan's Permanent Storage Allocation is Fully Vested, as provided in Section 1.7,
3 Metropolitan may increase its vested Permanent Storage Allocation by continuing to pay for the
4 storage and return of water at the rates set forth in the immediately preceding sentence, as provided
5 for in Section 6.6.

6
7 For the first ten years of the Agreement, Semitropic will allocate interim Program
8 capabilities, capacities and rights to Metropolitan sufficient to make available to Metropolitan at
9 least: (i) 35 percent of Semitropic's then existing capability to store water using then existing
10 facilities, (ii) 35 percent of Semitropic's then existing ability to return water through State Water
11 Project entitlement exchange available, and (iii) a minimum capacity of 31,500 acre-feet per year
12 to return water pumped from the Semitropic Basin directly to the California Aqueduct through
13 Semitropic's facilities.

31,500
6000
525 days of pumping

14
15 Under the terms of this Agreement, those amounts which result in the acquisition
16 by Metropolitan of Permanent Storage Allocation (that is, the \$90 Per Acre-Foot Storage Payments,
17 the \$20 Per Acre-Foot Long-Term Storage Payments and the Withdrawal Credits for amounts
18 payable pursuant to Section 6.3.1 upon the return of Stored Water) are to be adjusted using the
19 Engineering News Record Index, and all other amounts which are to be adjusted will be adjusted
20 using the Consumer Price Index, as hereinafter provided.

21
22 J. The trust relationship between Metropolitan, as settlor and beneficiary, and
23 Semitropic, as trustee, created by this Agreement and described in these Recitals, is entered into

1 by the Parties solely for the purpose of protecting Metropolitan's interest in water delivered by
2 Metropolitan to Semitropic hereunder for storage, and the right of Metropolitan, also held in trust
3 by Semitropic for Metropolitan to recover from the Semitropic Basin, water in a quantity sufficient
4 to return to Metropolitan, a quantity equal to Metropolitan's Storage Account Balance, such right
5 to be exercised by Semitropic, as trustee, through the lands, facilities, rights and interests of
6 Semitropic, or by its successor in interest in and to the trust property, all in accordance with the
7 terms of this Agreement. Semitropic acknowledges and agrees that all water delivered to it by
8 Metropolitan hereunder will be received, held, exchanged, accounted for, and returned or otherwise
9 disposed of by Semitropic in its capacity as trustee for Metropolitan with respect to such water and
10 the easements and rights relating thereto provided for herein. Metropolitan has herein authorized
11 Semitropic, as trustee, to commingle, exchange or otherwise dispose of the water delivered by
12 Metropolitan hereunder. In exchange for those rights and for water delivered hereunder,
13 Semitropic has granted, and does hereby grant, to Metropolitan the right to an equal quantity of
14 water from the lands, facilities, rights and interests of Semitropic (subject, however, to the loss
15 provisions of Article 4), together with such easements and other rights as are necessary to transport
16 the recovered water to the California Aqueduct for delivery to Metropolitan therein, all upon, and
17 subject to the provisions of, this Agreement (all which rights and easements may be referred to
18 herein, collectively, as the "**Trust Property**"). Metropolitan has granted, and does hereby grant,
19 to Semitropic said Trust Property, in trust, for the use and benefit of Metropolitan. The trust
20 relationship created by this Agreement is not otherwise intended to apply to or effect the
21 obligations of Semitropic or Metropolitan hereunder, or the remedies in the event of default; it
22 being expressly understood and agreed that Semitropic's obligations hereunder to, among other
23 things, construct facilities and enter into agreements with others in furtherance of the Program shall

1 not be fiduciary in nature. Notwithstanding creation of a trust under this Agreement, Semitropic
2 may benefit from the Program set forth in this Agreement.

3
4 K. Metropolitan has previously delivered 45,377.2 acre-feet of water to Semitropic
5 pursuant to the February 1, 1993, "Temporary Agreement for a Metropolitan-Semitropic Water
6 Banking and Exchange Program." Metropolitan and Semitropic desire that such water hereafter
7 be held and disposed of by Semitropic for the benefit of Metropolitan under this Agreement, as
8 hereinafter provided.

9 **DECLARATION OF TRUST**

10 Metropolitan hereby appoints Semitropic to hold, and Semitropic hereby accepts such
11 appointment and agrees to hold, in trust, for the use and benefit of Metropolitan, as beneficiary,
12 Metropolitan's Stored Water (as hereinafter defined), together with all of the other Trust Property
13 (as defined in Recitals J and K above), upon the terms set forth in this Agreement. The trust
14 created under this paragraph exists only for the purposes described in Recitals I, J and K above,
15 relating to protection of Metropolitan's ability to recover its Stored Water if Semitropic fails or
16 refuses to do so when required to do so by this Agreement, and only with respect to the Stored
17 Water and the other Trust Property. The creation of a trust under this paragraph does not
18 otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Semitropic
19 performs its obligations as provided in this Agreement, Semitropic will not be deemed or construed
20 to have breached any fiduciary duty to Metropolitan arising out of the trust provided for in this
21 Agreement.

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ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used. Further, each provision in this Article or in the Recitals which is stated in declarative form (for example, "will be adjusted") or is otherwise stated as an agreement between the Parties, rather than as a statement of their intent or purpose, shall be construed to be an operative part of this Agreement and shall be enforceable.

1.1 "Agreement" means, as of any particular time, this Agreement for a Metropolitan-Semitropic Water Banking and Exchange Program, as amended or supplemented by the Parties through that time.

1.2 "Banking Partner" means, as of any particular time, Metropolitan and any other entity which is then a party to a water banking and exchange agreement with Semitropic which includes one or more of options 1 through 4 of the Program Options and which does not violate to the requirements of this Agreement. The term "Banking Partner" does not include a Lower Priority Banking Partner.

1.3 "In-Lieu Service Area" means lands which have at least a five year history of cultivation using groundwater, the owners of which have executed surface water service contracts with Semitropic acknowledging and agreeing to cooperate with Semitropic in fulfilling its obligation to carry out the Program, that provide for the reasonable and beneficial use of water made available to Semitropic for banking and other purposes on that land in lieu of pumping

1 groundwater, and whose on-farm systems have been connected to Semitropic's surface water
2 distribution system to receive water delivered to Semitropic for storage purposes. It is estimated
3 that, upon completion of all Program facilities, the In-Lieu Service Area will be 23,000 acres.
4

5 1.4 **"Interim Storage Allocation"** means, as of any particular time, and with respect
6 to any particular Banking Partner, that portion of the total 1,000,000 acre-foot Program storage
7 capacity then allocated to that Banking Partner which has not yet become Permanent Storage
8 Allocation of a Banking Partner. As Permanent Storage Allocation is acquired by a Banking
9 Partner, as provided in Section 1.7, the Interim Storage Allocation of that Banking Partner is
10 reduced by an identical amount.
11

12 1.5 **"Lower Priority Banking Partner"** means an entity which is not a Banking Partner
13 and which enters into an agreement with Semitropic to utilize all or part of Program Delivery
14 Capability, Unused Semitropic Delivery Capability, Program Pumpback Capacity or Program
15 Entitlement Exchange Rights during such time period when not required to be available for use
16 by Semitropic or Banking Partners.
17

18 1.6 **"Metropolitan's Share of Total Program Capital Cost"** means, until December
19 31, 1995, \$46,900,000.00 (which is thirty-five percent (35%) of the Total Program Capital Cost
20 as of the date of this Agreement). As of January 1, 1996, and annually thereafter, until the time
21 when the sum of all payments made by Metropolitan under Sections 6.2.1, 6.3.1 and 6.4 and any
22 payments creditable for this purpose under Section 5.10 (collectively, the "Prior Payments")
23 equals Metropolitan's Share of Total Program Capital Costs (as redetermined pursuant to this

1 Section through that time), Metropolitan's Share of Total Program Capital Cost shall be
 2 redetermined for, respectively, calendar year 1996, and for each such subsequent calendar year, by
 3 adding the Unpaid Portion (defined and adjusted as provided below) of Metropolitan's Share of
 4 Total Program Capital Costs as of the beginning of that calendar year to the sum of Metropolitan's
 5 Prior Payments with respect to the period from the date of this Agreement through the end of the
 6 prior calendar year, using the following formula (such redetermination to be made in each calendar
 7 year when Metropolitan has paid all amounts due under Sections 5.10, 6.2.1, 6.3.1 and 6.4 through
 8 the end of the prior calendar year):

$$MS_{cy} = \left\{ \sum_{n=94}^{cy-1} P_n \right\} + UP_{cy}$$

9
 10
 11
 12
 13 where:

14 "cy" refers to the calendar year with respect to which the redetermination is being made;

15
 16 "cy-1" refers to the calendar year prior to the calendar year with respect to which the
 17 redetermination is being made (that is, 1995 with respect to the redetermination for use in 1996;
 18 1996 for 1997; and so on);

19 "MS_{cy}" means Metropolitan's Share of Total Program Capital Cost for the calendar year with
 20 respect to which the redetermination is being made (the first such calendar year being 1996; the
 21 second 1997; and so on), such redetermination being made by using the formula set forth above;

22 $\sum_{n=94}^{cy-1} P_n$ means the sum of all annual payments (P as defined below) from the calendar year
 23 1994 through the calendar year immediately preceding the calendar year with respect to which the
 24 redetermination is being made.
 25

26
 27 "P_n" (or Payments by Metropolitan to Semitropic with respect to a particular year) means
 28 the sum of the following amounts paid by Metropolitan with respect to that year, whether paid
 29 during or after that year:

- 1 (a) All amounts paid with respect to that calendar year pursuant to Section 6.2.1 for
 2 Stored Water delivered by Metropolitan to Semitropic; plus
 3
- 4 (b) All amounts paid with respect to that calendar year pursuant to Section 6.3.1 for
 5 Stored Water theretofore delivered to Metropolitan; plus
 6
- 7 (c) All amounts paid with respect to that calendar year pursuant to Section 6.4; plus
 8
- 9 (d) All amounts paid with respect to that calendar year pursuant to Section 5.10 that are
 10 creditable against Metropolitan's Share of Total Program Capital Cost under Section
 11 5.10.
 12

13 "UP_{cy} (or Metropolitan's Adjusted Unpaid Share of Total Program Capital Cost as of the
 14 beginning of the calendar year with respect to which the redetermination is being made) means:
 15 (i) with respect to the redetermination of Metropolitan's Share of Total Program Capital Cost for
 16 calendar year 1996, \$46,900,000 minus the sum of P_n (as defined above) determined for 1994
 17 ("P₉₄") plus P_n determined for 1995 ("P₉₅"); and (ii) for each subsequent year, the amount
 18 determined for such year using the following formula:
 19

$$20 \quad UP_{cy} = AI_{cy} \times \{ UP_{cy-1} - P_{cy-1} \}$$

21

22 where in addition to the above definition:
 23

1 "AI_{cy}" (the "Adjustment Index" for the calendar year with respect to which the
2 redetermination is being made) means a fraction, the numerator of which is the Construction Costs
3 Index for Los Angeles published by the Engineering News Record (the "Construction Costs
4 Index") for December of the calendar year immediately preceding the calendar year with respect
5 to which the determination is being made (that is, for December 1995 with respect to the
6 determination of Metropolitan's Share of Total Program Capital Cost for 1996; December 1996 for
7 1997; and so on), and the denominator of which is the Construction Costs Index for December
8 of the calendar year which is two years prior to the calendar year with respect to which the
9 determination is being made (provided, however, that for the determination of Metropolitan's Share
10 of Total Program Capital Cost for 1996, the denominator shall be the Construction Costs Index for
11 June 1994, which the parties agree is 6,550.36 based on a 1913 value of 100) (that is, the
12 denominator shall be the Construction Costs Index for December 1995 with respect to the
13 determination of Metropolitan's Share of Total Project Capital Cost for 1997; December 1996 for
14 1998; and so on). If Construction Costs Index ceases to be published or if the base year for the
15 Construction Costs Index or the methodology by which the Construction Costs Index is determined
16 is modified, then the Construction Costs Index to be used in the calculations required by this
17 Section 1.6 shall be modified as provided for in Section 6.2.3.

18
19 "UP_{cy-1}" means UP_{cy} as determined for the immediately preceding calendar year (that is, in
20 determining UP_{cy} for 1996 ("UP₉₆"), UP_{cy-1} for that redetermination means the UP_{cy} determined for
21 1995 ("UP₉₅"); in determining UP_{cy} for 1997 ("UP₉₇"), UP_{cy-1} for that redetermination means the
22 UP_{cy} determined for 1996 ("UP₉₆"); and so on);
23

1 " P_{cy-1}" means P_n (as previously defined) with respect to the calendar year immediately
 2 preceding the calendar year with respect to which the redetermination is being made (that is, in
 3 determining UP₉₆, P_{cy-1} for that redetermination means the P_n determined for 1995 ("P₉₅") in
 4 determining UP₉₇, P_{cy-1} for that redetermination means the P_n determined for 1996 ("P₉₆"); and so
 5 on); and
 6

7 If, pursuant to Section 2.5, Metropolitan's Interim Storage Allocation is eliminated,
 8 Metropolitan's Share of Total Program Capital Cost thereafter shall mean an amount equal to the
 9 sum of payments made pursuant to Sections 6.2.1 and 6.4 and payments made and payments
 10 which, upon the return of water, would be due pursuant to Section 6.3.1.
 11

12 1.7 "Permanent Storage Allocation" means, with respect to any particular Banking
 13 Partner and as of any particular time ("t"), the portion of the total 1,000,000 acre-foot Program
 14 storage capacity which is allocated to that Banking Partner as of that time. Until the earlier of the
 15 time when Metropolitan's Permanent Storage Allocation equals 350,000 acre-feet or any remaining
 16 portion of Metropolitan's Interim Storage Allocation is eliminated by Semitropic pursuant to
 17 Section 2.5, Metropolitan's Permanent Storage Allocation as of any particular time shall be
 18 determined using the following formula:

$$19 \quad \text{MPSA}_t = \left\{ \frac{P_p + P_t}{\text{TPCC}_t} + \sum_{n=94}^{cy-1} \frac{P_n}{\text{TPCC}_n} \right\} \times 1,000,000 \text{ acre-feet}$$

20
 21 where:
 22
 23

24 "MPSA_t" means Metropolitan's Permanent Storage Allocation as of the particular time with
 25 respect to which it is being determined, measured in acre feet;
 26
 27

1 "P_p" means all amounts that would be due to Semitropic pursuant to Section 6.3.1 if all of
2 the water in Metropolitan's Storage Account at that time was delivered to Metropolitan at that time;

3
4 "P_t" means all amounts paid, and all amounts then payable unless delinquent, by
5 Metropolitan under Sections 6.2.1, 6.3.1 and 6.4 with respect to the period from the beginning of
6 the calendar year during which that particular time (t) occurs and that particular time, plus any
7 payments creditable and all amounts which, when paid, will be creditable under Section 5.10 for
8 purposes of determining Metropolitan's Permanent Storage Allocation for the period from the
9 beginning of the calendar year during which that particular time (t) occurs and that particular time;

10
11 "TPCC_{cy}" means Total Program Capital Cost, as defined in Section 1.15, for the calendar
12 year during which that particular time occurs (that is, if MPSA is being determined as of April
13 1, 1999, TPCC_{cy} means TPCC₉₉);

14
15 "P_n" has the meaning given to that term in Section 1.6;

16
17
$$\sum_{n=94}^{cy-1} \frac{P_n}{TPCC_n}$$

18 means the sum of the percentages which result from dividing the payments
19 P_n for a given year by the TPCC for that same year, from calendar year 1994 through the calendar
20 immediately preceding the calendar year in which MPSA is being determined; and
21
22

23 "TPCC_n" means Total Program Capital Cost, as defined in Section 1.15, for the same
24 calendar year as P_n (that is, when P_n is P₉₉, TPCC_n means TPCC₉₉).

