

QUANTIFICATION SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2001, by and among Imperial Irrigation District ("IID"), a California irrigation district, The Metropolitan Water District of Southern California ("MWD"), a California metropolitan water district, and Coachella Valley Water District ("CVWD"), a California county water district, each of which is at times referred to individually as "Party" and which are at times collectively referred to as "Parties."

RECITALS:

A. IID is an irrigation district organized under the California Irrigation District Law, codified at §§ 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California for potable and irrigation purposes.

B. MWD is a metropolitan water district organized under the California Metropolitan Water District Act, § 109-1 of the Appendix to the California Water Code, and engaged in developing, storing and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, California.

C. CVWD is a county water district organized under the California County Water District Law, codified at §§ 30000 et seq. of the California Water Code, and delivers Colorado River water in Riverside County, California for potable and irrigation purposes.

D. IID, MWD, PVID and CVWD are each contractors with the United States for delivery of Colorado River water as authorized by the Boulder Canyon Project Act (Act of December 21, 1928: 45 Stat.1057, as amended.)

E. Pursuant to those contracts, PVID, the Yuma Project (Reservation Division), IID and CVWD (collectively "the agricultural agencies") hold California's first three priorities to Colorado River water and are collectively entitled to the beneficial consumptive use as reasonably required of not to exceed 3,850,000 AFY. The fourth and fifth priorities totaling 1,212,000 AFY are held by MWD. The sixth priority of 300,000 AFY is held by IID, CVWD and PVID. The seventh priority of all remaining water available for use within California is reserved for agricultural use in the Colorado River Basin within California, which includes the lands within IID, CVWD and PVID. MWD and CVWD also have surplus water delivery contracts with the Secretary of the Interior.

F. MWD, IID and CVWD recognize that they have differences of opinion over various legal questions including the right to transfer water and the volumes of water to which the various right holders are entitled, but each Party wishes to go forward with this Agreement and associated agreements without regard to certain current or future differences, subject to the provisions of Article 4 hereof.

G. This Agreement and the Related Agreements are intended to consensually settle longstanding disputes regarding the priority, use and transfer of Colorado River water, to establish by agreement the terms for the further distribution of Colorado River water among the Parties for up to seventy-five years based upon the water budgets set forth herein, and to facilitate agreements and actions which will enhance the certainty and reliability of Colorado River water supplies available to the Parties and assist the Parties in meeting their water demands within California's apportionment of Colorado River water by identifying the terms, conditions and incentives for the conservation and distribution of Colorado River water within California.

H. IID seeks to settle disputes with CVWD and MWD and to use proceeds from the acquisition of Conserved Water by those Parties from IID to improve the reliability, efficiency and management of its Colorado River supply.

I. CVWD seeks to settle disputes with IID and MWD and to acquire Conserved Water for agricultural uses to accommodate anticipated reductions in groundwater extraction.

J. MWD seeks to settle disputes with IID and CVWD and to ensure the reliability of its Colorado River supplies.

K. The Parties intend that the Effective Date (defined below) of this Agreement will be contingent upon the completion of review and adequate provision for any required mitigation under and in compliance with the California Environmental Quality Act, California Public Resources Code §§ 2100 *et seq.* ("CEQA").

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** As used in this Agreement, the following terms have the following meanings:

(1) **Approval Agreement.** The agreement between IID, MWD, CVWD and PVID dated December 19, 1989, and entitled Approval Agreement.

(2) **1998 IID/SDCWA Transfer Agreement.** The Agreement for Transfer of Conserved Water by and between IID and SDCWA dated April 29, 1998, as amended substantively by the Third Amendment dated _____, 2001, with such further changes thereto as IID and SDCWA may from time to time agree subject to the provisions of Section 4.9 hereof.

(3) **Acquisition Agreements.** Collectively, the 1998 IID/SDCWA Transfer Agreement, the CVWD/MWD Acquisition Agreement, the IID/MWD Acquisition Agreement, the IID/CVWD Acquisition Agreement, and the MWD/CVWD Transfer and Exchange Agreement.

(4) **AF.** Acre-foot, a measure of volume.

(5) **AFY.** Acre-feet per Calendar Year.

(6) **All-American Canal**. The canal and appurtenant works from Imperial Dam to the Imperial and Coachella Valleys authorized in Section 1 of the Boulder Canyon Project Act.

(7) **Allocation Agreement**. The Agreement dated as of the Closing Date among the Parties, PVID, City of Escondido, Vista Irrigation District, San Luis Rey River Indian Water Authority, the La Jolla, Pala, Pauma, Rincon and San Pasqual Bands of Mission Indians and the Secretary, concerning the allocation of Conserved Water created by the lining of the All-American Canal and the Coachella Canal, with such changes thereto as such parties may from time to time agree in writing.

(8) **Assignment (or Assign)**. Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

(9) **BOR**. The United States Bureau of Reclamation.

(10) **Business Day**. A day that is not a Saturday, Sunday, or federal or California state legal holiday.

(11) **Calendar Year**. The 12-month period running from January 1 through December 31.

(12) **Calendar Year Quarter**. Any of the four three-month periods (i) January to March; (ii) April to June; (iii) July to September; or (iv) October to December.

(13) **CEQA**. As defined in Recital K.

(14) **Closing Date**. The date established by the Parties as soon as practicable after each Party determines that the respective conditions set forth in Section 6.2 applicable to all Parties and in Sections 7.1, 8.1 and 9.1 applicable to IID, CVWD and MWD, respectively, have been satisfied or waived, which date shall be no later than December 31, 2002.

(15) **Coachella Canal**. The Coachella branch of the All-American Canal leading from the All-American Canal to the CVWD service area authorized in Section 1 of the Boulder Canyon Project Act.

(16) **Colorado River Aqueduct**. The aqueduct system owned and operated by MWD and extending from Lake Havasu to Lake Mathews in Riverside County.

(17) **Conserved Water**. Water made available for acquisition under this Agreement and the Related Agreements attributable to: (a) Temporary Land Fallowing or crop rotation, if an allowed use is for irrigation, or (b) projects or programs that enable the use of less water to accomplish the same purpose or purposes of allowed use; provided, however, that such term does not include water attributable to:

undertaken; or

- (i) the activities described in (a) or (b) above not voluntarily
- (ii) to the activities described in (a) above voluntarily undertaken in exchange for money payment or other valuable consideration received from a governmental source; and
- (iii) the resulting volume of reduced water used from (i) or (ii) above cannot be used anywhere within the IID service area, as described in IID's Section 5 Contract as in effect on October 15, 1999.

(18) **Consumptive Use.** The diversion of water from the main stream of the Colorado River, including water drawn from the main stream by underground pumping, net of measured and unmeasured return flows.

(19) **Conveyance Loss.** The actual loss of water to evaporation, seepage, or other similar cause resulting from any transportation of Conserved Water from Imperial Dam to the CVWD service area or to the MWD service area, as the case may be.

(20) **CVWD.** As defined in Recital C.

(21) **CVWD/MWD Acquisition Agreement.** The agreement between CVWD and MWD dated as of the Closing Date regarding the acquisition of Conserved Water in the form attached hereto as Exhibit A, with such changes thereto as CVWD and MWD may from time to time agree subject to the provisions of Section 4.9 hereof.

(22) **CVWD/MWD Supplemental Agreement.** The agreement between CVWD and MWD dated December 19, 1989 and entitled Agreement to Supplement Approval Agreement.

(23) **Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement.** The date on which the Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement becomes effective.

(24) **Delegation (or Delegate).** Any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the obligations or liabilities in or arising from this Agreement to any person or entity (excluding such a transfer by operation of law), regardless of the legal form of the transaction in which the attempted transfer occurs.

(25) **Decree Accounting Process.** The BOR process described in and contemplated under Section 9.1(1) hereof.

(26) **Effective Date.** The "initial transfer date" as such term is defined in and determined under the 1998 IID/SDCWA Transfer Agreement.

(27) **Environmental Cost Sharing Agreement.** The Agreement among IID, CVWD, SDCWA and MWD dated as of _____, 2001, concerning the sharing and payment of

certain environmental review and mitigation costs pertaining to this Agreement and the Related Agreements, in the form attached hereto as Exhibit I, with such changes thereto as such parties may from time to time agree in writing.

(28) **Environmental Cost Condition Precedent Test Date.** The ninetieth day after the first date on which all environmental review and assessment contemplated under Section 6.2(2)(a) hereof are completed and all resource approvals contemplated under Section 6.2 (2)(b) hereof have been obtained. In the event that any action is filed challenging any such review, assessment or approval and is not finally resolved before such ninetieth day, the "Second Environmental Cost Condition Precedent Test Date" shall be the ninetieth day after the first date on which all such actions are finally resolved.