25
26 At the earlier of the time (which time may be referred to herein as the "Time of Full Vesting")
27 when: (i) MPSA equals 350,000 acre-feet, or (ii) any remaining portion of Metropolitan's Interim
28 Storage Allocation is eliminated by Semitropic pursuant to Section 2.5, Metropolitan's Permanent
29 Storage Allocation shall be deemed to be "Fully Vested" and, thereafter, Metropolitan's Permanent

1 Storage Allocation shall be equal to Metropolitan's Permanent Storage Allocation at the Time of
2 Full Vesting, subject, however to the provisions of Sections 2.6, 6.5 and 6.6 (which permit
3 Metropolitan to acquire additional Permanent Storage Allocation as therein provided). An example
4 showing the acquisition of Permanent Storage Allocation by Metropolitan is attached as Exhibit
5 B.

6 1.8 "Program" means those facilities, agreements and operational activities, described
7 in Recital H and elsewhere, necessary for Semitropic to provide the water storage, management,
8 pumpback and exchange services specified in this Agreement and in other water banking and
9 storage agreements contemplated by this Agreement.

10
11 1.9 "Program Delivery Capability" means the capability to deliver water for storage
12 made available as a result of the construction of Program facilities, agreements and operational
13 activities. The absorptive capability of the proposed 23,000 acre In-Lieu Service Area plus
14 improvements in the delivery capability to the existing SWSA and TWSA are currently estimated
15 to be 90,500 acre-feet per year, based on current cropping patterns and irrigation efficiencies. The
16 estimated total annual and monthly quantities of Metropolitan's Program Delivery Capability upon
17 completion of all Program facilities is shown at Exhibit C hereto.

18
19 1.10 "Program Entitlement Exchange Rights" means the rights of Banking Partners
20 to exchange an amount of Stored Water through entitlement exchange for an equal amount of
21 Semitropic's allocation of Agency's SWP Entitlement Water from the California Aqueduct pursuant
22 to this Agreement or other similar agreements between Semitropic and other Banking Partners.
23 Upon completion of such an exchange by Metropolitan, Metropolitan's beneficial interest in the

1 Stored Water that was the subject of the exchange shall vest in Semitropic and the quantity so
2 exchanged shall be deducted from Metropolitan's Storage Account Balance. Upon completion of
3 necessary Program facilities, the total amount of Program Entitlement Exchange Rights available
4 to Banking Partners will be equal to Semitropic's SWP Entitlement allocation less the first 25,000
5 acre-feet. If the nature or description of Semitropic's allocation of the Agency's SWP Entitlement
6 Water is modified, such alternative supply from the SWP shall to such extent be substituted for
7 Semitropic's allocation of Agency's SWP Entitlement Water. Alternative supplies shall include
8 water purchases by the SWP or from sources generally available to State water contractors, as well
9 as water from facilities participation in which is generally made available to State water
10 contractors. Nothing in the preceding sentence shall obligate Semitropic to participate in such
11 programs. When all necessary Program facilities are constructed, the maximum Program
12 Entitlement Exchange Rights of the Banking Partners at any time will be 158,000 acre-feet minus
13 25,000 acre-feet (133,000 acre-feet) times the sum of all Banking Partners Interim and Permanent
14 Storage Allocation divided by 1,000,000 acre-feet. Assuming Metropolitan's Permanent Storage
15 Allocation is 350,000 acre-feet, Metropolitan's maximum share of Program Entitlement Exchange
16 Rights thus would be 46,550 acre-feet. Exhibit A specifies the maximum Program Entitlement
17 Exchange Rights as Banking Partners' Permanent Storage Allocation is accumulated.

18
19 1.11 "Program Pumpback Capacity" means the capacity, measured in acre-feet per
20 year and CFS, to return Stored Water to the California Aqueduct. Upon completion of all
21 necessary Program facilities, the minimum annual Program Pumpback Capacity shall be 90,000
22 acre-feet per year at a maximum instantaneous flow rate of 300 CFS. Exhibit C establishes the

1 minimum Program Pumpback Capacity available as the Banking Partners' accumulate Permanent
2 Storage Allocation.

3
4 1.12 "SWP Entitlement Water" means entitlement water as provided for in the state
5 water contracts, as well as the alternative supplies provided for in the definition of Program
6 Entitlement Exchange Rights.

7
8 1.13 "Storage Account Balance" means, with respect to a particular Banking Partner,
9 that Banking Partner's accumulated total Stored Water less the accumulated withdrawals of Stored
10 Water by that Banking Partner. Records of these accounts shall be maintained by Semitropic and
11 they shall be subject to audit, review and approval by the Banking Partners, at the expense of the
12 auditing or reviewing Banking Partner, on an annual basis.

13
14 1.14 "Stored Water" means, with respect to any particular Banking Partner, water
15 delivered for storage by that Banking Partner as measured at Semitropic's turnout in Reach 10A
16 of the California Aqueduct, less losses deducted in accordance with Article 4, which losses shall
17 be accounted for concurrently with the delivery of water to Semitropic for storage. Semitropic
18 acknowledges that the 45,377.2 acre-feet of water described in Recital K above will be included
19 in Metropolitan's Stored Water as provided in Section 5.10. Metropolitan acknowledges that
20 Metropolitan's Stored Water may be commingled with other water. At all times during the term
21 of this Agreement, an amount of water available to Semitropic in the Semitropic Basin equal to
22 the amount of the Metropolitan Storage Account Balance shall be deemed to be Metropolitan's
23 Stored Water. So long as water in the amount of Metropolitan's Storage Account Balance remains

1 in the Semitropic Basin, Semitropic, as trustee, shall be deemed to remove Metropolitan's Stored
2 Water from storage only as and when requested by Metropolitan pursuant to the terms of this
3 Agreement and any other removal of water by Semitropic from the Semitropic Basin shall be
4 deemed to be the removal of water that is not Metropolitan's Stored Water. If at any time the
5 amount of water in the Semitropic Basin is less than the sum of the Storage Account Balances of
6 the Banking Partners (an event which the parties believe is extremely unlikely), any additional
7 water subsequently available to Semitropic from the Semitropic Basin without interfering with the
8 rights of landowners or other public agencies, shall be shared by the Banking Partners in proportion
9 to their respective Storage Account Balances, until such time as the amount of water so available
10 to Semitropic from the Semitropic Basin equals or exceeds the total of the Storage Account
11 Balances of the Banking Partners.

12
13 1.15 **"Total Program Capital Cost"** means \$134,000,000.00 in 1994 dollars, which
14 amount shall be adjusted annually, as of the first day of each calendar year for such calendar year,
15 beginning January 1, 1996, said \$134,000,000.00 shall be adjusted on the same basis as in Section
16 6.2.1.

17
18 1.16 **"Unused Semitropic Delivery Capability"** means that portion of Semitropic's pre-
19 Program Delivery Capability (i.e., approximately 220,000 acre-feet per year plus approximately
20 10,000 acre-feet per year of direct percolation capability) which is not used for delivery of
21 Semitropic's SWP Entitlement Water, Agency Pool Water, Shafter-Wasco Irrigation District
22 deliveries pursuant to Section 5.9 or other water available to be used by Semitropic for non-
23 banking purposes.

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ARTICLE 2.
ALLOCATION AMONG BANKING PARTNERS

2.1 Banking Partners shall have the first priority to utilize their shares of Program Delivery Capability, Program Pumpback Capacity and Program Entitlement Exchange Rights as described in this Agreement. Banking Partners in all cases shall have the first priority to use any Program Delivery Capability, Unused Semitropic Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights during such time periods when not required for use by other Banking Partners. Semitropic shall notify each Banking Partner not using its respective share of said Program capability, capacity or right, when other entities including Banking Partners desire to utilize it and of any use made of it.

2.2 Semitropic shall not enter into any other water banking programs or other agreements which would interfere with the Program benefits and rights of the Banking Partners.

2.3 Then existing Banking Partners will be given an opportunity to review the terms and conditions of proposed agreements with potential Banking Partners and Lower Priority Banking Partners and to review Semitropic's records regarding administration of the Program. Such Lower Priority Banking Partners' agreements and activities shall not adversely impact Banking Partners' ability to utilize any benefits under this Agreement. If Semitropic or one or more then existing Banking Partners believe that other potential Banking Partners' proposed agreements or potential Lower Priority Banking Partners' proposed agreements violate any of the provisions of this Agreement or other such Agreement, any Party may seek dispute resolution pursuant to Article 9

1 concerning such matter. In this event, Semitropic shall only enter into agreements in conformity
2 with the result of the dispute resolution.

3
4 2.4 At no time under this Program shall the sum of all Banking Partners' Interim and
5 Permanent Storage Allocations exceed 1,000,000 acre-feet.

6
7 2.5 For a period of ten (10) years, commencing with the date of execution of this
8 Agreement, Metropolitan's maximum Interim Storage Allocation shall be 350,000 acre-feet, subject
9 to the provisions of Sections 2.6, 6.5 and 6.6. In order to convert all of such Interim Storage
10 Allocation to an equivalent Permanent Storage Allocation, the total of Payments, Actual and
11 Prospective (as defined in Section 1.7), by Metropolitan to Semitropic within said 10 years must
12 equal or exceed Metropolitan's Share of Total Program Capital Costs. Effective on or after the
13 termination of this ten-year period, Semitropic may eliminate any remaining Interim Storage
14 Allocation which has not been converted to Permanent Storage Allocation by Metropolitan as
15 provided in Section 1.7.

16
17 2.6 With the exception of agreements which Semitropic enters into with agencies or
18 districts within Kern County, Semitropic shall offer Metropolitan a right of first refusal for any
19 agreement which Semitropic proposes to enter into with a Lower Priority Banking Partner.
20 Further, after five years from the date of execution of this Agreement, if Semitropic negotiates an
21 agreement with another potential Banking Partner, Semitropic shall offer Metropolitan a right of
22 first refusal for the Interim and Permanent Storage Allocation provided for in such agreement and
23 on the same terms and conditions, irrespective of the maximum amount specified in Section 2.5.

1 Metropolitan must notify Semitropic in writing of its intent to exercise such options within forty-
2 five (45) days of receiving written notice from Semitropic transmitting the proposed agreement.

3
4 **ARTICLE 3.**
5 **DELIVERY OF WATER BY BANKING PARTNERS**
6 **TO SEMITROPIC**

7
8 3.1 Each Banking Partner, at its sole cost and expense, may deliver a portion of its SWP
9 Entitlement Water, or water from any other available sources mutually agreed upon by the
10 respective Banking Partner with Semitropic, to the Semitropic turnout in Reach 10A of the
11 California Aqueduct. Each Banking Partner shall notify Semitropic of its intent as early in the year
12 as possible, preferably no later than April 15. Such water will be scheduled and delivered to
13 Semitropic at times and rates of delivery acceptable to Semitropic, the Agency and the Banking
14 Partner and shall not exceed the Program Delivery Capability and Unused Semitropic Delivery
15 Capability nor shall it exceed the available capacity of Semitropic's distribution system.

16
17 3.2 Semitropic will take control and possession at the Semitropic turnout in Reach 10A
18 of the California Aqueduct of water delivered to Semitropic by any Banking Partner for storage,
19 and will credit the Storage Account Balance of that Banking Partner with Stored Water in an
20 amount equal to the water so delivered less the deduction for losses provided for in Article 4 with
21 respect to such water (the "Stored Water"). At the time Semitropic takes control and possession
22 of water delivered by Metropolitan, legal title to Metropolitan's water, together with the right to
23 withdraw from the Semitropic Basin an amount sufficient to return to Metropolitan the Stored
24 Water, shall vest in Semitropic, as trustee for Metropolitan. Upon taking control and possession

1 of water delivered hereunder for storage by Metropolitan, Semitropic, at its sole cost and expense,
2 will do either of the following: (i) transport and store such water by direct percolation; or (ii)
3 exchange that water for an interest in and right to withdraw from the Semitropic Basin an amount
4 of water sufficient to return to Metropolitan the Stored Water (which interest and right shall
5 thereafter be Trust Property). In either case, Semitropic shall thereafter hold and return or
6 otherwise dispose of the Trust Property as provided for in this Agreement. Upon crediting
7 Metropolitan's Storage Account Balance for the amount of any water exchanged as described in
8 clause (ii) above, Semitropic may deliver the exchanged water to water users for surface water
9 service in lieu of pumping groundwater. Semitropic shall retain the right to use its facilities to
10 deliver water supplies made available to it by Banking Partners and acquired by Semitropic by
11 exchange pursuant to clause (ii) above as it deems appropriate.

12
13 3.3 Program Delivery Capability shall be allocated among Banking Partners in
14 accordance with the ratio of the Banking Partner's portion of Permanent Storage Allocation to the
15 sum of all Banking Partners' Permanent Storage Allocations.

16
17 3.4 If, due to hydrologic conditions, changes in cropping patterns or other reasons,
18 Program Delivery Capability is reduced, the Banking Partners may request, and Semitropic shall
19 provide, information accounting for such reduction. If such reduction is not due to temporary
20 conditions, Semitropic shall take all actions necessary to comply with Exhibit C.

21
22 3.5 Unused Semitropic Delivery Capability shall be allocated among the Banking
23 Partners requesting the use of such Unused Semitropic Delivery Capability according to the ratio

1 of the sum of such Banking Partner's Interim and Permanent Storage Allocation, to the sum of all
2 such Banking Partners' Interim and Permanent Storage Allocations.

3
4 3.6 If, after reasonable efforts by Semitropic to accommodate the Banking Partners'
5 storage scheduling requests, such requests nevertheless exceed the instantaneously available
6 Program Delivery Capability and Unused Semitropic Delivery Capability, Semitropic shall allocate
7 available capacities in proportion to the total of each Banking Partners' Interim and Permanent
8 Storage Allocations.

9
10 **ARTICLE 4. LOSSES AND STORED WATER**

11
12 Semitropic's distribution system, evaporative and aquifer losses, for purposes of this
13 Agreement and similar agreements between Semitropic and other Banking Partners, are collectively
14 assumed to be ten percent (10%) of the amount of water furnished by Banking Partners for storage
15 as measured at Semitropic's turnout in Reach 10A of the California Aqueduct. This amount and
16 the Storage Account Balance shall be modified in the future, if the results of studies to be
17 conducted jointly by Metropolitan, other Banking Partners and Semitropic establish the actual loss
18 to be different than the assumed ten percent (10%) losses. The Storage Account Balance shall be
19 adjusted accordingly and resulting adjustments in compensation payments shall be in accordance
20 with Section 6.11.

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ARTICLE 5.

RETURN OF WATER BY SEMITROPIC TO METROPOLITAN

5.1 In any year, upon request by Metropolitan, Semitropic shall return Stored Water to Metropolitan by the method set forth in Section 5.1.1 or the method set forth in Section 5.1.2 or both.

5.1.1 Semitropic may exchange an amount of Metropolitan's Stored Water for an equal amount of Semitropic's SWP Entitlement Water. Metropolitan hereby consents to such an exchange and Semitropic will be deemed to have effected such an exchange by delivering a portion of its SWP Entitlement Water to Metropolitan at the Semitropic turnout. Upon completion of such an exchange, Metropolitan's beneficial interest in the Stored Water that was the subject of the exchange and the right to withdraw such water shall be vested in Semitropic in its individual capacity, and Semitropic may thereafter deliver such water to its water users who would otherwise have received the portion of Semitropic's SWP Entitlement Water that was delivered to Metropolitan as a result of the exchange.

5.1.2 Semitropic may return Metropolitan's Stored Water to Metropolitan by pumping water from the groundwater basin back to the Aqueduct for delivery to Metropolitan.

5.2 The return of Stored Water by Semitropic to Metropolitan shall be subject to the following terms and conditions:

1 5.2.1 Subject to the provisions of this Agreement, for each acre-foot of Stored
2 Water held by Semitropic for Metropolitan, Semitropic shall ultimately return one acre-foot of
3 water to Metropolitan. *the lesser?*
4

5 5.2.2 Subject to the provisions of this Agreement, when Metropolitan requests the
6 return of Stored Water, Semitropic shall return at a minimum the quantities of water calculated in
7 accordance with the following, using its reasonable efforts to accommodate Metropolitan's delivery
8 schedule:
9

10 5.2.2.1 Program Pumpback Capacity shall be allocated among Banking
11 Partners according to the ratio of each Banking Partner's combined Interim and Permanent Storage
12 Allocations divided by 1,000,000 acre-feet. For the first ten (10) years, however, Metropolitan
13 shall receive a minimum guarantee of 31,500 acre-feet of Program Pumpback Capacity. Each
14 Banking Partner shall have a right to any then existing Program Pumpback Capacity not used by
15 other Banking Partners, subject to mitigation of impacts to other Banking Partners pursuant to
16 Section 5.6. If requests by Banking Partners for unused Program Pumpback Capacity exceed such
17 capacity, then the unused Program Pumpback Capacity shall be allocated to each Banking Partner
18 according to the ratio of its combined Interim and Permanent Storage Allocations, divided by the
19 sum of the combined Interim and Permanent Storage Allocations of all Banking Partners wishing
20 to use the unused capacity times the amount of unused Program Pumpback Capacity.
21

22 5.2.2.2 Program Entitlement Exchange Rights shall be allocated to
23 each Banking Partner according to the ratio of its combined Interim and Permanent Storage

1 Allocations divided by 1,000,000 acre-feet times the Program Entitlement Exchange Rights to be
2 allocated. Each Banking Partner shall have a right to any Program Entitlement Exchange Rights
3 not required for use by other Banking Partners, subject to mitigation of impacts to other Banking
4 Partners pursuant to Section 5.6. If requests by Banking Partners for unused Program Entitlement
5 Exchange Rights exceed such rights, then the unused Program Entitlement Exchange Rights shall
6 be allocated to each Banking Partner according to the ratio of its combined Interim and Permanent
7 Storage Allocations, divided by the sum of the combined Interim and Permanent Storage
8 Allocations of all Banking Partners wishing to use the unused Program Entitlement Exchange
9 Rights times unused Program Entitlement Exchange Rights.

10
11 5.2.3 In the event it is determined in the future that the minimum annual Program
12 Pumpback Capacity is less than 90,000 acre-feet per year but greater than 31,500 acre-feet per year
13 and/or the maximum Program Entitlement Exchange Rights are less than 133,000 acre-feet per year
14 but greater than 46,550 acre-feet per year on a permanent basis, and Metropolitan's Permanent
15 Storage Allocation is Fully Vested (as defined in Section 1.7), and, during the first ten (10) years
16 of this Agreement, whether or not Metropolitan's Permanent Storage Allocation is fully vested,
17 Metropolitan's minimum guarantee of 31,500 acre-feet per year of Program Pumpback Capacity
18 and its maximum of 46,550 acre-feet per year (133,000 acre-feet per year times 35 percent) of
19 Program Entitlement Exchange Rights shall not be reduced. In the event said capacity and rights
20 are less than Metropolitan's minimum guarantee of 31,500 acre-feet per year and less than 46,550
21 acre-feet per year of Program Entitlement Exchange Rights, and if Metropolitan's Permanent
22 Storage Allocation is Fully Vested, and, during the first ten (10) years of this Agreement, whether
23 or not Metropolitan's Permanent Storage Allocation is fully vested, Metropolitan shall be allocated

1 all of said capacity and rights. If, however, pursuant to Section 2.5, Metropolitan's Permanent
2 Storage Allocation is reduced, such Program Pumpback Capacity and Program Entitlement
3 Exchange Right shall be reduced to its vested rights. Temporary reductions in said capacity and
4 rights are subject to Section 5.5.

5
6 5.3 Metropolitan shall notify Semitropic of its intent to take delivery of Stored Water
7 as early in the year as possible, but no later than May 1 of the same year. If such notification is
8 provided after May 1, Semitropic, at its sole discretion, may make reasonable efforts to comply
9 with Metropolitan's request. In the event of an emergency need for water by Metropolitan,
10 Semitropic shall endeavor to return Stored Water to Metropolitan to the maximum extent feasible.

11
12 5.4 Semitropic shall be responsible for obtaining approval from DWR to deliver Stored
13 Water by pumpback to the California Aqueduct. In addition it shall be Semitropic's responsibility
14 to notify the Agency, each Banking Partner, and DWR, as to the amount of Program Entitlement
15 Exchange Rights and Program Pumpback Capacity for that year. When Stored Water is returned
16 by pumpback, it shall be returned during Semitropic's off-peak irrigation season and other periods
17 which Semitropic determines to be operationally feasible, on a schedule acceptable to the respective
18 Banking Partner, Agency and DWR and at varying rates of delivery. Banking Partner shall be
19 responsible for all necessary approvals and costs once the Stored Water is returned to the
20 California Aqueduct at the Semitropic turnout by either Program Pumpback or Program Entitlement
21 Exchange.

1 5.5 Notwithstanding any other provision of this Agreement, Semitropic will temporarily
2 reduce or terminate groundwater pumping for the purpose of returning Stored Water to Banking
3 Partners to the extent required pursuant to the MOU referenced above in Recital G. However, to
4 the extent possible, Semitropic shall change the timing and location of pumping to avoid reduction
5 or termination in the return of Stored Water pursuant to the MOU. Semitropic shall construct
6 adequate facilities and/or secure agreements and/or operational arrangements to obtain the long
7 term levels of service provided for in Exhibit A. Such long term levels of service may only be
8 reduced to the extent required by the MOU referenced above in Recital G.

9
10 5.6 If the use by other Banking Partners, Lower Priority Banking Partners or Semitropic
11 of unused Program Pumpback Capacity or unused Program Entitlement Exchange Rights referenced
12 in Sections 5.2.2.1 and 5.2.2.2 interferes with the recovery of Metropolitan's or any other Banking
13 Partner's Stored Water by causing a reduction or termination of pumping pursuant to the MOU,
14 the Party or Parties responsible for the action(s) which impacts Metropolitan or any other Banking
15 Partner shall reduce its withdrawal of Stored Water to make up Metropolitan's or other Banking
16 Partner's loss and, to the extent reductions in the withdrawal of Stored Water are insufficient, shall
17 provide, at the election of the impacted Banking Partner, an equivalent water supply in that year
18 or cash in the amount of the replacement cost of such water, such water or cash to be for the
19 benefit of and to be immediately distributed to the impacted Banking Partners. Semitropic shall
20 adjust the Banking Partners' accounts to reflect any such water exchange.

21
22 5.7 Wells within Semitropic can currently produce water that will meet DWR's water
23 quality standards to return water to the California Aqueduct. Semitropic shall take no direct action

1 which would knowingly cause the quality of recovered groundwater to not meet such water quality
2 standards in effect. The preceding sentence shall not apply to delivery of water under non-banking
3 programs or otherwise operating under this Program. In the event that future water quality
4 standards change, or the quality of groundwater from Semitropic wells is such that Semitropic
5 cannot meet acceptable DWR water quality requirements for pumping into the California Aqueduct,
6 Stored Water shall be returned to Banking Partners by Program Entitlement Exchange or alternative
7 methods satisfactory to the affected Banking Partners. Such alternative methods may include, but
8 are not necessarily limited to: purchases, exchanges with others, and/or by improving Stored Water
9 quality to acceptable standards for direct pumpback, with the additional costs of any such methods
10 being paid by Banking Partners accepting such alternative methods. Semitropic's operations and
11 financial situation shall not be adversely impacted as a result of these alternative methods.

12
13 5.8 This Agreement shall be subject to the "Agreement Between the Department of
14 Water Resources of the State of California, Kern County Water Agency and Semitropic Water
15 Storage District for 1990 Demonstration Semitropic Local Element," dated May 1, 1990, which
16 provides for Semitropic to return all banked water to DWR solely by entitlement exchange. Said
17 agreement expires when all banked water is withdrawn, or on December 31, 2010, whichever first
18 occurs. Until such expiration, DWR has priority over Banking Partners in any year water is to be
19 returned by entitlement exchange. The amount owed to DWR is 50,164 acre-feet as of January
20 1, 1994. After December 31, 1994, DWR can withdraw a maximum of 10,033 acre-feet per year.
21 Any amendment to such agreement shall be subject to this Agreement and the review of the
22 Banking Partners.

1 5.9 Metropolitan also recognizes that Semitropic has entered into an "Agreement
2 Between Shafter-Wasco Irrigation District and Semitropic Improvement District of Semitropic
3 Water Storage District Providing for Construction and Operation of an Intertie Pipeline," dated
4 December 6, 1993, which implements a water banking and exchange program. Semitropic has
5 committed to return water to Shafter-Wasco by delivery of either surface water in excess of its
6 needs from any available source or by pumping groundwater. The agreement with Shafter-Wasco
7 is based on the use of existing Semitropic facilities for the delivery of water to storage and for the
8 withdrawal or return of water. Shafter-Wasco, therefore, has priority over Banking Partners in the
9 use of existing facilities. Semitropic's obligation under said agreement does not require
10 commitment of SWP entitlement nor the use of pumpback facilities required for the return of
11 Banking Partners' Stored Water.

12
13 5.10 When the conditions set forth in clause (a) through (d) of Article 8 (the "Article 8
14 Conditions") have been satisfied and provided that this Agreement has not previously been
15 terminated: (i) the 45,377.2 acre-feet of water currently in the Metropolitan storage account under
16 the February 1, 1993, "Temporary Agreement for a Metropolitan-Semitropic Water Banking and
17 Exchange Program" (the "Temporary Agreement") or so much thereof as has not been withdrawn,
18 shall be transferred to Metropolitan's Storage Account under this Agreement, and (ii) the provisions
19 of this Agreement shall supersede said Temporary Agreement and the 45,377.2 acre-feet shall be
20 considered Stored Water under this Agreement, except that no additional payment pursuant to
21 Section 6.2.1 is required. Such water will be subject to charges pursuant to Sections 6.3.1, 6.3.3,
22 6.4 and 6.7, as applicable. Payments made pursuant to Sections 6.3.1 and 6.4 shall be credited to
23 Metropolitan's Share of Total Program Capital Costs. If, prior to satisfaction of the Article 8

1 Conditions, Metropolitan has withdrawn water stored under the Temporary Agreement and has paid
2 (or has been or will be billed for) the return of such water at the rates provided in the Temporary
3 Agreement, then Metropolitan may pay to Semitropic the difference between the sum of all
4 payments made by Metropolitan with respect to withdrawal of such water under Article 4.2 of the
5 Temporary Agreement other than the power component and the amount which would have been
6 due pursuant to Section 6.3.1 if the water had been withdrawn under this Agreement, and the total
7 amount paid with respect to withdrawal of such water under both the Temporary Agreement and
8 this Agreement shall be credited pursuant to Section 1.6 and 1.7, as applicable, in determining
9 Metropolitan's Share of Total Capital Costs and Metropolitan's Permanent Storage Allocation.