(29) **Environmental Mitigation Insurance.** One or more insurance policies which may be obtained and maintained by and with the consent of each of the Parties and SDCWA insuring IID and SDCWA (and CVWD and MWD to the extent their interests may appear) by indemnity or other means, at coverage levels and upon other terms acceptable to them, in their discretion, against the risk of unanticipated environmental consequences that may result in mitigation costs with respect to the transactions contemplated by the 1998 IID/SDCWA Transfer Agreement in excess of the IID Environmental Cost Ceiling and the Authority Environmental Cost Ceiling, as such terms are defined in the 1998 IID/SDCWA Transfer Agreement.

(30) **Execution Date.** The date on which the Parties have signed this Agreement; provided, however, that, if the Parties sign on different dates, the Execution Date is the date on which the last-to-sign Party has signed this Agreement.

(31) **Flood Control Release.** The release of water from Lake Mead and the operation of Hoover Dam for flood control purposes pursuant to the reservoir operating criteria specified in the February 8, 1984 Field Working Agreement between the U.S. Army Corps of Engineers and the BOR, and the U.S. Army Corps of Engineers regulations contained in Volume 33 of the Code of Federal Regulations, Part 208.11.

(32) **Force Majeure.** An event, not within the control of the Parties, which materially and adversely affects the performance of their respective obligations and duties to properly construct, operate, establish, implement or maintain the means of creating or receiving deliveries of Conserved Water.

(33) **GDPIPD Inflation Index.** For any Calendar Year Quarter after the fourth Calendar Year Quarter of 1998, the ratio of the published value for that quarter of the Gross Domestic Product Implicit Price Deflator published quarterly by the Bureau of Economic Analysis of the United States Department of Commerce in the Survey of Current Business, divided by the value of the Gross Domestic Product Implicit Price Deflator for the fourth Calendar Year Quarter of 1998. The GDPIPD Inflation Index for future quarter "n" is calculated by the following formula:

GDPIPD Inflation Index Quarter "n"
GDPIPD Inflation Index Fourth Quarter 1998

- (34) **IID**. As defined in Recital A.
- (35) **IID/CVWD Acquisition Agreement**. The agreement between IID and CVWD dated as of the Closing Date regarding the acquisition of Conserved Water in the form attached hereto as Exhibit B, with such changes thereto as IID and CVWD may from time to time agree subject to the provisions of Section 4.9 hereof.
- (36) **IID/MWD 1988 Agreement**. The agreement between IID and MWD dated December 22, 1988, and entitled Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water.
- (37) **IID/MWD Acquisition Agreement**. The agreement between IID and MWD dated as of the Closing Date regarding the acquisition of Conserved Water in the form attached hereto as Exhibit C, with such changes thereto as IID and MWD may from time to time agree subject to the provisions of Section 4.9 hereof.
- (38) **Implementation Agreement**. The agreement among the Parties, SDCWA, and the Secretary, dated as of the Closing Date, containing the terms of agreement with the Secretary to honor the terms of this Agreement and the Related Agreements in taking actions concerning the Colorado River, in the form attached hereto as Exhibit D, with such changes thereto as the Parties and the Secretary may from time to time approve in writing.
- (39) **Improvement District No. 1**. That area of land described in Exhibit "B" of the Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and for Delivery of Water between the United States and Coachella Valley County Water District dated October 15, 1934, as heretofore or hereafter modified under Section 15 of the Agreement of Compromise between Imperial Irrigation District and Coachella Valley County Water District dated February 14, 1934; provided, however, that any modification that requires IID's consent shall also require MWD's consent for purposes of this definition.
- (40) **Inadvertent Overrun and Payback Program**. The BOR program described in and contemplated under Section 6.2(4) hereof.
- (41) **Inflation Index**. For any Calendar Year Quarter ending after January 1, 1999, the arithmetic average of the PPI Inflation Index and the GDPIPD Inflation Index. The Inflation Index for any future Calendar Year Quarter "n" is calculated by the following formula:

$$I_n = \frac{(\text{PPI Inflation Index} + \text{GDPIPD Inflation Index})}{2}$$

An example of the calculation of the Inflation Index is provided in Attachment 1.

(42) **Interim Surplus Guidelines**. The federal guidelines described in and contemplated under Section 6.2(5) hereof.

(43) **MWD**. As defined in Recital B.

(44) **MWD/CVWD Transfer and Exchange Agreement**. The agreement between MWD and CVWD dated as of the Closing Date regarding the transfer by MWD to CVWD of thirty-five thousand (35,000) AFY of MWD's State Water Project entitlement and the exchange of such water for Colorado River water, with such changes thereto as MWD and CVWD may from time to time agree subject to the provisions of Section 4.9 hereof.

(45) **"N" Dollars**. That nominal dollar amount in a future Calendar Year Quarter "n" which, when adjusted based on the Inflation Index ("I_n") is equivalent to the specified dollar amount in the Agreement measured as of the Year Z specified in the Agreement. The adjustment is calculated according to the following formula:

$$\text{"N" Dollars} = \text{Nominal Dollar Amount} = \$\text{zzz}(\text{Year Z}) \times \text{Inflation Index}_n$$

(46) **Neutral County**. Any county other than Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego or Ventura.

(47) **Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement**. The termination of the 1998 IID/SDCWA Transfer Agreement after the Effective Date,

(i) other than by the mutual voluntary agreement or consent of IID and SDCWA;

(ii) by reason of the environmental condition subsequent contained in Sections 7.1(b)(iii) and 8.1(b)(iii) of the 1998 IID/SDCWA Transfer Agreement, but only after the later of December 31, 2016 or December 31 of the fifteenth (15th) year after the initial implementation of the Interim Surplus Guidelines, and after taking into account any proceeds of, or the value of other benefits provided by, any Environmental Mitigation Insurance, and without IID or SDCWA exercising rights under Sections 7.3 or 8.3 of the 1998 IID/SDCWA Transfer Agreement; or

(iii) by reason of the expiration of the Initial Term without the commencement of a Renewal Term in Year 46, as defined in the 1998 IID/SDCWA Transfer Agreement, as it existed on April 29, 1998, or as the Initial and Renewal Term may be modified to change Year 46 to Year 31.

(48) **PPI Inflation Index**. For the last month of any Calendar Year Quarter ending after January 1, 1999, the ratio for the published value for that month of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) published by the United States bureau of Labor Statistics, divided by the published value for December

1998. The PPI Inflation Index for future month "n" is calculated by the following formula for published values:

$$\frac{\text{PPI month "n"}}{\text{PPI December 1998}}$$

- (49) **Priority "Z"**. The contractual priority level of the right to Colorado River water by the California agencies with Section 5 Contracts, with "Z" varying between Priority 1 and Priority 7, as set forth in the provisions of Article I, Sections 1-7 of the Seven Party Agreement of 1931, which provisions are included in each Section 5 Contract.
- (50) **PVID**. The Palo Verde Irrigation District, an irrigation district organized under the Palo Verde Irrigation District Act, §§ 33-1 et seq. of the Appendix to the California Water Code.
- (51) **Related Agreements**. The Acquisition Agreements, the Allocation Agreement, the Implementation Agreement, the IID/MWD 1988 Agreement, the 1989 Approval Agreement, the CVWD/MWD Supplemental Agreement, and any other agreements, amendments and waivers entered into or adopted by or with the written consent of all Parties in connection with this Agreement or made pursuant to Section 4.9 hereof.
- (52) **SDCWA**. The San Diego County Water Authority, a California county water authority incorporated under the California County Water Authority Act, §§ 45-1 et seq. of the Appendix to the California Water Code.
- (53) **Secretary**. The Secretary of the United States Department of the Interior, and duly appointed successors, representatives and others with properly delegated authority.
- (54) **Section 5 Contract**. A contract between the Secretary and a California agency for permanent service for the delivery of Colorado River water, established pursuant to Section 5 of the Boulder Canyon Project Act, 43 U.S.C. § 617d.
- (55) **SWRCB**. The California State Water Resources Control Board.
- (56) **Temporary Land Fallowing**. The creation of Conserved Water from the retirement of land from crop production activities for a period starting no earlier than the Effective Date and ending on or prior to the Termination Date.
- (57) **Termination Date**. If the Closing Date has not occurred by December 31, 2002, the Termination Date is December 31, 2002; if the Closing Date has by then occurred, the Termination Date is the earlier of (i) the Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement, (ii) the date on which the Inadvertent Overrun and Payback Program adopted by BOR in satisfaction of the condition set forth in Section 6.2(4) hereof expires or terminates, or (iii) December 31 of Year 75.