11 **ARTICLE 6. COMPENSATION**

12
13 Metropolitan shall make the payments set forth below to compensate Semitropic for (i) its
14 services as trustee under this Agreement, (ii) costs and expenses incurred by Semitropic in
15 connection with its obligations under this Agreement.

16
17 6.1 Semitropic commits to utilize Metropolitan's payments and other Semitropic funds,
18 and to maintain such adequate financial flexibility, as it reasonably determines to be necessary to
19 construct facilities needed to provide Metropolitan with Program Pumpback Capacity and Program
20 Entitlement Exchange Rights in a timely manner as described in Exhibit A hereto and, as payments
21 of Metropolitan's Share of Total Program Capital Cost are made, provide increases in Program
22 Delivery Capability to Metropolitan's share of Program Delivery Capability as described in Exhibit
23 C, all in accordance with this Agreement.

1 Metropolitan shall pay the following for services provided by Semitropic for storage and
2 withdrawal of water. Semitropic shall pay all other costs not specified herein, and Semitropic shall
3 not create and impose any other charges or fees upon Metropolitan.
4

5 6.2 Storage Payments.

6
7 6.2.1 Until Metropolitan has actually paid Metropolitan's Share of Total Program
8 Capital Cost, Metropolitan shall pay to Semitropic Ninety Dollars (\$90.00) per acre-foot for all
9 Stored Water credited to Metropolitan's Storage Account Balance for calendar years 1994 and
10 1995. Subsequent to calendar year 1995, the Ninety Dollars (\$90.00) per acre-foot shall be
11 adjusted at the beginning of each year as provided in this Section 6.2.1, and the adjusted amount
12 shall apply to all Stored Water credited to Metropolitan's Storage Account Balance for that year.
13 The adjusted amount for any particular calendar year after 1995 shall be the amount equal to
14 Ninety Dollars (\$90.00) multiplied by a fraction, the numerator of which is the Construction Costs
15 Index (as defined in Section 1.6) for December of the calendar year immediately preceding the
16 calendar year with respect to which the adjusted amount is being determined (that is, for December
17 1995 with respect to the adjusted amount for 1996; December 1996 for 1997; and so on), and the
18 denominator of which shall be the Construction Costs Index for June 1994.
19

20 6.2.2 From and after the time when Metropolitan has paid Metropolitan's Share
21 of Total Program Capital Cost, Metropolitan shall pay Fifty Dollars (\$50.00) per acre-foot for any
22 additional Stored Water credited to Metropolitan's Storage Account Balance, adjusted at the
23 beginning of each year as provided in this Section 6.2.2, and the adjusted amount shall apply to

1 all Stored Water credited to Metropolitan's Storage Account Balance for that year and to which this
2 Section 6.2.2 is applicable. The adjusted amount under this Section 6.2.2 for any particular
3 calendar year shall be the amount equal to Fifty Dollars (\$50.00) multiplied by a fraction, the
4 numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western
5 Cities with populations of 50,000 to 330,000 (the "CPI") for December of the calendar year
6 immediately preceding the calendar year with respect to which the adjusted amount is being
7 determined (that is, for December 2000 with respect to the adjusted amount for 2001; December
8 2001 for 2002; and so on), and the denominator of which shall be the CPI for June 1994 (which,
9 the Parties agree, is 148.6 (based on 1982-84 index).

10
11 6.2.3 If publication of either of the indexes referred to in Section 6.2.1 or 6.2.2
12 ceases or if the basis for such indexes is substantially modified, the Parties shall negotiate and
13 mutually agree on an alternative but equivalent index or, in the absence of agreement, the matter
14 shall be resolved pursuant to Article 9.

15
16 6.3 Withdrawal Payments.

17
18 6.3.1 Metropolitan shall pay to Semitropic Forty Dollars (\$40.00) per acre-foot,
19 for each acre-foot of water with respect to which storage payments have been made pursuant to
20 Section 6.2.1, when such water is returned to Metropolitan. Said charge shall be adjusted on the
21 same basis as in Section 6.2.1.
22

1 6.3.2 Metropolitan shall pay Fifty Dollars (\$50.00) per acre-foot, for each acre-foot
2 of water with respect to which storage payments have been made pursuant to Section 6.2.2, when
3 such water is returned to Metropolitan. Said charge shall be adjusted on the same basis as in
4 Section 6.2.2. No water shall be deemed or construed to be subject to the charge provided in this
5 Section 6.3.2 until all water which is subject to the charge provided in Section 6.3.1 has been
6 returned.

7
8 6.3.3 In addition to payment under Sections 6.3.1 and 6.3.2, when water is
9 returned, Metropolitan shall pay the average unit power costs then actually incurred by Semitropic
10 to pump such water from the groundwater basin for either direct delivery to the California
11 Aqueduct or for entitlement exchange. In the case of direct delivery to the California Aqueduct,
12 Metropolitan also shall pay the average unit power cost then actually incurred by Semitropic to
13 convey the returned water through the distribution system and to pump such water into the
14 California Aqueduct at the Semitropic turnout in Reach 10A. Said power costs shall be computed
15 based on the amount of energy consumed to withdraw and when applicable to convey to the
16 California Aqueduct Metropolitan's Stored Water in a given month times Semitropic's average
17 actual unit power cost for the same pumping period. For ease in billing, Semitropic shall establish
18 an estimated power rate for each calendar year with respect to which Metropolitan requests such
19 information and shall provide Metropolitan with such estimate, including back-up documentation
20 to justify the rate, within fourteen (14) days of the request. Such estimated rate shall be used for
21 billing purposes for the following year and then the billing will be adjusted to actual by March 1
22 of the year following the estimated rate year, or as soon as possible thereafter. Once the variance
23 amount has been agreed to by the Parties, any amount due by either Party shall be billed

1 immediately and paid in accordance with Section 6.8. Semitropic has its own power production
2 and distribution facilities and the unit cost of power shall be based upon the cost of Semitropic's
3 energy project including, but not limited to, debt service for the energy project, fuel, operation and
4 maintenance for the energy project, replacements, reserve deposit for the energy project, utility
5 billings, and the cost of production and distribution of such power. The Parties agree that the
6 initial calculation shall be consistent with the calculation in Exhibit D. For all Stored Water
7 returned by Semitropic's exercise of Program Entitlement Exchange Rights, Semitropic shall pay
8 all applicable SWP costs to the Semitropic turnout in Reach 10A.

9
10 6.3.4 Exhibit D may be revised from time to time by written consent of the Parties,
11 which consent shall not be unreasonably withheld. The intent of Exhibit D is to provide
12 Semitropic with sufficient revenue to recover the power costs incurred by Semitropic for
13 Metropolitan's withdrawal of Stored Water and to allow Semitropic flexibility to change the
14 calculation based on experience and the changing electric utility industry.

15
16 6.4 During the period in which Metropolitan has Interim Storage Allocation, if
17 Metropolitan has not paid Metropolitan's Share of Total Program Capital Cost, Metropolitan shall
18 pay Semitropic \$20.00 per acre-foot for any water remaining in Metropolitan's Storage Account
19 Balance for more than five years (determined with respect to water stored under the Temporary
20 Agreement beginning on the date of this Agreement), which payment shall be due each year.
21 Withdrawal of water under the Agreement shall be accounted for on a first-in-first-out basis. The
22 above fee shall be adjusted based on the index referenced in Section 6.2.1 above.

1 6.5 If Metropolitan has not stored and withdrawn 350,000 acre-feet and if payments
2 made pursuant to Sections 6.2.1, 6.3.1 and 6.4 result in Metropolitan paying to Semitropic an
3 amount in excess of Metropolitan's Share of Total Program Capital Cost, then the amount of such
4 excess shall increase Metropolitan's Permanent Storage Allocation and related rights under the
5 Program. The amount of such increase shall be determined monthly, once Metropolitan has paid
6 an excess amount, by dividing the sum theretofore paid in excess of Metropolitan's Share of Total
7 Program Capital Cost as of the last day of the prior calendar month by Total Program Capital Cost
8 as of that same date and multiplying that quotient by 1,000,000 acre-feet.

9
10 6.6 When Metropolitan's Permanent Storage Allocation is Fully Vested, at Metropolitan's
11 election and Semitropic's concurrence, Metropolitan may continue to deliver water for storage and
12 make payments under Sections 6.2.1, 6.3.1 and 6.4, and such election and payments will result in
13 an increase in Metropolitan's Permanent Storage Allocation to the extent the sum of all Banking
14 Partners' Permanent and Interim Storage Allocation does not exceed 1,000,000 acre-feet. The
15 amount of such increase shall be determined pursuant to Section 1.7.

16
17 6.7 Except as otherwise provided at Sections 6.7.1 or 6.7.2, Metropolitan shall be
18 allocated an annual operations and maintenance fee (the "O&M Fee") of \$3.98 (the "Base
19 Amount") per acre-foot of Permanent Storage Allocation held by Metropolitan. The Base Amount
20 shall be adjusted in the same manner described and using the same index referenced in Section
21 6.2.2. The annual O&M Fee shall start in January 1, 1995, for water stored in 1993 and 1994.

22

1 6.7.1 In any year, Metropolitan shall pay in total, an amount equal to the greater
2 of the sum of payments required under Sections 6.2.2 and 6.3.2 or the annual O&M Fee otherwise
3 required under Section 6.7. The annual O&M Fee shall be billed on January 1 of each year. Any
4 amounts due during that year under Section 6.2.2 and Section 6.3.2 shall be compared with the
5 O&M fee. No payments due under Sections 6.2.2 and 6.3.2 shall be payable until the amount
6 owed under Sections 6.2.2 and 6.3.2 is greater than the O&M fee. Thereafter, only the amount
7 payable under Sections 6.2.2 and 6.2.3 that is greater than the O&M fee paid that year is then due
8 and payable to Semitropic.

9
10 6.7.2 If Semitropic or other Banking Partners use Program Delivery Capability,
11 Program Pumpback Capacity or Program Entitlement Exchange Rights allocated to Metropolitan,
12 such entity using said capacity shall pay the share of Metropolitan's O&M Fee under this Section
13 6.7 that is represented by its use. The payment made for the use of Metropolitan's unused capacity
14 rights shall be deducted from the next payment due from Metropolitan under this Agreement.

15
16 6.7.3 If Metropolitan uses another Banking Partner's unused Program Delivery
17 Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights, Metropolitan
18 shall pay the share of the other Banking Partner's O&M Fee under this Section 6.7 that is
19 represented by its use.

20
21 6.8 Semitropic may bill Metropolitan no more than monthly for payments under Sections
22 6.2.1 or 6.2.2, 6.3.1 or 6.3.2, 6.3.3, 6.7.1 and 6.7.3 hereof and annually for payments under Section
23 6.4, which payments shall be due Semitropic and shall become delinquent forty-five (45) days after

1 Metropolitan receives the invoice under the terms of this Agreement. In addition to other remedies
2 available, delinquent payments shall bear interest at the rate of one percent (1%) per month. Data
3 supporting the amounts invoiced shall be provided upon the reasonable request of Metropolitan.
4 Semitropic shall correct any erroneous billing promptly upon discovery of the error. If
5 Metropolitan has been underbilled, payment of the underbilled amount shall be due and become
6 delinquent forty-five (45) days after Metropolitan receives the corrective invoice and data justifying
7 the change. Overpayments by Metropolitan shall be refunded to Metropolitan within forty-five
8 days of discovery, together with interest thereon at the average investment yield of Metropolitan's
9 investments as reported monthly by Metropolitan's Treasurer.

10
11 6.9 Semitropic shall require in other Banking Partners agreements that Semitropic shall
12 collect from such other Banking Partners sufficient funds to reimburse Metropolitan for a portion
13 of its expenses in developing the Program. Metropolitan's reimbursement shall be equal to the
14 proportion of other Banking Partners Interim and Permanent Storage Allocation to 1,000,000 acre-
15 feet times Metropolitan's cost of \$300,000, adjusted in the same manner as in Section 6.2.2.
16 Semitropic shall pay Metropolitan such reimbursement within twelve (12) months of execution of
17 the Banking Partner's Agreement.

18
19 6.10 In order to design essential facilities for the benefit of Metropolitan and which will
20 need to be constructed during Semitropic's 1994-95 off-peak period, Metropolitan will make an
21 advance payment of \$1,350,000 within thirty (30) days of execution of this Agreement. This
22 amount, plus \$225,000.00 which is Semitropic's share of preparing the EIR, will be deducted from
23 amounts due from Metropolitan to Semitropic pursuant to Section 6.2.1, beginning with the first

1 payment due during the second calendar year in which Metropolitan delivers water into storage,
2 and continuing each year until the total advance payment has been repaid to Metropolitan by such
3 offsets. Before invoicing Metropolitan for water delivered into storage, the amount due from
4 Semitropic shall be deducted. If this Agreement is terminated by either Party by reason of a
5 failure to obtain satisfaction of all of the Article 8 conditions (either Party having the right to
6 terminate this Agreement at any time prior to the time all of the Article 8 Conditions are satisfied
7 by giving written notice of such termination to the other), or if this Agreement is involuntarily
8 terminated pursuant to Section 12.3, for reasons beyond the control of Semitropic and Metropolitan,
9 said amount of \$1,350,000 will be repaid to Metropolitan within thirty (30) days of exercise of a
10 right of first refusal pursuant to Section 8(d), otherwise within ten (10) years of execution of this
11 Agreement, without interest.

12
13 6.11 In the event there is an adjustment in Metropolitan's Storage Account Balance as
14 provided at Section 4, applying the first-in-first-out method of accounting for water in the Storage
15 Account Balance, previous payments shall be adjusted based on the payment charged in the year
16 the quantity of water to be adjusted was delivered with no further adjustments using the applicable
17 indexes cited in Section 6.2.1 or Section 6.2.2. In addition no interest shall be payable on the
18 amount of money required for said adjustment. Financial obligations shall occur as follows:

19
20 6.11.1 To the extent the Storage Account Balance is reduced (i.e., losses are
21 determined to exceed ten percent (10%)), Semitropic shall reimburse Metropolitan for the charges
22 paid under Sections 6.2.1, 6.2.2 and 6.4 within one year of such determination.
23

1 6.11.2 To the extent the Storage Account Balance is increased (i.e., losses are
2 determined to be less than ten percent (10%)), Metropolitan shall pay Semitropic for charges that
3 would have been paid under Sections 6.2.1, 6.2.2 and 6.4 for such additional water determined to
4 be in the Metropolitan Storage Account Balance within one year of such determination.
5

6 6.12 It is recognized that changes in Semitropic's actual costs of operating the Program
7 may occur on or after the date this Agreement is executed as a result of enactments, amendments,
8 changes in implementation or interpretation, or repeal of any federal or state law, rule, regulation
9 or ordinance (each, a "**Regulatory Change**"). If either Party determines that a Regulatory Change
10 has occurred that would result in a material change (upward or downward) in Semitropic's costs
11 for storing, recovering or transporting water pursuant to the terms of this Agreement, which change
12 in Semitropic's costs is not reflected in the adjustments in the payments due from Metropolitan to
13 Semitropic pursuant to Article 6 or other provision of this Agreement (including, but not limited
14 to, this Section 6.12), such Party shall promptly inform the other Party of the nature and extent of
15 such alleged Regulatory Change and of the reason why that party believes an adjustment pursuant
16 to this Section 6.12 is warranted in the payments due from Metropolitan to Semitropic. Promptly
17 thereafter, Semitropic shall provide Metropolitan with its calculation of the costs or cost savings
18 associated with such Regulatory Change and the facts and assumptions underlying that calculation.
19 Upon agreement by the parties hereto (i) that a charge or credit affecting any payment due from
20 Metropolitan to Semitropic should be made as a result of a Regulatory Change, (ii) of the amount
21 of such charge or credit, (iii) as to whether such charge or credit is to affect the basic payment
22 amount or is to be separately accounted for (and, if so, in what manner), and (iv) as to the period
23 during which such charge or credit is to apply, such charge or credit shall be incorporated into an

1 amendment to this Agreement setting forth the foregoing and other particulars necessary to
2 implement that adjustment. If such agreement cannot be reached within forty-five (45) days after
3 Semitropic has provided the required notice and information to Metropolitan, the matter shall be
4 resolved pursuant to Article 9, the qualified third party or arbitration panel being charged with
5 determining (x) whether a Regulatory Change has occurred (if that is in dispute), (y) the amount
6 of change, if any, in Semitropic's costs resulting from the Regulatory Change, and (z) the manner
7 in which the payments due from Metropolitan to Semitropic are to be adjusted to fairly and
8 equitably reflect that change in Semitropic's costs (it being the intent of the parties that no windfall
9 or unwarranted compensation or benefit should result to any party as a result of any adjustment
10 made pursuant to this Section 6.12). Any adjustment to the payments due from Metropolitan to
11 Semitropic made pursuant to this Section 6.12 shall be effective as of the first day such Regulatory
12 Change affects Semitropic's operations hereunder unless the parties otherwise agree and may be
13 reconsidered thereafter at any time, at the request of any party, if the adjustment is unjustly
14 undercompensating or overcompensating any party.

15 16 **ARTICLE 7. DIVISION OF RISK RESPONSIBILITIES**

17
18 Semitropic and Metropolitan agree to cooperate, and Semitropic shall require other Banking
19 Partners to cooperate, in reducing, to the greatest extent practicable, the risk from claims arising
20 against any of the Parties from implementation of this Agreement. In the event of claims by third
21 parties relating to this Agreement, the responsibilities of Semitropic, whether acting in its
22 individual and/or trustee capacity, Metropolitan and the other Banking Partners shall be divided
23 as follows:

1 7.1 Semitropic shall defend, indemnify and hold harmless Metropolitan and the other
2 Banking Partners, and their respective directors, officers, agents and employees against any and
3 all losses, claims, demands and causes of action (herein collectively referred to as "claims") and
4 shall assume responsibility for payment of any settlements, judgements, costs and attorneys' fees
5 arising from claims concerning the following:

- 6
- 7 (a) Control, carriage, handling, use, disposal, or distribution of water in
8 Semitropic's facilities;
- 9
- 10 (b) Any contest or dispute by any landowner or water user within the service
11 area of, or otherwise served by, Semitropic concerning the allocation of
12 benefits among or the assessment of charges to Semitropic landowners or
13 water users;
- 14
- 15 (c) Construction, repair, modification, or replacement of any Semitropic
16 facilities;
- 17
- 18 (d) Semitropic's operation of the Program or Semitropic facilities or the actions
19 of its officers, employees or agents; and
- 20
- 21 (e) Any other activities under Semitropic's exclusive control.
- 22

1 If Metropolitan is named in any such action, it may submit its defense to Semitropic, which
2 shall bear the full cost of defense, except to the extent that Metropolitan utilizes its own counsel
3 for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the
4 validity, underlying authority or enforceability of the Program under this Agreement shall be as
5 provided at Section 7.3.

6
7 7.2 Each Banking Partner (including Metropolitan) shall defend, indemnify and hold
8 harmless Semitropic and the other Banking Partners, and their respective directors, officers, agents
9 and employees, against any and all claims and shall assume responsibility for payment of any
10 settlements, judgements, costs or attorneys' fees arising from claims concerning the following:

- 11
- 12 (a) Control, carriage, handling, use, disposal or distribution of Stored Water in
13 facilities of that Banking Partner or in SWP facilities, to the extent that the
14 claim relates to use of SWP facilities to implement this Agreement with
15 respect to that Banking Partner;
- 16
- 17 (b) Any claim by a landowner, resident, public agency or other entity within the
18 service area of, or otherwise served by, that Banking Partner challenging the
19 appropriateness of that Banking Partner entering into this Agreement;
- 20
- 21 (c) Construction, repair, modification or replacement of any of the facilities of
22 that Banking Partner;
- 23

1 (d) Operation of the facilities of or the actions of the officers, employees or
2 agents (other than Semitropic) of that Banking Partner; and

3
4 (e) Any other activities under the exclusive control of that Banking Partner.
5

6 If Semitropic is named in any such action, it may submit its defense to the Banking Partner
7 involved, which Banking Partner shall bear the full cost of defense, except to the extent Semitropic
8 utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any
9 claims challenging the validity, underlying authority or enforceability of the Program under this
10 Agreement shall be as provided at Section 7.3. Semitropic shall not be entitled to any
11 indemnification from Metropolitan except as set forth in this Section 7.
12

13 7.3 As for any claims by a third party with respect to the Program which are not
14 otherwise provided for at Sections 7.1 or 7.2, including any claims challenging the underlying
15 authority for or the validity or enforceability of the Program under this Agreement, each Banking
16 Partner shall be responsible for payment of its allocable share of any settlements or judgments to
17 which it is a party with respect to such claims. If Semitropic is named in any action with respect
18 to such a claim, it may submit its defense to the Banking Partners which are parties to that action
19 with respect to that claim and those Banking Partners shall bear the full cost of defense, except to
20 the extent Semitropic utilizes its own counsel for such defense.
21

22 7.4 At the request of Metropolitan and/or other Banking Partners, Semitropic shall join
23 in the defense of any claim which is not adverse to Semitropic's water supply or financial interests

1 in which case the requesting Party shall reimburse Semitropic for all of its costs of defense.
2 However, with respect to claims in which one or more of the plaintiffs resides or does business
3 in Kern County challenging the recovery of groundwater under this Agreement, and with respect
4 to any third party claim challenging this Agreement or the right of Metropolitan to the return of
5 its Stored Water in accordance with the terms of this Agreement, Metropolitan may demand that
6 Semitropic join in the defense of claims. In such case, Semitropic must comply with any such
7 demand, the Parties shall jointly manage the litigation, and Metropolitan and other Banking
8 Partners who are parties to such litigation shall pay one-half of Semitropic's defense costs, if one
9 or more of the plaintiff resides or does business in Kern County; and in other such cases, shall
10 reimburse Semitropic for all of its costs of defense.

11
12 7.5 In all other water banking and exchange agreements involving Semitropic and any
13 Banking Partner, the division of risk and indemnification responsibilities between and among
14 Semitropic and the Banking Partner(s) shall be identical to the responsibilities provided in Sections
15 7.1, 7.2, 7.3, 7.4 and 7.6. In particular:

16
17 7.5.1 Each Banking Partner shall be required to assume the duty to defend,
18 indemnify and hold harmless Semitropic and the other Banking Partners from claims arising from
19 or otherwise concerning the activities described in Section 7.2 of that Banking Partner.

20
21 7.5.2 Each Banking Partner shall be required to assume the duty to pay its
22 allocable share of any claims of the type described in Section 7.3. Unless otherwise provided in
23 the settlement or judgment, each Banking Partner's share of such settlements, judgments, or

1 attorney fees as provided at Section 7.3 shall be determined according to the ratio of that Banking
2 Partner's combined Interim and Permanent Storage Allocation divided by the sum of all involved
3 Banking Partners' combined Interim and Permanent Storage Allocations.
4

5 7.6 In the event that payments are made in settlement of a claim, in satisfaction of a
6 judgment or for defense costs where the claim arises from issues applying to both Semitropic and
7 one or more Banking Partners, payments shall be divided in proportion to the relative liability of
8 each arising from the common claim. If the Parties cannot agree on the proportion, then the share
9 to be paid by each of Semitropic and the Banking Partners shall be submitted to arbitration as
10 provided at Article 9 hereof.
11

12 **ARTICLE 8. REQUIRED FOR IMPLEMENTATION**

13
14 Implementation of this Agreement is contingent upon the following:

- 15
- 16 (a) An agreement among DWR, Agency and Metropolitan for a Metropolitan
17 point of delivery at the Semitropic turnout in Reach 10A of the California
18 Aqueduct.
19
 - 20 (b) An agreement between DWR, Agency and Semitropic for a turn-in to the
21 California Aqueduct in Reach 10A.
22

1 (c) An agreement between DWR and Metropolitan to convey Stored Water from
2 Semitropic's turnout to Metropolitan.

3
4 (d) No entity within Kern County exercising its right of first refusal under the
5 same terms and conditions provided to Metropolitan in this Agreement
6 within forty-five (45) days after execution of this Agreement.

7
8 Semitropic will promptly notify Metropolitan when condition (d) has been met and the
9 Parties will keep each other informed concerning the satisfaction of the other Article 8 Conditions.

10
11 **ARTICLE 9. DISPUTE RESOLUTION**

12
13 9.1 In the event of dispute regarding interpretation or implementation of this Agreement,
14 or if the parties are unable to agree upon a matter as to which their agreement is provided for
15 hereunder, the Parties will endeavor to resolve the dispute by using the service of a mutually
16 acceptable consultant. The fees and expenses of the consultant shall be shared equally by the
17 Parties.

18
19 9.2 If a consultant cannot be agreed upon, or if the consultant's recommendations are
20 not acceptable to the Parties, and unless the Parties otherwise agree, the matter shall be resolved
21 by arbitration as provided in this Article 9 and in the California Arbitration Act (Part 3
22 [commencing with § 1280], Tit. 9, Calif. Code Civ. Proc.), including Section 1283.05. The Parties
23 agree to be bound by the majority decision of a three-member panel to be selected as follows:

1 (a) One member shall be selected by Metropolitan (or if the dispute is between
2 various Banking Partners and Semitropic, by the Banking Partners involved,
3 collectively; provided, however that if they are unable to agree on a
4 member, any one Banking Partner may petition the court to appoint a
5 member pursuant to Code of Civil Procedures Section 1281.6);

6
7 (b) One member shall be selected by Semitropic; and

8
9 (c) The third member shall be selected by the other two (2) members.
10

11 If the two (2) members selected by the Banking Partner(s) and Semitropic are unable to agree on
12 the selection of a third member, either Party may petition a court to appoint the third member
13 pursuant to Code of Civil Procedure Section 1281.6. Each Party shall be responsible for any fees
14 and expenses of the member of the panel appointed by that Party, and the fees and expenses of the
15 third member of the panel shall be shared fifty percent (50%) by Semitropic with the remainder
16 to be equally among the other Parties participating in the dispute resolution process.
17

18 If a Party asserts that another Party has breached obligations under this Agreement, it may
19 request that the arbitration panel order the other Party to comply with this Agreement. Upon the
20 panel finding that a Party has in fact breached this Agreement, the panel shall order compliance.
21 The panel may order any other equitable relief permitted by California law, including declaratory
22 or injunctive relief, applicable to the matter before the panel for resolution. If termination is
23 sought by a party pursuant to the terms hereof, the panel may determine the issues of whether a

1 default has occurred or other condition precedent to the termination alleged has been satisfied and,
2 if so, may issue orders implementing that termination. The orders of the panel shall be judicially
3 enforceable. The panel may order that the effective date of its order be the date of the breach, if
4 appropriate. If Metropolitan has suspended payments under Section 11.1.2, it shall reimburse
5 Semitropic for any monies withheld and then due to Semitropic as soon as Semitropic again fully
6 complies with this Agreement. The panel may not order any damages (including consequential or
7 punitive damages) beyond those provided for or permitted under this Agreement.

8

9 ARTICLE 10. TERM OF AGREEMENT

10

11 Unless this Agreement is earlier terminated pursuant to this Article 10 or pursuant to
12 Sections 11.1.3, 11.2, 11.3, 12.2 or 12.3, this Agreement shall terminate on November 4, 2035, the
13 date of termination of the Agency's Long-Term Water Supply Contract; *provided, however*, that,
14 if Metropolitan has timely requested return of Stored Water pursuant to Article 5 at such a time
15 and in such a manner that Metropolitan's Stored Water could have been returned prior to November
16 4, 2035 but, because of conditions beyond the control of Metropolitan, all of Metropolitan's Stored
17 Water has not been returned by that date, the provisions of Articles 1, 5, 6, 7, 9, 11, 12 and 13 of
18 this Agreement shall continue in full force and effect for such additional period of time as is
19 necessary for Metropolitan to receive its Stored Water as requested; and *provided, further*, that if
20 a claim arising under or with respect to the terms of this Agreement has not been resolved when
21 this Agreement terminates, or if such a claim is brought after this Agreement has terminated but
22 within the period of time for bringing such a claim under California law (such a claim being
23 referred to herein as a "**Late Arising Claim**"), the provisions of Articles 1, 7, 9 and 13 of this

1 Agreement shall continue in full force and effect for such additional period of time as is necessary
2 to resolve such claim and to satisfy the rights and obligations of the Parties hereto with respect to
3 it pursuant to such Articles. This Agreement may be renewed by mutual agreement of the parties,
4 which renewal shall unless otherwise agreed effect a continuation of Semitropic's duties under this
5 Agreement. Metropolitan may elect to terminate this Agreement at any time by giving written
6 notice to Semitropic of Metropolitan's intent to terminate not less than one year in advance of the
7 termination date selected by Metropolitan and specified in the notice and by conveying its
8 beneficial interest in the amount of Metropolitan's Stored Water in Metropolitan's Storage Account
9 Balance on that termination date to Semitropic. Upon Metropolitan's conveyance of such beneficial
10 interest, this Agreement shall be fully terminated except as provided in this Article 10 with respect
11 to Late Arising Claims.