(58) "Year" (e.g., Year 25.) One in the series of Calendar Years occurring after the Effective Date with Year 1 being the first full Calendar Year after the Effective Date; provided, however, that if the Effective Date occurs on or before June 30th of any Calendar Year, Year 1 shall commence on the Effective Date and end on December 31st of that Calendar Year.

1.2 Rules of Construction and Word Usage. Unless the context clearly requires otherwise:

(1) The Recitals to this Agreement are a part of this Agreement to the same extent as the Articles;

(2) The Exhibits and Attachments attached to this Agreement are incorporated by reference and are to be considered part of the terms of this Agreement;

(3) The plural and singular numbers include the other;

(4) The masculine, feminine, and neuter genders include the others;

(5) "Shall," "will," "must," and "agrees" are each mandatory;

(6) "May" is permissive;

(7) "May not" is prohibitory;

(8) "Or" is not exclusive;

(9) "Includes" and "including" are not limiting;

(10) "Between" includes the ends of the identified range;

(11) "Person" includes any natural person or legal entity; and

(12) "Transfer," when used herein or in the Related Agreements in relation to a transaction involving Conserved Water, does not mean or imply that the Parties agree as to whether any such transaction is properly characterized as a transfer under California law or whether such transaction is subject to SWRCB jurisdiction.

ARTICLE 2 WATER BUDGETS

2.1 IID Water Budget.

(1) Priority 3a Cap. IID's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three million one hundred thousand (3,100,000) AFY at Imperial Dam, less (i) the Conserved Water made available by IID for use by others

hereunder, and (ii) the water made available under Paragraph (2) of this Section 2.1 to the extent charged to Priority 3a, and plus any Conserved Water made available to IID from the lining of the All-American and Coachella Canals, as provided under and subject to the terms and conditions of the Allocation Agreement. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Program. Any Colorado River water permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** IID shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Program, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of eleven thousand five hundred (11,500) AFY. IID's obligation to forbear use of water for this purpose may be charged, at IID's option, to its rights under Priorities 6a, 7 or 3a as available. In the event it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between 14,500 AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **IID Priority 6a Forbearance and Priority 7 Use.** IID agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use, except as may otherwise be required under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition Mechanism and Location.** IID performs its obligations to make Conserved Water available for CVWD and MWD acquisition as contemplated by this Agreement by reducing its Consumptive Use at Imperial Dam by an amount equal to the Conserved Water to be acquired. When IID acts in that manner, IID has satisfied its obligation to make Conserved Water available for acquisition. CVWD and MWD each accept responsibility for any arrangements and facilities necessary to divert the Conserved Water made available to either of them and for any Conveyance Loss. CVWD and MWD have no duty to divert any or all of the Conserved Water. The payments by CVWD and MWD to IID under their respective Acquisition Agreements are for the conservation and acquisition of the Conserved Water, whether or not CVWD or MWD actually diverts that Conserved Water.

(5) **Conserved Water for CVWD.** IID shall make Conserved Water available to CVWD under and subject to the terms and conditions of the IID/CVWD Acquisition Agreement and the Implementation Agreement.

(6) **Conserved Water for SDCWA.** The terms and conditions applicable to IID's conservation and transfer of Conserved Water to SDCWA contemplated by this Agreement shall be as set forth in the 1998 IID/SDCWA Transfer Agreement.

(7) **Conserved Water for MWD.** IID shall make Conserved Water available to MWD under and subject to the terms and conditions of the IID/MWD Acquisition Agreement.

(8) **Conserved Water from Canal Lining Projects.** Conserved Water resulting from the lining of the All-American Canal and the Coachella Canal shall be made available to MWD (or to IID) and others, as provided under and subject to the terms and conditions of the Allocation Agreement.

2.2 **CVWD Water Budget.**

(1) **Priority 3a Cap.** CVWD's Consumptive Use entitlement under its share of Priority 3a is capped by this Agreement at three hundred thirty thousand (330,000) AFY at Imperial Dam, less (i) Conserved Water made available from the lining of the Coachella Canal, as provided under and subject to the terms and conditions of the Allocation Agreement, and (ii) the water made available under Paragraph (2) of this Section 2.2 to the extent charged to Priority 3a. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Program and the Decree Accounting Program. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** CVWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Program, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water, up to a maximum of three thousand (3,000) AFY. CVWD's obligation to forbear use of water for this purpose may be charged, at CVWD's option, to its rights under Priorities 6, 7 or 3 as available. In the event that it is not necessary in any Year for IID and CVWD to collectively forbear a total of fourteen thousand five hundred (14,500) AF for this purpose, then a credit equal to the difference between 14,500 AF and the amount of actual necessary forbearance responsibility shall be shared seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(3) **CVWD Priority 6a Forbearance and Priority 7 Use.** CVWD agrees to forbear Consumptive Use under Priority 6a sufficient to enable IID, CVWD and MWD to Consumptively Use Priority 6a water as it may be available in accordance with the following order of use, except as may otherwise be provided under the Interim Surplus Guidelines: first, thirty-eight thousand (38,000) AFY to MWD; second, sixty-three thousand (63,000) AFY to IID; third, one hundred nineteen thousand (119,000) AFY to CVWD; fourth, any balance of Priority 6a and 7 water available in accordance with the priorities identified in the IID, CVWD and MWD Section 5 Contracts, as in effect on October 15, 1999. Should IID, CVWD or MWD not Consumptively Use all or any of the Priority 6a or 7 water available to it as provided above, any

unused volume shall be available in the above order to meet the next lower order Consumptive Use needs.

(4) **Acquisition From IID.** The terms and conditions applicable to the acquisition of Conserved Water by CVWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/CVWD Acquisition Agreement.

(5) **Acquisition From MWD.** The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

2.3 **MWD Water Budget.**

(1) **MWD Priority 4 and 5 Cap.** MWD's Consumptive Use entitlements under Priorities 4 and 5 are capped by this Agreement at five hundred fifty thousand (550,000) AFY, and six hundred sixty-two thousand (662,000) AF, respectively, at Lake Havasu, less the water made available under paragraph (2) of this Section 2.3 to the extent charged to Priority 4 or 5. This cap shall be subject to adjustment in any Year to the extent permitted under or required by the Inadvertent Overrun and Payback Program. Water made available by MWD to CVWD in any Year pursuant to this Agreement shall be charged at MWD's option to any water available to MWD in that Year. Any Colorado River water acquired from any Party pursuant to a transaction contemplated by this Agreement or permitted to be acquired under Section 4.3 hereof shall be in addition to this cap.

(2) **Miscellaneous and Indian PPR's.** MWD shall forbear Consumptive Use when necessary, in conjunction with the Inadvertent Overrun and Payback Program, to permit the Secretary to make available for Consumptive Use by holders of miscellaneous and Indian present perfected Colorado River water rights the aggregate amount necessary to satisfy individually their respective present perfected rights to Colorado River water in excess of fourteen thousand five hundred (14,500) AFY. MWD's obligation to forbear Consumptive Use for this purpose shall be charged at MWD's option to any Priority pursuant to which MWD has water available.

(3) **Priorities 1 & 2 Consumptive Use Over and Under 420,000 AF.** MWD shall be responsible when necessary, in conjunction with the Inadvertent Overrun and Payback Program, for repayment of any overrun as a result of aggregate use by Priorities 1, 2 and 3b in excess of four hundred twenty thousand (420,000) AFY; and to the extent that Priorities 1, 2 and 3b use is less than 420,000 AFY, MWD shall have the exclusive right to Consumptively Use such unused water.

(4) **Acquisitions From IID.** The terms and conditions applicable to the acquisition of Conserved Water by MWD from IID, as contemplated by this Agreement, shall be as set forth in the IID/MWD Acquisition Agreement and the Allocation Agreement.

(5) **Acquisition From CVWD.** The terms and conditions of the acquisition of water by MWD from CVWD, as contemplated by this Agreement, shall be as set forth in the MWD\CVWD Transfer and Exchange Agreement and the Allocation Agreement.

(6) **Acquisition by CVWD.** The terms and conditions of the acquisition of water and entitlement to water by CVWD from MWD, as contemplated by this Agreement, shall be as set forth in the CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement.

ARTICLE 3 TERM/CLOSING/EFFECTIVE DATE

3.1 **Term.** This Agreement shall commence on the Execution Date and shall terminate on the Termination Date.

3.2 **Closing Date.** As of the Closing Date, provided that the parties shall each have completed any necessary public or other review process and shall each have received a final determination of approval from its governing board concerning the obligations contemplated by this Agreement, each Party shall execute and deliver the Acquisition Agreements and the Implementation Agreement to which it is a signatory and shall use its reasonable efforts to obtain the execution and delivery of the Implementation Agreement by the Secretary.

3.3 **Effective Date.** Notwithstanding any other provision of this Agreement, the obligations of the Parties under Articles 2 and 4, and under the related provisions of the Acquisition Agreements and the Implementation Agreement contemplated by this Agreement, shall be contingent upon the occurrence of, and shall not become effective until, the Effective Date.

3.4 **Early Termination.** In the event of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement:

(1) **Advance Notice.** IID shall, to the extent reasonably possible, give the other Parties, SWRCB, BOR and the Secretary at least 12 months advance written notice of such event together with a written explanation of the underlying factors and calculations;

(2) **Relief or Contribution.** Any termination pursuant to Section 1.1 (47) (ii) shall not be effective and shall be of no further force or effect, if, prior to the Date of Non-consensual Termination of the 1998 IID/SDCWA Transfer Agreement, SDCWA or IID, as applicable, shall have exercised its rights under Sections 7.3 or 8.3 of the 1998 IID/SDCWA Transfer Agreement, or funding for or other relief from the environmental excess costs, as reasonably determined pursuant to the 1998 IID/SDCWA Transfer Agreement, shall have been covered by Environmental Mitigation Insurance or authorized by enactment of California or federal legislation, or by final California or federal administrative action, or one or both of the other Parties shall have agreed to fund the excess cost amount; and

(3) **Base Obligation.** In the event that relief or contribution is timely provided or agreed to in accordance with the foregoing, IID shall undertake the additional

measures and pay for the excess environmental costs, subject to its entitlement to such relief or contribution.

3.5 Effect of Termination. As of the Termination Date, neither the terms of this Agreement nor the conduct of the Parties in performance of this Agreement shall be construed to enhance or diminish the rights of any of the Parties as such rights existed at the Execution Date, including any enhancement or diminishment by reason of an alleged application of common law principles of reliance, estoppel, intervening public use, domestic or municipal priority, shortage or emergency, or equitable apportionment. Notwithstanding any provision to the contrary in this Agreement, in the Acquisition Agreements, or in the Implementation Agreement, all water budget components contemplated under Article 2 of this Agreement and all state and federal approvals, permits and water contract amendments issued or adopted in connection therewith, other than environmental related permits with continuing mitigation obligations, shall thereupon terminate by consent of each of the Parties, which consents are hereby given, and which consents shall be reaffirmed in writing at the request of any Party, and the rights of the Parties shall revert to the status quo as though the Parties had never entered into, or intended to enter into, this Agreement, the Acquisition Agreements, or the Implementation Agreement.

ARTICLE 4 ADDITIONAL SETTLEMENT PROVISIONS

4.1 General Settlement Provisions; No Admission of Settlement Terms; Reservation of Rights and Claims.

The Parties do not agree on the nature or scope of their relative rights to the delivery, use or transfer of Colorado River water. This Agreement is a consensual, comprehensive settlement arrangement acceptable to all Parties. It does not reflect any Party's rights or claims singularly or collectively, nor does it reflect the anticipated, predicted or possible outcome to any of the many disputes between the Parties if they were to be resolved without consensus. The Parties acknowledge that this Agreement is, in fact, a settlement and thus may not be used for any purpose in any judicial, legislative or administrative proceeding, and may not be used in any future attempt to reallocate water or water rights or to reorder the priorities of the Parties upon the termination of this Agreement. Subject to the provisions of this Agreement which compromise such matters, the legal rights, duties, obligations, powers and claims of each Party are preserved and may be acted upon by any Party during the term of this Agreement.

4.2 All-American Canal and Coachella Canal Lining Projects Conserved Water.

(1) The Parties agree that sixty seven thousand seven hundred (67,700) AFY and twenty six thousand (26,000) AFY, subject to the provisions of the Allocation Agreement, are to be the amounts of Conserved Water from the completed All-American Canal Lining Project and the Coachella Canal Lining Project, respectively, as defined in the Allocation Agreement.

(2) After the Effective Date, subject to the terms and conditions of the Allocation Agreement, up to sixteen thousand (16,000) AFY of Conserved Water attributable to the lining of the All-American and Coachella Canals will be made available to be utilized by the

Secretary to facilitate implementation of the San Luis Rey Indian Water Rights Settlement Act. The volume of Conserved Water from each canal lining project made available for this purpose shall be in proportion to its percentage of the total water conserved, eleven thousand five hundred (11,500) AFY from the All-American Canal and four thousand five hundred (4,500) AFY from the Coachella Canal. The remaining amount of Conserved Water from such canal lining projects shall be made available to MWD (or to IID) as provided under the Allocation Agreement.

(3) For decree accounting purposes, Consumptive Use of the Conserved Water utilized by the Secretary to facilitate implementation of the San Luis Rey Indian Water Rights Settlement Agreement will be assigned and will not be charged to IID or CVWD, but will be deducted from IID's Consumptive Use cap under Section 2.1(1) and CVWD's Consumptive Use cap under Section 2.2(1) in proportion to the Conserved Water from the All-American Canal and Coachella Canal, respectively. For decree accounting purposes, Consumptive Use of the Conserved Water utilized by MWD will be deducted from IID's Consumptive Use cap under Section 2.1(1) and CVWD's Consumptive Use cap under Section 2.2(1) in proportion to the Conserved Water from the All-American Canal and the Coachella Canal, respectively.

(4) As the Conserved Water to be made available by the lining of the All-American and Coachella Canals is produced, it will be made available 83 percent to MWD (or to IID) and 17 percent to the Secretary for the benefit of the San Luis Rey Settlement Parties, as provided under the Allocation Agreement.

(5) The specific terms and conditions governing the distribution of Conserved Water as contemplated by this Section 4.2 shall be as set forth in the Allocation Agreement.

4.3 Other Acquisitions of Colorado River Water. During the period from the Effective Date to the Termination Date, the Parties may acquire Colorado River water from any person, without objection by any of the Parties, so long as any such acquisition is not inconsistent with any other term of this Agreement or the Related Agreements and does not materially reduce the water available to the Parties.

4.4 Salinity Control Act Interim Period. IID, CVWD and MWD will submit annual estimates of water diversions to the BOR with the modifier "to the extent Colorado River water is available to this requesting agency under its entitlements, the Quantification Settlement Agreement and otherwise."

4.5 CVWD Utilization of Water.

(1) Other than as provided in Section 3.6 of the IID/CVWD Acquisition Agreement, CVWD shall not utilize its water budget to facilitate any water use outside of Improvement District No. 1 other than for direct and in lieu recharge, and shall use its best efforts to utilize its water budget to address the groundwater overdraft problem in Improvement District No. 1 and to implement a program that is designed to achieve a safe yield within Improvement District No. 1 by the end of CVWD's water budget ramp-up in approximately Year 30.

(2) IID and MWD shall not object to the utilization of Colorado River water in the Coachella Valley, but outside Improvement District No. 1, in order to maximize the effectiveness of Improvement District No. 1's water use and recharge programs.

(3) CVWD shall make no claim as a matter of right to any additional Colorado River water in Priorities 3 or 6.

(4) This Agreement does not affect CVWD's rights under its surplus contract with the Secretary dated March 6, 1987, including its right to use water delivered under that contract anywhere within its boundaries.

4.6 CVWD Groundwater Storage of IID Water. Subject to the physical availability of storage in the Coachella Valley after accounting for the storage to be utilized by CVWD for the MWD/CVWD conjunctive use program, if implemented, CVWD will provide groundwater storage for IID's use in accordance with the IID/CVWD Acquisition Agreement.

4.7 Public Awareness Program. The Parties will each implement and maintain a water conservation public awareness program.

4.8 Shortage and Sharing of Reduced Water Availability. If for any reason there is less than 3.85 million (3,850,000) AF available to Priorities 1, 2 and 3 in any Year, there will be no termination of this Agreement. Shortages will be shared pursuant to the particular provisions of the Acquisition Agreements and the Allocation Agreement.