12 13 **ARTICLE 11. REMEDIES**

14 15 **11.1 Remedies in Event of Semitropic's Voluntary Failure to Perform.**

16
17 **11.1.1** If Metropolitan alleges that Semitropic has not substantially performed
18 according to the terms of this Agreement (including, but not limited to, by failing to construct
19 adequate Program facilities and/or securing agreements or operational arrangements, all as
20 necessary to provide those levels of capabilities, capacities and rights described in Exhibits A and
21 C, or by causing (or, if within Semitropic's jurisdiction, permitting) other entities or persons to
22 interfere with Program operation, or by attempting to resign its obligations as trustee under this
23 Agreement or by failing to accept or return water as and when required by this Agreement), or if

1 Semitropic has otherwise breached its obligations under this Agreement, which failure to perform
2 or breach is not subject to Section 12.3, and notice has been provided to Semitropic pursuant to
3 Section 13.4 and Semitropic has failed to cure the alleged breach within the time provided in
4 Section 13.4, Metropolitan may, at any time thereafter while the default is continuing, advise
5 Semitropic of the remedy or remedies provided in Article 9 (Dispute Resolution), and Sections
6 11.1.2 and 11.1.3 below which Metropolitan intends to pursue with respect to such default.
7 Semitropic may challenge at any time, through Article 9, whether in fact there has been a breach
8 of or default under this Agreement by Semitropic.

9
10 11.1.2 In the event of an alleged breach as to which Metropolitan has given notice
11 to Semitropic pursuant to Section 11.1.1, Metropolitan may elect to suspend any payment
12 obligations it may have under Article 6 of this Agreement until Semitropic complies with the terms
13 of this Agreement and cures such breach or default or is determined, pursuant to Article 9, not to
14 have violated the Agreement. Notwithstanding such suspension of Metropolitan's payment
15 obligations, this Agreement shall remain in effect unless and until Metropolitan elects to terminate
16 the Agreement under Section 11.1.3 or Article 10, in which case termination shall occur in
17 accordance with and as provided in such provision. Notwithstanding an election by Metropolitan
18 under this Section 11.1.2 to suspend payment obligations, Metropolitan or Semitropic may
19 thereafter also seek relief under Article 9.

20
21 11.1.3 If, pursuant to Section 11.1.1, Metropolitan elects to terminate this
22 Agreement, Semitropic will purchase the amount of Metropolitan's Stored Water in its Storage
23 Account Balance for an amount equal to Metropolitan's previous payments with respect to such

1 Stored Water plus any unrefunded portion of monies described in Section 6.9, all adjusted based
2 on the index referenced at Section 6.2.2, plus twenty percent (20%) of said payments, all payable
3 within one (1) year of said election by Metropolitan to terminate. Once such payment has been
4 fully made, this Agreement shall be fully terminated except for Articles 1 (Definitions); 7 (Division
5 of Risk Responsibilities); 9 (Dispute Resolution); and Article 13 (Miscellaneous Provisions). Upon
6 payment in full by Semitropic as provided above, Metropolitan's beneficial interest in the amount
7 of Metropolitan's Stored Water in Metropolitan's Storage Account Balance shall vest in Semitropic
8 and Semitropic shall be entitled to produce and use such water for its own account.

9
10 **11.2 Remedies in the Event of Metropolitan's Voluntary Failure to Perform.**

11
12 If Metropolitan has not substantially performed according to the terms of this
13 Agreement, and notice has been provided to Metropolitan pursuant to Section 13.4 and
14 Metropolitan has failed to cure the alleged breach within the time provided in Section 13.4,
15 Semitropic may at its election, at any time thereafter while the default is continuing, either (1)
16 suspend further performance (except that Semitropic shall continue to hold the trust property in
17 trust) and thereafter seek relief under Article 9, and shall recommence performance once
18 Metropolitan complies with the Agreement, or (2) terminate this Agreement, except that Articles
19 1, 7, 9 and 13 shall remain in effect. If Semitropic elects to terminate this Agreement, Semitropic
20 will either purchase the amount of Metropolitan's Stored Water in Metropolitan's Storage Account
21 Balance in the manner and for the price provided in Section 12.3 or will deliver to Metropolitan
22 that amount of water in the manner provided in Section 12.2. Metropolitan may challenge at any
23 time, through Article 9, whether in fact there has been a breach of this Agreement by Metropolitan.

1 11.3 Remedies in Event of Failure of Certain Other Remedies.

2

3 If: (i) Semitropic has breached or defaulted in the performance of its obligations

4 under this Agreement, and (ii) Metropolitan has given notice of the breach or default pursuant to

5 Section 11.1.1, and (iii) Semitropic has failed to cure that breach or default within thirty (30) days

6 as required by Section 13.4, and (iv) Metropolitan has elected a remedy for that breach or default

7 pursuant to Section 11.1.1, and (v) Semitropic has agreed to such remedy or, if Semitropic has not

8 so agreed, Metropolitan has obtained a judgment or court order against Semitropic (whether based

9 on an order of an arbitration panel under Article 9 or otherwise) which judgment or court order

10 Semitropic has failed or refused to perform, *then* Metropolitan may notify Semitropic that

11 Metropolitan is entitled to and intends to exercise its right to appointment of a successor trustee

12 in place of Semitropic and, thereafter, Metropolitan may apply to a court of competent jurisdiction

13 for such appointment of a successor trustee who shall be charged with performing the duties of the

14 trustee pursuant to the terms of this Agreement. The successor trustee, when appointed, shall be

15 entitled to exercise only and all rights theretofore held by Semitropic as trustee for Metropolitan,

16 including, without limitation, those under or relating to the Trust Property (excepting, however, the

17 right to receive additional water for storage hereunder), until such time as the successor trustee has

18 collected and recovered water from the property of Semitropic in an amount sufficient to return

19 water in an amount equal to the amount of Metropolitan's Stored Water in Metropolitan's Storage

20 Account Balance and has transported that water to the California Aqueduct at Reach 10A. Upon

21 the receipt by Metropolitan at Reach 10A of the California Aqueduct of water in an amount equal

22 to Metropolitan's Storage Account Balance pursuant to the exercise by such successor trustee of

23 its rights in the Trust Property, this Agreement shall be fully terminated except for Articles 1

1 (Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); and 13 (Miscellaneous
2 Provisions), all in accordance with the terms of this Agreement.

3 4 **ARTICLE 12. EARLY TERMINATION**

5
6 **12.1 Resignation of Semitropic.** Because Semitropic is uniquely situated for performing
7 its duties as trustee, Semitropic may not resign its duties and obligations under this Agreement for
8 the term of this Agreement except as permitted by Sections 11.2, 12.2 and 12.3, and any other
9 attempt by Semitropic to resign shall be deemed to be a breach of its obligations hereunder.

10
11 **12.2 Voluntary Termination.** If after ten (10) years from the execution of the
12 Agreement Metropolitan's Program activities have ceased to provide benefits to Semitropic because
13 Metropolitan has not made payments under Section 6.4 or either has not requested to store or
14 withdraw significant quantities of water for a period of five (5) years and has a Storage Account
15 Balance of less than 100,000 acre-feet, Semitropic may elect to terminate Articles 3, 5 and 6 of
16 this Agreement. Upon such election, Semitropic must either (i) purchase the amount of
17 Metropolitan's Stored Water in Metropolitan's Storage Account Balance for an amount equal to
18 Metropolitan's previous payments for any water remaining in the Metropolitan Storage Account
19 plus twenty percent (20%) of said payments, all payable within one year of such termination, or
20 (ii) exchange Metropolitan's Stored Water for an amount of water equal to the remaining water in
21 Metropolitan's Storage Account Balance, such water to be delivered to Metropolitan, at the
22 Semitropic Turnout in the California Aqueduct or another location acceptable to the Parties, within
23 five (5) years of such termination upon a schedule mutually acceptable to the Parties (or, if the

1 Parties fail to agree upon such schedule, the matter shall be resolved pursuant to Article 9). If
2 payment is made or exchange water is provided by Semitropic as provided above, Metropolitan's
3 beneficial interest in Metropolitan's Stored Water shall vest in Semitropic as and to the extent such
4 payment or delivery is made. Once either the payment referred to above has been fully made or
5 the water in Metropolitan's Storage Account Balance has been returned to Metropolitan in full, this
6 Agreement shall be fully terminated except for Articles 1 (Definitions); 7 (Division of Risk
7 Responsibilities); 9 (Dispute Resolution); this Section 12.1 and Article 13 (Miscellaneous
8 Provisions). Upon the termination of this Agreement pursuant to this Section 12.2, Semitropic
9 shall retain the right to offer the benefits of this Program to other entities without interference from
10 Metropolitan.

11
12 **12.3 Involuntary Termination.** Notwithstanding Article 11, in the event that Semitropic
13 is unable to perform its obligations under this Agreement for reasons beyond its control, and that
14 inability to perform includes the inability of Semitropic to return Stored Water which remains in
15 the Metropolitan Storage Account Balance, Semitropic will purchase the Stored Water which
16 Semitropic is unable to return for an amount equal to the costs which Semitropic would have
17 incurred to purchase such water as entitlement water under its Member Unit contracts with the
18 Agency referenced at Recital B (including all fixed and variable costs for delivery of such
19 entitlement water to the Semitropic Turnout in Reach 10A) in the year Metropolitan delivered such
20 Stored Water to Semitropic. "Reasons beyond its control" as used in the aforesaid sentence shall
21 not include any reasons caused by Semitropic's breach of its obligations under this Agreement or
22 other failure to comply with any of its legal obligations. Such payment by Semitropic to
23 Metropolitan upon involuntary termination under this Section 12.3 shall be financed over time upon

1 terms mutually agreeable to Metropolitan and Semitropic. If Metropolitan and Semitropic are
2 unable to agree on such terms in a reasonable period of time, they shall resolve their disagreement
3 pursuant to Article 9. Once such payments have been fully made, this Agreement shall be fully
4 terminated except for Articles 1 (Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute
5 Resolution); this Section 12.2 and Article 13 (Miscellaneous Provisions). If payment is made as
6 provided above, the beneficial interest in the amount of Metropolitan's Stored Water in
7 Metropolitan's Storage Account Balance which Semitropic is unable to return shall vest in
8 Semitropic.

9
10 In addition to such payment, if, subsequent to such involuntarily termination, Semitropic
11 is able to negotiate another arrangement or program with another entity which utilizes Program
12 Delivery Capacity which was developed as a result of payments by Metropolitan pursuant to this
13 Agreement, and which capacity would have been available to Metropolitan absent such involuntary
14 termination, the Parties shall negotiate a payment schedule to reimburse Metropolitan for the
15 undepreciated balance of capital costs which Metropolitan has paid, deducting payments made or
16 to be made by Semitropic as provided above, and which does not render such new program
17 infeasible. Attached as Exhibit E are the assumptions to be used in such calculation. If
18 Metropolitan and Semitropic are unable to agree on the terms of a payment schedule in a
19 reasonable period of time, they shall resolve their disagreement pursuant to Article 9.

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ARTICLE 13. MISCELLANEOUS PROVISIONS

13.1 **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Any successor to Semitropic shall be a successor Trustee hereunder. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any party to this Agreement, or to give any person any right of subrogation or action over or against any party to this Agreement.

13.2 **Allocation Among Semitropic Improvement Districts.** Semitropic shall allocate the rights and obligations under this Agreement between the water users and landowners of Semitropic Water Storage District, Semitropic Improvement District, Buttonwillow Improvement District and Pond-Poso Improvement District as it deems appropriate, so long as Metropolitan's and the other Banking Partners right to obtain the return of Stored Water is not adversely impacted. Regardless of such allocations, Semitropic shall remain the trustee under this Agreement.

13.3 **No Modification of Existing Contracts.** This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between the DWR and the Agency or Metropolitan or the water supply agreements between the Agency and Semitropic.

1 **13.4 Waiver/Cure of Defaults.** The failure of any Party to enforce against the other a
2 provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a
3 provision at a later time. No Party shall be deemed to be in default of any provision of this
4 Agreement unless the other Party has given written notice specifically stating the alleged default
5 and the Party in default fails to cure the default within thirty (30) days of receipt of such written
6 notice.

7
8 **13.5 Construction of Agreement.** The language in all parts of this Agreement shall be
9 in all cases construed simply according to its fair meaning and not strictly for or against any of
10 the parties hereto and Section 1654 of the Civil Code has no application to interpretation of this
11 Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this
12 Agreement are solely for the convenience of the parties, are not a part of this Agreement and shall
13 not be used in construing it. The preamble, recitals and all exhibits and schedules to this
14 Agreement are part of this Agreement and are incorporated herein by this reference. When
15 required by the context: whenever the singular number is used in this Agreement, the same shall
16 include the plural, and the plural shall include the singular; and the masculine gender shall include
17 the feminine and neuter genders and vice versa. Unless otherwise required by the context (or
18 otherwise provided herein): the words "**herein**," "**hereof**" and "**hereunder**" and similar words shall
19 refer to the Agreement generally and not merely to the provision in which such term is used; the
20 word "**person**" shall include individual, partnership, corporation, limited liability company, business
21 trust, joint stock company, trust, unincorporated association, joint venture, governmental authority
22 and other entity of whatever nature; each of the words "**Metropolitan**" and "**Semitropic**" shall
23 include the respective representatives, successors and permitted assigns, if any, of such person; the

1 words "including," "include" or "includes" shall be interpreted in a non-exclusive manner as
2 though the words "but [is] not limited to" or "but without limiting the generality of the foregoing"
3 immediately followed the same; the word "month" shall mean calendar month; and the term
4 "business day" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on
5 which performance of any act or the occurrence of any event hereunder is due is not a business
6 day, the time when such performance or occurrence shall be due shall be the first business day
7 occurring after the day on which performance or occurrence would otherwise be due hereunder.
8 All times provided in this Agreement for the performance of any act will be strictly construed, time
9 being of the essence of this Agreement.