4.9 Amendments to Acquisition Agreements. The Parties to each Acquisition Agreement shall have the right to amend that Agreement from time to time without the consent of any other Party hereto (a "non-signatory Party"); provided, however, that prompt notice and a copy of any such amendment is provided to each non-signatory Party, the Secretary, BOR and, with respect to the transfers to SDCWA contemplated under the 1998 IID/SDCWA Transfer Agreement and acquisitions from IID by CVWD under the IID/CVWD Acquisition Agreement, SWRCB; and provided, further, that no such amendment shall be given any force or effect, or be binding on any Party, if:

(1) such amendment would affect in any respect the rights of any non-signatory Party to Colorado River water; or

(2) such amendment could reasonably have a significant adverse effect on the interests of a non-signatory Party; unless or until

(3) in the circumstances of either (1) or (2), the written consent to such amendment shall have been obtained from each non-signatory Party, which consent shall not be unreasonably withheld and, if determined to have been unreasonably withheld, shall be effective retroactively to the date originally requested.

4.10 MWD Mitigation of Certain Effects of Interim Surplus Guidelines. In the event that Priority 3a Consumptive Use by IID and CVWD, consistent with and as adjusted by this Agreement, is reduced as a direct result of the application and operation of the Interim Surplus Guidelines, MWD will assume responsibility for any required payback of any water use overruns by IID and CVWD resulting from such reduction. MWD's aggregate payback obligation under this Section 4.10 shall be limited to an amount equal to the aggregate amount of surplus water allocated to and Consumptively Used by MWD under Full Domestic Surplus and/or Partial Domestic Surplus conditions, as determined by the Secretary under the Interim Surplus Guidelines. An example of MWD's mitigation obligation with respect to certain Interim Surplus Guidelines effects pursuant to this Section 4.10 is provided in Attachment 2.

4.11 SWRCB Proceeding. The terms and conditions applicable to the Parties in connection with the matters referenced in Section 6.2(11) hereof shall be as set forth in the Protest Dismissal Agreement attached hereto as Exhibit E.

4.12 MWD Reparations to Arizona and Nevada. In connection with the implementation of the Interim Surplus Guidelines, MWD, the Secretary and the State of Arizona have entered into Interim Surplus Guidelines Agreements dated as of May 23, 2001 and _____, 2001; and MWD, the Secretary and the State of Nevada have entered into Interim Surplus Guidelines Agreements dated as of _____, 2001 and _____, 2001. Pursuant to such agreements MWD may be required to forbear delivery of a determinable quantity of Colorado River water in certain circumstances involving the Secretary's determination of a shortage condition in accordance with such Guidelines. IID and CVWD hereby agree to forbear exercise of any right or claim under Priorities 6 and 7, including any right or claim under this Agreement or a Related Agreement, to such water to the extent of any such required forbearance by MWD.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

5.1 IID's Representations and Warranties.

(1) Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) IID has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement and (ii) the execution and delivery hereof by IID and the performance by IID of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which IID is a party or by which IID is bound.

(2) **Signatories.** The persons executing this Agreement on behalf of IID have the full power and authority to bind IID to the terms of this Agreement. In addition, the persons signing this Agreement on IID's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on IID's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Sections 6.2 and 7.1 of this Agreement, this Agreement constitutes a valid and binding agreement of IID, enforceable against IID in accordance with its terms.

(4) **No Pending or Threatened Disputes.** Except as disclosed in Appendix 5.1, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to IID's knowledge, threatened against or affecting IID relating to the performance contemplated by this Agreement.

(5) **Notice of Developments.** IID agrees to give prompt notice to the Parties if IID discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Closing Date.

5.2 **CVWD's Representations and Warranties.**

(1) Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) CVWD has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement and (ii) the execution and delivery hereof by CVWD and the performance by CVWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which CVWD is a party or by which CVWD is bound.

(2) **Signatories.** The persons executing this Agreement on behalf of CVWD have the full power and authority to bind CVWD to the terms of this Agreement. In addition, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Sections 6.2 and 8.1 of this Agreement, this Agreement constitutes a valid and binding agreement of CVWD, enforceable against CVWD in accordance with its terms.

(4) **No Pending or Threatened Disputes.** Except as disclosed in Appendix 5.2, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to CVWD's knowledge, threatened against or affecting CVWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments.** CVWD agrees to give prompt notice to the Parties if CVWD discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Closing Date.

5.3 MWD's Representations and Warranties.

(1) Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement and compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement: (i) MWD has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement and (ii) the execution and delivery hereof by MWD and the performance by MWD of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which MWD is a party or by which MWD is bound.

(2) **Signatories.** The persons executing this Agreement on behalf of MWD have the full power and authority to bind MWD to the terms of this Agreement. In addition, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to the determinations and approvals contemplated by Section 6.2(2) of this Agreement, compliance with environmental laws as contemplated by Section 6.2(2) of this Agreement, and satisfaction or waiver of the conditions set forth in Sections 6.2 and 9.1 of this Agreement, this Agreement constitutes a valid and binding agreement of MWD, enforceable against MWD in accordance with its terms.

(4) **No Pending or Threatened Disputes.** Except as disclosed in Appendix 5.3, attached to this Agreement, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to MWD's knowledge, threatened against or affecting MWD relating to the performance contemplated by this Agreement.

(5) **Notice of Developments.** MWD agrees to give prompt notice to the Parties if MWD discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Closing Date.

**ARTICLE 6
GENERAL CONDITIONS TO IID, MWD AND CVWD OBLIGATIONS**

6.1 Performance by IID, CVWD and MWD. IID's, MWD's and CVWD's obligations under Articles 2 and 4 of this Agreement are subject to the satisfaction or waiver of the general conditions set forth in Section 6.2 and the particular conditions set forth in Articles 7, 8 and 9, in each case on or before December 31, 2002. IID, MWD and CVWD shall each proceed in good faith with reasonable diligence and use reasonable efforts to satisfy the

conditions for which it has responsibility, including the conditions set forth in the Related Agreements and in the Implementation Agreement.

6.2 Satisfaction of General Conditions to IID's, MWD's and CVWD's Obligations.

(1) **Representations and Warranties.** The representations and warranties of each of the Parties shall be true as of the date each such Party signs this Agreement, and as of the Closing Date.

(2) **Environmental Obligations.**

(a) **Environmental Review.** All environmental review and assessment required under CEQA, NEPA and applicable federal, state and agency regulations implementing the same have been completed, to the extent required to authorize implementation of the activities contemplated by this Agreement. An environmental review process will be deemed "completed" only when all required Notices of Determination pursuant to CEQA have been duly filed; all required Records of Decision pursuant to NEPA have been duly issued; all administrative appeal periods have expired; all statutes of limitation for filing an action challenging any environmental process pursuant to CEQA have expired; as of the deadline for satisfying these conditions, no action challenging any environmental process has been filed, or, if filed, has been resolved by a final judgment which upholds or sustains the environmental review process and allows implementation of the covered activities and all judicial appeal periods have expired. The environmental review processes described above shall include, but are not limited to:

(1) The federal EIS in connection with the Implementation Agreement, the Inadvertent Overrun and Payback Program and this Agreement, to be prepared by BOR as the lead agency;

(2) The EIS relating to the Interim Surplus Guidelines, prepared by BOR as the lead agency;

(3) The program EIR relating to this Agreement, to be prepared by IID, MWD, CVWD and SDCWA as co-lead agencies;

(4) The joint EIR/EIS relating to the conservation and transfer by IID of up to three hundred thousand (300,000) AFY and IID's Priority 3 cap, to be prepared by IID as the lead agency under CEQA and BOR as the lead agency under NEPA;

(5) The joint EIR/EIS relating to the lining of the Coachella Canal, to be prepared by CVWD as the lead agency under CEQA, and by BOR as the lead agency under NEPA.

(6) Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resources plan and any other documents required to allow

implementation of the All-American Canal Lining project pursuant to a certified EIR/EIS for that project;

(7) Final approval by all necessary federal and state agencies of a mitigation plan, a cultural resource plan and any other documents required to allow implementation of the Coachella Canal Lining project pursuant to a certified EIR/EIS for that project; and

(8) The program EIR for the CVWD Groundwater Recharge project, to be prepared by CVWD as the lead agency.

(b) **Resource Approvals.** All permits, approvals, authorizations, opinions, assessments and agreements pursuant to the federal Endangered Species Act ("ESA"), the California Endangered Species Act ("CESA") and any other federal or state environmental resource protection laws, and applicable federal or state regulations implementing the same (collectively "Resource Approvals"), have been finalized, to the extent required by such statutes or regulations or deemed necessary or appropriate by the U.S. Fish and Wildlife Service ("USFWS"), the California Department of Fish and Game ("CDFG"), BOR or IID to document compliance therewith and to authorize implementation of the 1998 IID/SDCWA Transfer Agreement, the conservation by IID of up to three hundred thousand (300,000) AFY and IID's Priority 3a cap. A Resource Approval shall be deemed "final" only when all required environmental review has been completed as described in Section 6.2(2)(a) above; final action has been taken and all required documents have been approved and executed by the resource agencies and the applicant; all required biological assessments and biological opinions have been issued; all administrative appeal periods have expired; as of the deadline for satisfying these conditions, no action challenging any Resource Approval has been filed, or, if filed, has been resolved by a final judgment which upholds or sustains the Resource Approval in a manner acceptable to the resource agencies and the applicant and all judicial appeal periods have expired. The Resource Approvals described above shall include, but are not limited to, all required approvals by federal and state agencies of:

(1) The change in the point of diversion on the Colorado River and transfer of up to three hundred thousand (300,000) AFY of water to be conserved by IID;

(2) Incidental take authorization pursuant to ESA and CESA, to the extent required to implement the change in the point of diversion on the Colorado River, the water transfer described above, the Interim Surplus Criteria, the Inadvertent Overtake and Payback Program, the All-American Canal Lining project, and the Coachella Canal Lining project; and

(3) A habitat conservation plan and an incidental take permit and execution of an implementation agreement by and among USFWS, CDFG and IID, permitting implementation of conservation and water use activities within the IID service area consistent with this Agreement, including impacts on the Salton Sea and areas outside of IID's service area, and including "No Surprises" assurances pursuant to ESA Section 10(a), all of the foregoing acceptable in form, substance, scope and coverage to IID.

(c) **Party Approvals of Environmental Requirements.** Each Party, by action of its governing board, has approved and accepted the terms, conditions and mitigation measures of the environmental review processes described in Section 6.2(2)(a) above and the Resource Approvals described in Section 6.2(2)(b) above (collectively, "Environmental Requirements"), to the extent such Party is responsible, in whole or in part, for compliance, performance or payment of the costs of such Environmental Requirements.

(d) **Assurances.** "No Surprises" assurances pursuant to ESA Section 10 (a) shall have been obtained by IID and CVWD for 50 years for the first fifty thousand (50,000) AFY acquisition by CVWD and through Year 50 or, if appropriate, Year 45 for the second fifty thousand (50,000) AFY acquisition by CVWD, as contemplated under Sections 2.1(5) and 2.2(4) hereof and the IID/CVWD Acquisition Agreement.

(3) **Yuma Island.** The Secretary shall have appointed an independent panel to conduct a public review and, based thereon, to provide recommendations to the Secretary regarding the determination of the amount of Consumptive Use of water on the Yuma Island and whether such use is charged to Priority 2.

(4) **Inadvertent Overrun and Payback Program.** The BOR shall have adopted on or before the Closing Date standards and procedures for an Inadvertent Overrun and Payback Program to be implemented without material modification over a period commencing on or before the Effective Date and ending no sooner than Year 31 that is in all material respects in conformity with the proposal set forth in Exhibit F hereto, or is otherwise acceptable to IID, MWD and CVWD.

(5) **Interim Surplus Guidelines.** The Interim Surplus Guidelines implemented pursuant to the Secretary's Record of Decision dated January 16, 2001, a copy of which is provided as Exhibit G hereto, shall be in full force and effect.

(6) **PVID Waiver.** PVID shall have agreed for the period commencing on or before the Effective Date and ending on the Termination Date: (a) to waive any call rights on Conserved Water from the lining of the All-American Canal and the Coachella Canal, as contemplated by this Agreement, (b) to limit use on the PVID Mesa, (c) to forego any rights to Priority 6b water, and (d) to the amendment to the 1989 Approval Agreement contemplated under the CVWD/MWD Acquisition Agreement.

(7) **The IID/CVWD Acquisition Agreement** shall have been executed by the Parties signatory thereto for delivery as of the Closing Date.

(8) **The IID/MWD Acquisition Agreement** shall have been executed by the Parties signatory thereto for delivery as of the Closing Date.

(9) **The CVWD/MWD Acquisition Agreement and the MWD/CVWD Transfer and Exchange Agreement** shall have been executed by the Parties signatory thereto for delivery as of the Closing Date.

(10) **The Implementation Agreement** shall have been executed by the Parties, SDCWA, and the Secretary for delivery as of the Closing Date.

(11) **SWRCB Approval**. The SWRCB shall have entered a final order of approval of the Petition for Change relating to the 1998 IID/SDCWA Transfer Agreement and the IID/CVWD Acquisition Agreement in conformity with the Protest Dismissal Agreement attached hereto as Exhibit E, which order in effect establishes that:

(a) IID has presented substantial evidence to support the transfers to SDCWA and the acquisitions by CVWD contemplated hereunder;

(b) As of the effective date of such final order, such substantial evidence, which includes the provisions of the Protest Dismissal Agreement, satisfies any existing SWRCB concerns with respect to IID reasonable and beneficial use and with respect to injury to junior right holders;

(c) Pursuant to the request of IID, CVWD, MWD and SDCWA, such final order shall have no binding precedential effect on the applicability of California or any other law to any other water transfer transaction;

(d) In light of the substantial evidence, and based upon the continuing effectiveness of this Agreement and the continuing fulfillment of IID's contractual commitments to undertake major conservation activities, the SWRCB does not anticipate a need to reassess the reasonable and beneficial use of water by IID until the end of the Year 20, absent any substantial material adverse change in IID's irrigation practices or advances in economically feasible technology associated with irrigation efficiency.

(e) The order by its terms shall lapse and be of no force or effect if this Agreement terminates.

(12) **Effectiveness of 1998 IID/SDCWA Transfer Agreement**. IID's obligations to undertake "water conservation" efforts and to transfer "conserved water," as defined in and determined under the 1998 IID/SDCWA Transfer Agreement, shall have become effective as of the Closing Date, subject only to the execution and delivery of the other Acquisition Agreements and the Implementation Agreement contemplated by Section 3.2 hereof.

(13) **Environmental Cost Sharing Agreement**. The Environmental Cost Sharing Agreement shall be in full force and effect, and each party thereto shall be in full compliance with the provisions thereof applicable to it.

(14) **Litigation**. Any pending or threatened litigation, including disputes disclosed in Appendices 5.1, 5.2 or 5.3 hereof, that would, if finally determined in favor of any complaining person or person, materially and adversely affect (a) the ability of any Party to perform under this Agreement, the Environmental Cost Sharing Agreement, or any Acquisition Agreement, (b) the continuing efficacy of the Inadvertent Overrun and Payback Program, the

Interim Surplus Guidelines, or the SWRCB's final order of approval contemplated under Section 6.2 (11) hereof (including its ongoing conformity to the requirements of the Protest Dismissal Agreement), or (c) the ability of the Secretary (or the Secretary's delegate) to perform under the Implementation Agreement, shall have become the subject of one or more joint defense agreements among the Parties allocating responsibilities to a Party or Parties for the defense of (or intervention in) such litigation and, where appropriate, for the potential consequences of any materially adverse final determination of such litigation or otherwise specifying the consequences of any such determination.

6.3 Contribution to Satisfaction of Environmental Obligations Conditions. With respect to any required environmental mitigation contemplated under Section 6.2(2), and except as otherwise expressly provided under an Acquisition Agreement, a Party may, but shall not be in any way compelled to, contribute the additional cost, in excess of a specified cap, such that the net economic effect to the responsible Party is the same as if the condition had been satisfied directly. In that event, the condition shall be deemed satisfied with respect to that Party, and such Party may not terminate this Agreement on the basis that the condition has not been satisfied.

6.4 Written Waiver of Conditions. The Parties agree that a Party may waive in writing any one or more of the conditions to its obligations under Articles 2 and 4; provided, however, that no Party shall waive compliance with CEQA, NEPA or other requirements under applicable laws. A written waiver of a condition must be delivered in accordance with the notice provisions of Section 11.1 hereof. As to any condition to the obligations of all Parties, a waiver of that condition will be effective only if made by all Parties.

6.5 Determination of Environmental Cost Conditions. The Parties shall cooperate in their determinations of costs applicable to their respective environmental cost ceilings for purposes of Articles 7 and 9 hereof. Each Party shall use reasonable assumptions and methods in making such determinations, and, at the request of any other Party, shall promptly provide a written explanation of such assumptions and methods. In the event of any disagreement between or among Parties as to the reasonableness of any such method or assumption, the Parties shall in good faith try to resolve such disagreement through negotiation before proceeding under Section 10.3.