10
11 **13.6 Entire Agreement.** This Agreement and other documents expressly referenced
12 herein constitute the entire agreement between the Parties pertaining to the matters provided for
13 herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and
14 understanding, whether written or oral pertaining between the Parties relating to the matters
15 provided for herein (it being expressly understood and agreed, however, that the Temporary
16 Agreement shall continue in full force and effect until the earliest of the following to occur: (i)
17 satisfaction of the Article 8 Conditions, or (ii) withdrawal by Metropolitan of all of the water
18 stored pursuant to the Temporary Agreement, or (iii) January 1, 2010).

19
20 **13.7 Severability.** In the event that a court of competent jurisdiction or a arbitration
21 panel as provided at Article 9 determines that a provision included in this Agreement is legally
22 invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use
23 their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual

1 agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months
2 thereafter promptly agree on the appropriate revision(s). The time periods specified above may
3 be extended by mutual agreement of the Parties. Pending the completion of the actions designated
4 above, to the extent it is reasonably practical and can be done without violating any applicable
5 provisions of law, the provisions of this Agreement which were not found to be legally invalid or
6 unenforceable in the final decision shall continue in effect. If the Parties cannot agree on
7 appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section
8 12.3.

9
10 **13.8 Force Majeure.** All obligations of the Parties other than monetary or payment
11 obligations shall be suspended for so long as and to the extent the performance thereof is
12 prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes, facility
13 failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental
14 agencies having competent jurisdiction, or other events or causes beyond the control of the Parties.
15 In no event shall any liability accrue against a Party, to its officers, agents or employees, for any
16 damage arising out of or connected with a suspension of performance pursuant to this Section 13.8.
17 In event of such an occurrence of duration in excess of one year, Section 12.3 shall control, unless
18 the Parties otherwise agree.

19
20 **13.9 Notices.** All notices, requests and demands hereunder ("Notices") shall be in writing
21 and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on
22 the third business day after mailing, if that date is earlier than actual delivery). Notices shall be
23 sent to a Party at the address of that Party set forth below or, if such Party has furnished notice

1 of a change of that address as herein provided, to the address of that Party most recently so
2 furnished. Notices for Semitropic shall be sent to the General Manager of Semitropic at Post
3 Office Box Z, Wasco, California 93280, if mailed, and otherwise to the General Manager at 1017
4 Central Avenue, Wasco, California 93280. Notices for Metropolitan shall be sent to the General
5 Manager of Metropolitan at Post Office Box 54153, Los Angeles, CA 90054-0153 if mailed, and
6 otherwise to the General Manager at the offices of Metropolitan at 350 S. Grand Avenue, Los
7 Angeles, California 90071. Each Party hereto (a "Recipient") who receives from another Party
8 hereto (a "Sender") by electronic facsimile transmission (telecopier) any writing which appears to
9 be signed by that Sender is authorized to rely and act upon that writing in the same manner as if
10 the original signed writing was in the possession of the Recipient upon oral confirmation of that
11 Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender
12 to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by
13 electronic facsimile transmission agrees to forward immediately to that Recipient, by expedited
14 means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the
15 signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition
16 of the original by the Sender.

17
18 **13.10 Further Assurances.** Each party hereto, upon the request of the other, agrees to
19 perform such further acts and to execute and deliver such other documents as are reasonably
20 necessary to carry out the provisions of this instrument.


21
22 **13.11 Counterparts.** This Agreement, and any document or instrument entered into, given
23 or made pursuant to this Agreement or authorized hereby, and any amendment or supplement

1 thereto may be executed in two or more counterparts, and by each party on a separate counterpart,
2 each of which, when executed and delivered, shall be an original and all of which together shall
3 constitute one instrument, with the same force and effect as though all signatures appeared on a
4 single document. Any signature page of this Agreement or of such an amendment, supplement,
5 document or instrument may be detached from any counterpart without impairing the legal effect
6 of any signatures thereon, and may be attached to another counterpart identical in form thereto but
7 having attached to it one or more additional signature pages. In proving this Agreement or any
8 such amendment, supplement, document or instrument, it shall not be necessary to produce or
9 account for more than one counterpart thereof signed by the party against whom enforcement is
10 sought.

11
12 **13.12 Recording of Memorandum.** A memorandum of this Agreement in the form
13 attached hereto as Exhibit F shall be recorded in the Office of the County Recorder, County of
14 Kern.
15

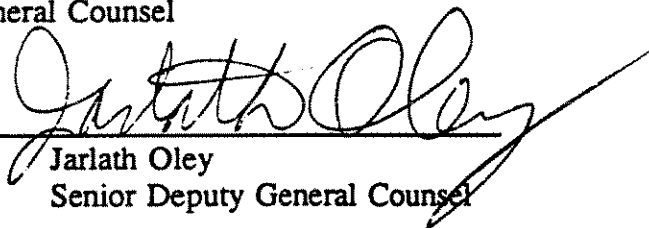
1 Executed the day and year first hereinabove written.

2
3 **THE METROPOLITAN WATER DISTRICT**
4 **OF SOUTHERN CALIFORNIA**

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8 By: 
9 John R. Wodraska
10 General Manager

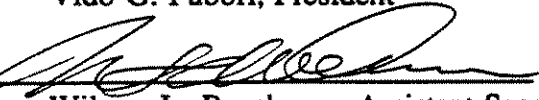
11
12
13 APPROVED AS TO FORM:

14
15 N. Gregory Taylor
16 General Counsel

17
18
19 By: 
20 Jarlath Oley
21 Senior Deputy General Counsel

22
23
24 **SEMITROPIC WATER STORAGE DISTRICT**

25
26
27 By: 
28 Vido G. Fabbri, President


29
30 By: 
31 Wilmar L. Boschman, Assistant Secretary

32
33
34 **SEMITROPIC IMPROVEMENT DISTRICT**
35 **OF SEMITROPIC WATER STORAGE DISTRICT**

36
37
38 By: 
39 Vido G. Fabbri, President

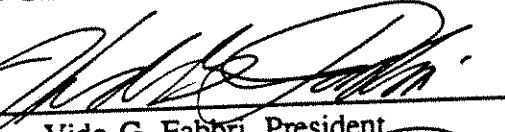
40
41 By: 
42 Wilmar L. Boschman, Assistant Secretary

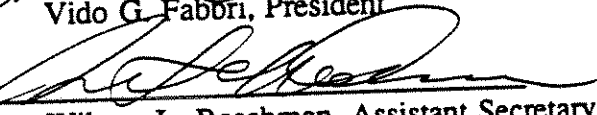
1 **BUTTONWILLOW IMPROVEMENT DISTRICT**
2 **OF SEMITROPIC WATER STORAGE DISTRICT**

3
4
5 By: 
6 Vido G. Fabbri, President

7
8 By: 
9 Wilmar L. Boschman, Assistant Secretary

10
11
12 **POND-POSO IMPROVEMENT DISTRICT**
13 **OF SEMITROPIC WATER STORAGE DISTRICT**

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15
16
17 By: 
18 Vido G. Fabbri, President

19
20 By: 
21 Wilmar L. Boschman, Assistant Secretary

**BUILDUP SCHEDULE
FOR
PROGRAM ENTITLEMENT EXCHANGE RIGHTS
AND
PROGRAM PUMPBACK CAPACITY**

Sum of All Banking Partners' Deliveries or Funds Paid to Establish "Program Pumpback" Permanent Storage Allocations (acre-feet)	¹ Maximum "Program Entitlement Exchange Rights" at Full Entitlement Allocation (acre-feet per year)	¹ Minimum Capacity (acre-feet per year)
100,000	40,000	31,500
150,000	45,000	90,000 ²
200,000	50,000	90,000
300,000	60,000	90,000
400,000	70,000	90,000
500,000	80,000	90,000
600,000	90,000	90,000
700,000	100,000	90,000
800,000	110,000	90,000
900,000	120,000	90,000
1,000,000	133,000	90,000

¹ Applies in the year after the Permanent Storage Allocation reaches the indicated amount, subject to the provisions of this Agreement.

² Maximum instantaneous flowrate at this level is 300 cfs.

EXHIBIT B

METROPOLITAN'S PAYMENTS TO SEMITROPIC FOR STORED AND RETURNED WATER

Year	HYPOTHETICAL DELIVERY SCHEDULE				PAYMENTS WHICH CONTRIBUTE TO METROPOLITAN ACQUIRING A SHARE OF PROGRAM				NON-CONTRIBUTING PAYMENTS					
	Quantity Stored in Year		Quantity Returned in Year		Payments for Storing Water (\$50 Payment Under Section 6.2.1)		Payments for Return of Water (\$40 Payment Under Section 6.3.1)		Payments for Water Stored More than Five Years (\$20 Payment Under Section 6.4)		Payments for Storing Water (\$50 Payment Under Section 6.2)		Payments for Return of Water (\$50 Payment Under Section 6.3.2)	
	AF	AF	AF	AF	Water Stored	Adjusted per ENR Index \$/AF	Returned Water	Adjusted per ENR Index \$/AF	Water Stored < 5 yrs	Adjusted per ENR Index \$/AF	Water Stored	Adjusted per ENR Index \$/AF	Returned Water	Adjusted per ENR Index \$/AF
1993	45,377.20	45,377.20	45,377.20	45,377.20	0.00	40.00	0.00	40.00	NA	20.00	0.00	0.00	0.00	0.00
1994	0.00	45,377.20	0.00	45,377.20	0.00	40.00	45,377.20	40.00	NA	20.00	0.00	0.00	0.00	0.00
1995	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	97.34	0.00	43.28	NA	21.63	0.00	0.00	0.00	0.00
1996	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	101.24	\$9,734,400	44.89	NA	22.50	0.00	0.00	0.00	0.00
1997	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	105.29	\$10,123,776	46.78	0.00	23.40	0.00	0.00	0.00	0.00
1998	100,000.00	100,000.00	100,000.00	100,000.00	100,000.00	109.50	\$10,528,727	48.67	0.00	24.33	0.00	0.00	0.00	0.00
1999	0.00	0.00	0.00	0.00	0.00	113.88	0.00	50.81	0.00	25.31	0.00	0.00	0.00	0.00
2000	0.00	0.00	0.00	0.00	0.00	118.43	0.00	52.84	0.00	26.32	0.00	0.00	0.00	0.00
2001	0.00	0.00	0.00	0.00	0.00	123.17	0.00	54.74	100,000.00	27.37	\$2,631,864	0.00	0.00	0.00
2002	0.00	0.00	0.00	0.00	0.00	128.10	0.00	56.93	200,000.00	28.47	\$5,474,276	0.00	0.00	0.00
2003	0.00	0.00	0.00	0.00	0.00	133.22	0.00	59.21	300,000.00	29.60	\$8,539,871	0.00	0.00	0.00
2004	0.00	0.00	0.00	0.00	0.00	138.55	0.00	61.58	250,000.00	30.78	\$9,007,156	0.00	0.00	0.00
2005	0.00	0.00	0.00	0.00	0.00	144.08	0.00	64.84	0.00	32.02	\$3,202,964	0.00	0.00	0.00
2006	0.00	0.00	0.00	0.00	0.00	149.86	0.00	66.80	0.00	33.30	0.00	0.00	0.00	0.00
2007	0.00	0.00	0.00	0.00	0.00	155.85	0.00	69.27	0.00	34.63	0.00	0.00	0.00	0.00
2008	0.00	0.00	0.00	0.00	0.00	162.08	0.00	72.04	0.00	36.02	0.00	0.00	0.00	0.00
2009	0.00	0.00	0.00	0.00	0.00	168.57	0.00	74.92	0.00	37.48	0.00	0.00	0.00	0.00
2010	0.00	0.00	0.00	0.00	0.00	175.31	0.00	77.92	0.00	38.96	0.00	0.00	0.00	0.00
2011	0.00	0.00	0.00	0.00	0.00	182.32	0.00	81.03	0.00	40.52	0.00	0.00	0.00	0.00
2012	0.00	0.00	0.00	0.00	0.00	189.62	0.00	84.27	0.00	42.14	0.00	0.00	0.00	0.00
2013	0.00	0.00	0.00	0.00	0.00	197.20	0.00	87.84	0.00	43.82	0.00	0.00	0.00	0.00
2014	0.00	0.00	0.00	0.00	0.00	205.08	0.00	91.15	0.00	45.58	0.00	0.00	0.00	0.00
2015	0.00	0.00	0.00	0.00	0.00	213.28	0.00	94.80	0.00	47.40	0.00	0.00	0.00	0.00
2016	0.00	0.00	0.00	0.00	0.00	221.82	0.00	98.59	0.00	49.28	0.00	0.00	0.00	0.00
2017	0.00	0.00	0.00	0.00	0.00	230.70	0.00	102.53	0.00	51.27	0.00	0.00	0.00	0.00
2018	0.00	0.00	0.00	0.00	0.00	239.93	0.00	106.83	0.00	53.32	0.00	0.00	0.00	0.00
2019	0.00	0.00	0.00	0.00	0.00	249.52	0.00	110.90	0.00	55.45	0.00	0.00	0.00	0.00
2020	0.00	0.00	0.00	0.00	0.00	259.50	0.00	115.33	0.00	57.67	0.00	0.00	0.00	0.00
2021	0.00	0.00	0.00	0.00	0.00	269.88	0.00	119.95	0.00	59.97	0.00	0.00	0.00	0.00
2022	0.00	0.00	0.00	0.00	0.00	269.88	0.00	119.95	0.00	59.97	0.00	0.00	0.00	0.00

Notes:
 Exhibit does not show energy payments required to return water under Article 6.3.3 or operation and maintenance fee under Article 6.7.
 Assumes Engineering News Record (ENR) Index increases four percent annually.
 Assumes Consumer Price Index increases three percent annually.
 Share means Metropolitan's share of Total Project Capital Costs. (As defined in Article 1.5)
 Adjustments are not applied retroactively to water previously delivered, returned and/or remaining in storage more than five years.