ARTICLE 7 PARTICULAR CONDITIONS TO IID'S OBLIGATIONS

7.1 Conditions to IID's Obligations.

(1) **IID Environmental Costs.** IID shall have determined that the environmental process and mitigation costs for which it is responsible under the terms and conditions of the Environmental Cost Sharing Agreement will not exceed in total present value as of the Environmental Cost Condition Precedent Test Date (and, if applicable, the Second Environmental Cost Condition Precedent Test Date) \$15,000,000 (in 1998 Dollars) after taking into account any contribution to such costs by any other person.

**ARTICLE 8
PARTICULAR CONDITIONS TO CVWD'S OBLIGATIONS**

8.1 Conditions to CVWD's Obligations.

(1) **Salinity Control Act.** The Amendment to Amendatory Contract between the United States of America and Coachella Valley Water District for Replacing a Portion of the Coachella Canal in the form attached as Exhibit H shall have been executed by the United States.

**ARTICLE 9
PARTICULAR CONDITIONS TO MWD'S OBLIGATIONS**

9.1 Conditions to MWD's Obligations.

(1) **Decree Accounting Process.** BOR shall have agreed with the Parties to develop a process for establishing a statistically significant trend test for increases in use by Priorities 1, 2 and 3b.

(2) **Waiver.** SDCWA shall have waived any and all rights under the 1998 IID/SDCWA Transfer Agreement with respect to Conserved Water that may be acquired by MWD pursuant to the IID/MWD Acquisition Agreement, in conjunction with MWD's agreement that, should IID transfer less than the full two hundred thousand (200,000) AFY to SDCWA as part of the stabilized primary quantity under the 1998 IID/SDCWA Transfer Agreement, but later make available additional Conserved Water for transfer to SDCWA, MWD will exchange such additional amounts up to a total of two hundred thousand (200,000) AFY under the terms of the 1998 Agreement between MWD and SDCWA for the Exchange of Water.

(3) **MWD Environmental Costs.** MWD shall have determined that the environmental process and mitigation costs for which it is responsible under the terms and conditions of the Environmental Cost Sharing Agreement (without regard to the payments with respect to environmental mitigation costs for which MWD will be responsible upon exercise of its options or right of first refusal under the IID/MWD Acquisition Agreement) will not exceed in total present value as of the Environmental Cost Condition Precedent Test Date (and, if applicable, the Second Environmental Cost Condition Precedent Test Date) \$5,000,000 (in 2001 Dollars) after taking into account any contribution to such costs by any other person.

**ARTICLE 10
REMEDIES**

10.1 Specific Performance. Each Party recognizes that the rights and obligations of the Parties under this Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party does not perform in accordance with this Agreement, the other Parties will likely suffer harm curable only by the imposition of an

injunction requiring specific performance. Thus, each of the Parties agrees that any breach of this Agreement by any Party shall entitle the non-breaching Parties, or any one of them, to injunctive relief, including but not limited to a decree of specific performance, in addition to any other remedies at law or in equity that may be available in the circumstances.

10.2 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this Agreement or otherwise.

10.3 Action or Proceeding between the Parties. Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the California Code of Civil Procedure ("CCP"). Each Party further acknowledges that any action or proceeding commenced by one Party against another Party would, under § 394(a) of the CCP, as a matter of law be subject to:

- (1) being transferred to a Neutral County, or instead
- (2) having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.
- (3) In the event an action is filed by any Party against another Party or Parties to enforce this Agreement and to obtain damages for its alleged breach, each Party hereby:
 - (i) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action;
 - (ii) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;
 - (iii) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and
 - (iv) Acknowledges that this Agreement, and in particular this Section 10.3, may be submitted to the court as part of the moving papers.
- (4) Nothing in this Section 10.3, however, shall impair or limit the ability of a Party to contest the suitability of any particular county to serve as a Neutral County, or shall operate to waive any other rights.

ARTICLE 11 GENERAL PROVISIONS

11.1 Notices. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to the addresses of each Party set forth below. Notice will be sufficiently given for all purposes as follows:

Personal Delivery. When personally delivered to the recipient. Notice is effective on delivery.

Certified Mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.

Overnight Delivery. When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile Transmission. Notice is effective on receipt, provided that the facsimile machine provides the sender a notice that indicates the transmission was successful, and that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purpose of giving notice are as follows:

To IID: Imperial Irrigation District
Attn.: General Manager

Address for U.S. Mail P.O. Box 937
Imperial, CA 92251

*Address for Personal or
Overnight Delivery:* 333 E. Barioni Boulevard
Imperial, CA 92251

Telephone: 760-398-9477
Facsimile: 760-398-5893

With a copy delivered by the same means to:

Horton, Knox, Carter & Foote
895 Broadway
El Centro, CA 92243
Attention: John P. Carter, Esq.

Telephone: 760-352-2821
Facsimile: 760-352-8540

To MWD:

The Metropolitan Water District of
Southern California
Attn.: General Manager

Address for U.S. Mail

P.O. Box 54153
Los Angeles, CA 90054

*Address for Personal or
Overnight Delivery:*

700 North Alameda Street
Los Angeles, CA 90012-2944

Telephone: 213-217-6000
Facsimile: 213-217-6950

With a copy delivered by the same means and at the same address to:

The Metropolitan Water District of Southern
California
Attn: General Counsel

To CVWD:

Coachella Valley Water District
Attn.: General Manager-Chief Engineer

Address for U.S. Mail

P.O. Box 1058
Coachella, CA 92236

*Address for Personal or
Overnight Delivery:*

Highway 111 and Avenue 52
Coachella, CA 92236

Telephone: 760-398-2651
Facsimile: 760-398-3711

With a copy delivered by the same means to:

Redwine & Sherrill
1950 Market Street
Riverside, CA 92501
Telephone: 909-684-2520
Facsimile: 909-684-9583

(1) A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first

date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

(2) A Party may change its address by giving the other Parties notice of the change in any manner permitted by this Agreement.

11.2 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of a breach, failure of condition or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

11.3 Post-Closing Notices. Each Party will give the other Parties prompt notice from time to time after the Closing Date and prior to the Termination Date of any actions, suits, legal or administrative proceedings, or governmental investigations pending or, to such Party's knowledge, threatened against or affecting any Party relating to the performance contemplated by this Agreement and the Related Agreements.

11.4 Counterparts. This Agreement may be executed in three 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.

11.5 No Third-Party Rights. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

11.6 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

11.7 Alterations in PPI or GDPIPD Inflation Indices. If the publication of the Producer Price Index for the Materials and Components for Construction (ID #WPUSOP2200) or if the publication of the Gross Domestic Product Implicit Price Deflator is altered in some manner, including changing the name of the index, the geographic area covered, or the base year, the Parties will use their reasonable best efforts to agree on a substitute index or procedure that reasonably reflects the change in the level of producer prices for the materials and components for construction, or the change in the level of prices for goods and services included in the calculation of the United States Gross Domestic Product, as applicable.

11.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of law provisions; provided, however, that federal law shall be applied as appropriate to the extent it bears on the resolution of any claim or issue relating to the permissibility of the acquisitions of Colorado River water contemplated herein.

11.9 Binding Effect; No Assignment. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. No Party may Assign any of its rights or Delegate any of its duties under this Agreement or the Related Agreements, and any such Assignment or Delegation made in violation of this Section 11.8 shall be void and of no force or effect.

11.10 Joint Defense. The Parties agree to cooperate, to proceed with reasonable diligence, and to use reasonable best efforts to defend any lawsuit or administrative proceeding challenging the legality, validity or enforceability of any term of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement. Except as otherwise provided in the Environmental Cost Sharing Agreement, or under an agreement referenced in Section 6.2 (14), each Party shall bear its own costs of participation and representation in any such defense.

11.11 Entire Agreement. This Agreement (including the exhibits and other agreements attached to and referenced in this agreement) constitutes the final, complete, and exclusive statement of the terms of the Agreement among the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. 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.

11.12 Modification. This Agreement may be supplemented, amended, or modified only by the written agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by all Parties.

IN WITNESS WHEREOF, IID, CVWD AND MWD have executed this Agreement as of the day and year first written above.