Year	METROPOLITAN'S SHARE OF TOTAL PROGRAM CAPITAL COST				METROPOLITAN'S SHARE OF TOTAL PROGRAM CAPITAL COST				METROPOLITAN'S SHARE OF TOTAL PROGRAM CAPITAL COST				METROPOLITAN'S STORAGE ALLOCATION			
	Met's Payments During Calendar Year	Previous Year's Unpaid Portion	Previous Payments	Difference Between Unpaid Portion and Previous Yrs. Payment	Adjustment Factor for Calendar Year	Beg. of Calendar Year Unpaid Share	Cumulative Payments from Previous Years	Beg. of Share Total Project Capital Cost	Total Program Capital Cost (Adjusted)	Annual Payments Divided Total Program Capital Cost	Cumulative % Paid by Met	Prospective Payments Pursuant to Section 8.3.1	Total % Paid (Actual and Prospective)	Permanent Storage Allocation	Interim Storage Allocation (Initially 350,000 AF)	Total Permanent and Interim Storage Allocation
1993	\$0	\$46,900,000	\$0	\$46,900,000	1.00	\$46,900,000	\$0	\$46,900,000	\$134,000,000	0.00%	0.00%	1.35%	1.35%	AF	AF	350,000
1994	\$0	\$46,900,000	\$0	\$46,900,000	1.00	\$46,900,000	\$0	\$46,900,000	\$134,000,000	0.00%	0.00%	0.00%	1.35%	13,545	336,455	350,000
1995	\$1,815,088	\$46,900,000	\$0	\$48,715,088	1.06	\$48,715,088	\$1,815,088	\$50,530,176	\$134,000,000	6.72%	6.72%	2.96%	9.72%	110,560	238,440	350,000
1996	\$9,734,400	\$46,900,000	\$1,815,088	\$58,449,488	1.04	\$49,664,576	\$11,784,912	\$60,449,488	\$134,000,000	8.72%	15.44%	5.97%	21.41%	207,575	142,425	350,000
1997	\$10,123,776	\$46,900,000	\$9,734,400	\$66,648,184	1.04	\$50,798,976	\$21,950,400	\$72,748,576	\$134,000,000	8.72%	24.16%	8.96%	33.12%	304,590	45,410	350,000
1998	\$10,528,727	\$46,900,000	\$10,123,776	\$77,276,903	1.04	\$52,022,752	\$32,274,176	\$84,501,024	\$134,000,000	0.00%	24.16%	8.96%	33.12%	304,590	45,410	350,000
1999	\$0	\$46,900,000	\$10,528,727	\$57,428,727	1.04	\$53,246,528	\$32,274,176	\$86,520,704	\$134,000,000	0.00%	24.16%	8.96%	33.12%	304,590	45,410	350,000
2000	\$0	\$46,900,000	\$0	\$46,900,000	1.04	\$54,470,528	\$32,274,176	\$88,744,704	\$134,000,000	1.49%	25.65%	8.96%	34.61%	319,516	30,484	350,000
2001	\$7,831,864	\$22,863,183	\$0	\$22,863,183	1.04	\$55,713,611	\$32,274,176	\$90,987,787	\$134,000,000	2.99%	28.64%	8.96%	37.60%	349,368	634	350,000
2002	\$5,474,276	\$23,798,510	\$2,631,964	\$26,430,746	1.04	\$57,045,577	\$40,306,131	\$97,351,708	\$134,000,000	4.48%	33.12%	8.96%	42.08%	350,000	0	350,000
2003	\$8,539,871	\$22,013,313	\$5,474,276	\$30,518,147	1.04	\$58,377,543	\$48,840,002	\$107,217,545	\$134,000,000	4.48%	37.60%	7.46%	45.06%	350,000	0	350,000
2004	\$9,007,156	\$17,200,808	\$8,539,871	\$25,740,027	1.04	\$59,709,599	\$57,367,158	\$117,076,757	\$134,000,000	1.49%	39.09%	5.97%	45.06%	364,925	0	364,925
2005	\$3,078,958	\$9,007,156	\$9,007,156	\$18,086,114	1.04	\$61,041,645	\$66,374,316	\$127,415,961	\$134,000,000	0.00%	39.09%	4.48%	43.57%	378,851	0	378,851
2006	\$3,202,064	\$0	\$3,078,958	\$6,151,022	1.04	\$62,373,691	\$73,453,274	\$140,826,965	\$134,000,000	0.00%	39.09%	4.48%	43.57%	378,851	0	378,851
2007	\$0	\$0	\$3,202,064	\$3,202,064	1.04	\$63,705,737	\$86,655,338	\$153,361,075	\$134,000,000	0.00%	39.09%	4.48%	43.57%	378,851	0	378,851
2008	\$0	\$0	\$0	\$0	1.04	\$65,037,783	\$100,957,402	\$168,994,885	\$134,000,000	0.00%	39.09%	4.48%	43.57%	378,851	0	378,851
2009	\$0	\$0	\$0	\$0	1.04	\$66,369,829	\$116,259,466	\$185,624,691	\$134,000,000	2.99%	40.58%	1.49%	42.07%	409,701	0	409,701
2010	\$7,491,925	\$0	\$7,491,925	\$7,491,925	1.04	\$67,701,875	\$132,751,391	\$200,452,666	\$134,000,000	1.49%	42.07%	0.00%	42.07%	424,627	0	424,627
2011	\$3,895,801	\$0	\$3,895,801	\$3,895,801	1.04	\$69,033,921	\$149,647,192	\$220,699,658	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2012	\$0	\$0	\$0	\$0	1.04	\$70,365,967	\$167,542,993	\$244,904,651	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2013	\$0	\$0	\$0	\$0	1.04	\$71,698,013	\$186,940,806	\$271,638,664	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2014	\$0	\$0	\$0	\$0	1.04	\$73,030,059	\$207,970,865	\$303,668,717	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2015	\$0	\$0	\$0	\$0	1.04	\$74,362,105	\$230,632,970	\$342,000,820	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2016	\$0	\$0	\$0	\$0	1.04	\$75,694,151	\$254,927,121	\$387,624,971	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2017	\$0	\$0	\$0	\$0	1.04	\$77,026,197	\$281,953,318	\$441,678,122	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2018	\$0	\$0	\$0	\$0	1.04	\$78,358,243	\$311,711,561	\$505,389,365	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2019	\$0	\$0	\$0	\$0	1.04	\$79,690,289	\$344,201,850	\$580,590,609	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2020	\$0	\$0	\$0	\$0	1.04	\$81,022,335	\$380,224,185	\$669,814,844	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2021	\$0	\$0	\$0	\$0	1.04	\$82,354,381	\$419,578,566	\$774,393,030	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627
2022	\$0	\$0	\$0	\$0	1.04	\$83,686,427	\$462,264,993	\$897,657,423	\$134,000,000	0.00%	42.07%	0.00%	42.07%	424,627	0	424,627

EXHIBIT C

PROGRAM DELIVERY CAPABILITY

INTRODUCTION:

The In-Lieu Service Area authorized in the EIR consists of 23,000 acres of actively farmed land. Semitropic's commitment to the Banking Partners is that at full development there will be 23,000 acres of In-Lieu Service Area. In the event cropping patterns or irrigation practices change the assumed average annual quantity of water each acre of land requires for irrigation, Semitropic shall not be obligated to increase its commitment to develop 23,000 acres of in-lieu land at full program development.

I. Maximum Annual Estimated Program Delivery Capability:

1.	In-Lieu Service Area: 23,000 acres x 3.5 AF/acre	-	80,500 AF/Yr
2.	Reduce existing delivery system constraints to lands already served by Semitropic's distribution system:		<u>10,000 AF/Yr</u>
	Total		90,500 AF/Yr

II. Metropolitan's share of Maximum Estimated Program Delivery Capability:

1.	By Establishing an In-Lieu Service Area 23,000 acres x 0.35 = 8,050 acres 8,050 acres x 3.5 AF/acre	-	28,175 AF/Yr
2.	By Increasing System Capacity 10,000 AFY x 0.35	-	<u>3,500 AF/Yr</u>
	Total Metropolitan Share of Maximum Estimated Program Delivery Capability		31,675 AF/Yr

Semitropic shall not be obligated to change its commitment to have developed 8,050 acres of in-lieu land by the time Metropolitan has paid Metropolitan's share of Total Project Capital Cost.

Expected Monthly Distribution of Metropolitan's Share of Maximum Estimated Program Delivery Capability:

	Historical Deliveries on 66,800 Acres+ Average of '84, '89 and '93		Estimated Monthly Distribution of MWD's share of "Program Delivery Capability " Acre-Feet Per Month
	Acre-Feet	Percent	
JANUARY	* 2,444	1.0	317
FEBRUARY	* 22,185	9.8	3,104
MARCH	21,185	9.6	3,041
APRIL	17,984	7.9	2,502
MAY	24,373	10.6	3,358
JUNE	36,138	15.9	5,036
JULY	41,123	18.1	5,733
AUGUST	34,084	15.1	4,783
SEPTEMBER	12,310	5.4	1,710
OCTOBER	6,373	2.8	887
NOVEMBER	4,015	1.9	602
DECEMBER	4,206	1.9	602
TOTAL	226,420 AF	100.0	31,675 AF

* Average of 1984 and 1989 only

SEMITROPIC WATER STORAGE DISTRICT
CALCULATION OF POWER PAYMENTS UNDER SECTION 6.3.3
AGREEMENT FOR A METROPOLITAN-SEMITROPIC WATER BANKING AND EXCHANGE PROGRAM

BASIC FORMULA

$$\frac{(\text{ENERGY CONSUMED to WITHDRAW WATER from STORAGE}) \times (\text{TOTAL SEMITROPIC ENERGY COSTS})}{(\text{TOTAL ENERGY CONSUMED BY SEMITROPIC})} = (\text{WITHDRAWAL PAYMENTS})$$

Summary of components

ENERGY CONSUMED to WITHDRAW WATER from STORAGE (Water Banking activity to return stored water)

1. Energy used to extract ground water for Banking Partners, including:
 - a) Actual electric meter readings from Semitropic operated wells
 - b) Actual PG&E meter readings from bills submitted for payment under pumping agreements for operation of Semitropic landowner wells
 - c) Energy use under pumping agreements with Semitropic landowners for operation of wells where the actual KWH is unavailable (as in engine driven wells) use the formula:
KWH = 1.707 x (PUMPING LIFT in feet) x (ACRE-FEET EXTRACTED)
Where 1.707 is the conversion factor assuming 60% wire to water efficiency
Where the PUMPING LIFT is determined from the previous year's "Lines of Equal Pumping Lifts" by Bookman-Edmonston Engineering, Inc.
Where the ACRE-FEET EXTRACTED is from actual Semitropic water meter readings
 - d) Estimated use for released Contract Water (on-farm ground water pumping) use the same formula as above
2. Energy used to reverse the flow of Semitropic canals
 - a) From the actual electric meter readings at reverse flow pumping structures
The use shall be proportional to the water pumped for WITHDRAWAL for Banking Partners to the total water pumped by Semitropic
3. Energy used at the Semitropic's Pump-Back Pumping Plant to return water to the California Aqueduct
 - a) From the actual electric meter readings at the Pump-Back Pumping Plant
The use shall be proportional to the water pumped for WITHDRAWAL for Banking Partners to the total water pumped by Semitropic
4. Estimated energy use for other facilities as may be required by Semitropic

TOTAL ENERGY COSTS (Costs to secure energy required for all Semitropic activities)

5. Costs to feed energy into the Semitropic Grid
 - a) PG&E billing at Semitropic Substation (single point of service with Semitropic power grid)
 - b) All costs for other electrical feeds into Semitropic Grid (i.e. external cogeneration facilities)
 - c) All costs for power generated by Semitropic's Energy Project including:
 - (currently 4 MW of natural gas engine generation and 850 KW of hydroelectric generation)
 - Fuel
 - Operation & Maintenance
 - Replacement Reserve deposits
 - Debt Service

6. Costs for energy not fed into Semitropic Grid
 - a) All PG&E billings for Semitropic facilities not on Semitropic Grid
 - b) Engine/generator rental and diesel to operate temporary Semitropic facilities
 - c) All payments to Semitropic landowners under ground water pumping agreements for operation of Semitropic landowner wells
 - d) All payments to Contract Water Users for release of Contract Water (on-farm ground water pumping) for energy use identified in 1.d) above
 - e) Costs of other facilities as may be required by Semitropic

TOTAL ENERGY CONSUMED (Energy required for all Semitropic activities)

7. Energy fed into the Semitropic Grid
 - a) PG&E meter readings at Semitropic Substation (single point of service with Semitropic power grid)
 - b) Any other electrical service metered into Semitropic Grid (i.e. external cogeneration facilities)
 - c) Energy metered at each Semitropic operated natural gas engine-generator
 - d) Energy metered at each Semitropic operated hydroelectric generator

8. Energy not fed into the Semitropic Grid
 - a) All PG&E meter readings for Semitropic facilities not on Semitropic Grid
 - b) Actual PG&E meter readings from bills submitted for payment under pumping agreements for operation of Semitropic landowner wells
 - c) Energy use under pumping agreements with Semitropic landowners for operation of wells where the actual KWH is unavailable
(as in engine driven wells) use the formula:
$$\text{KWH} = 1.707 \times (\text{PUMPING LIFT in feet}) \times (\text{ACRE-FEET EXTRACTED})$$

Where 1.707 is the conversion factor assuming 60% wire to water efficiency
Where the PUMPING LIFT is determined from the previous year's "Lines of Equal Pumping Lifts" by Bookman-Edmonston Engineering, Inc.
Where the ACRE-FEET EXTRACTED is from actual Semitropic water meter readings
 - d) Estimated use for released Contract Water (on-farm ground water pumping) use the same formula as above

 - e) Estimated energy use for other facilities as may be required by Semitropic

**DEPRECIATION ASSUMPTIONS
TO BE USED
FOR SECTION 12.2 OF THIS
AGREEMENT**

- I. Depreciation is to be calculated on a straight line basis.
- II. The average useful lives of facilities are as follows:

<u>Facility</u>	<u>Average Useful Life (years)</u>
Canals	50
Structures	50
Pipelines and Appurtenances	50
Pumps and Motors	25
Wells	25