Approved as to form:

IMPERIAL IRRIGATION DISTRICT

By: _____

By: _____

Its: _____

JESSE SILVA
GENERAL MANAGER

COACHELLA VALLEY WATER DISTRICT

By: _____

By: _____

Its: _____

TOM LEVY

GENERAL MANAGER-CHIEF
ENGINEER

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By: _____

By: _____

Its: _____

RONALD R. GASTELUM
GENERAL MANAGER

QUANTIFICATION SETTLEMENT AGREEMENT

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AGREEMENT FOR ACQUISITION OF CONSERVED WATER BETWEEN IMPERIAL IRRIGATION DISTRICT AND COACHELLA VALLEY WATER DISTRICT

THIS AGREEMENT FOR ACQUISITION OF CONSERVED WATER ("**Agreement**") is made and entered into by IMPERIAL IRRIGATION DISTRICT, a California irrigation district ("**IID**"), and COACHELLA VALLEY WATER DISTRICT, a California county water district ("**CVWD**"), as of _____, 2001. IID and CVWD are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

A. IID is an irrigation district organized under the California Irrigation District Law, codified at §§ 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California for irrigation and potable purposes.

B. CVWD is a county water district organized under the California County Water District Law, codified at §§ 30000 et seq. of the California Water Code, and delivers Colorado River water in Riverside County, California for irrigation and potable purposes.

C. This Agreement is one of several agreements executed and delivered as of the date hereof by the Parties and by other agencies, including Metropolitan Water District ("**MWD**"), pursuant to the Quantification Settlement Agreement among the Parties and MWD dated as of _____, 2001 (the "**QSA**"), which settles a variety of long-standing disputes regarding the priority, use, and transfer of Colorado River water and establishes the terms for the further distribution of Colorado River water among these entities for up to seventy-five years based upon the water budgets set forth therein.

D. IID will cause Water Conservation Efforts (defined below) to be undertaken in exchange for payments to be made by CVWD.

E. This Agreement provides for the voluntary acquisition of Conserved Water from IID by CVWD.

F. CVWD is willing to make payments to IID in order to acquire Conserved Water created by IID's Water Conservation Efforts.

G. The purpose of this Agreement is to set forth the terms and conditions under which CVWD will make payments to IID for the acquisition of a specified quantity of Conserved Water, in accordance with the QSA.

H. Although the Parties intend to act in accordance with this Agreement, they do not intend to, and under the Agreement do not in any way, transfer, assign, encumber, or grant to each other any ownership interest in or control over any of each other's water rights.

I. The Parties intend that this Agreement shall become effective, and the activities described herein shall commence, only after compliance with the California Environmental Quality Act, California Public Resources Code §§ 21000 et seq. ("CEQA"), and the National Environmental Policy Act, Title 4, United States Code §§ 4321 et seq. ("NEPA"), as applicable.

A G R E E M E N T:

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, IID and CVWD agree that the terms and conditions of this Agreement are as follows:

ARTICLE 1

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 **Incorporated Definitions.** The terms with initial capital letters that are used in this Agreement shall have the same meaning as set forth in Section 1.1 of the QSA, unless the context otherwise requires.

1.2 **Additional Definitions.** As used in this Agreement, in addition to the QSA defined terms, the following terms shall have the meanings set forth below:

- (1) **Adjustment Notice.** As defined in Section 3.4.
- (2) **Contracting Landowner.** A Landowner that has contracted with IID to undertake Water Conservation Efforts and reduce its use of Colorado River water.
- (3) **Due Date.** As defined in Section 6.1(1).
- (4) **Environmental Review Process Costs.** As defined in the Environmental Cost Sharing Agreement.
- (5) **Environmental Mitigation Costs.** As defined in the Environmental Cost Sharing Agreement.
- (6) **Event of Default.** As defined in Article 15.
- (7) **First Fifty Thousand Acquisition.** As defined in Section 3.1.
- (8) **Landowner.** A legal owner of real property located within the jurisdictional boundary of IID.
- (9) **Late Payment Charge.** As defined in Section 6.3.
- (10) **Make Available (and grammatical variations thereof).** Conserved Water will be deemed to have been Made Available to CVWD in any Year hereunder by means

of IID's corresponding reduction in that Year of its Consumptive Use at Imperial Dam in an amount equal to the Conserved Water to be acquired hereunder in that Year by CVWD.

- (11) NEPA. As defined in Recital I.
- (12) Occasional Reduction Notice. As defined in Section 3.5(5).
- (13) Permanent Reduction Notice. As defined in Section 3.7.
- (14) Postponement Notice. As defined in Section 3.3.
- (15) QSA. As defined in Recital C.
- (16) Second Fifty Thousand Acquisition. As defined in Section 3.2.
- (17) Shortfall. As defined in Article 11.
- (18) Term. As defined in Article 4.
- (19) Water Conservation Efforts. The activity, program or project used to generate Conserved Water.

1.3 Rules of Construction and Word Usage. The provisions of Section 1.2 of the QSA are incorporated herein by reference, unless the context requires otherwise.

ARTICLE 2

BASIC PROVISION

Subject in all events to the specific terms and conditions of this Agreement:

(a) IID will compromise certain positions and cause Water Conservation Efforts to be undertaken (by IID or by contracts with Landowners) to create Conserved Water for acquisition by CVWD and reduce the Consumptive Use of Colorado River water by IID.

(b) CVWD will compromise certain positions, acquire Conserved Water from the IID (subject to Section 3.6 below), use such Conserved Water for CVWD Improvement District No. 1 and pay IID for the Conserved Water available for acquisition.

(c) IID and CVWD agree that at the termination of this Agreement, neither the terms of the Agreement nor the conduct of the Parties in performance of this Agreement confers upon the other any legal or equitable rights that would not have existed in the absence of this Agreement and the Parties' performance thereunder.

ARTICLE 3

ACQUISITION QUANTITY

3.1 First Fifty Thousand Acquisition. Subject to Sections 3.3 and 3.4 below, the quantity of Conserved Water acquired by CVWD during the Calendar Year 2007 shall be five thousand (5,000) AF and shall ramp-up by five thousand (5,000) AFY each year thereafter until fifty thousand (50,000) AFY is reached (the "First Fifty Thousand Acquisition"). Thereafter, subject to the Occasional or Permanent Reduction provisions of Sections 3.5 and 3.7 below, the First Fifty Thousand Acquisition shall remain at fifty thousand (50,000) AFY.

3.2 Second Fifty Thousand Acquisition. Commencing in the year following the end of the ramp-up for the First Fifty Thousand Acquisition and subject to Section 3.4 below, the quantity of Conserved Water acquired by CVWD shall be five thousand (5,000) AF and shall ramp-up by five thousand (5,000) AFY each year thereafter until an additional acquisition of fifty thousand (50,000) AFY is reached (the "Second Fifty Thousand Acquisition"). Thereafter, subject to the Occasional or Permanent Reduction provisions of Sections 3.5 and 3.7 below, the aggregate First and Second Fifty Thousand Acquisitions shall total and remain at one hundred thousand (100,000) AFY.

3.3 Postponement of First Fifty Thousand Acquisition. CVWD may from time to time postpone the first year of the First Fifty Thousand Acquisition ramp-up to any Calendar Year between Calendar Year 2007 and Calendar Year 2015 by providing written notice to IID at least two (2) years prior to the January 1 of the year which would otherwise be the first year. More than one postponement is permissible, but no notice may be given after December 31, 2012. The notice shall identify the year other than 2007 that will be the new first year of the First Fifty Thousand Acquisition (the "Postponement Notice"). An example of the postponement of the first year of the First Fifty Thousand Acquisition pursuant to this Section 3.3 is provided in Attachment 1.

3.4 Adjustment to Ramp-Up of First and Second Fifty Thousand Acquisitions. After the First Fifty Thousand Acquisition has commenced, and provided that written notice is provided to IID at least one year prior to the January 1 for the Calendar Year to be adjusted, CVWD may reduce an annual ramp-up step from five thousand (5,000) AFY to either three thousand (3,000) AFY or four thousand (4,000) AFY. The notice shall specify the amount and number of years for the adjustment (the "Adjustment Notice"). CVWD may provide an Adjustment Notice more than one time, but only one Adjustment Notice is permitted for any given year.

3.5 Occasional Reductions to First or Second Fifty Thousand Acquisitions. CVWD shall have a limited right to occasionally reduce the amount of Conserved Water acquired in the First or Second Fifty Thousand Acquisitions from IID. This limited right is subject to the following terms and conditions. An example of occasional reductions to the First or Second Fifty Thousand Acquisitions is provided in Attachment 2.

(1) **Availability.** The occasional reductions may occur only during the period between the first year of the First Fifty Thousand Acquisition and two (2) years after the end of the ramp-up for the Second Fifty Thousand Acquisition.

(2) **Annual Reduction Amount.** The occasional reductions shall be in a volume comprised of one or more increments of five thousand (5,000) AF.

(3) **Aggregate Reduction Maximum.** CVWD may not reduce its acquisition of Conserved Water by more than one hundred thousand (100,000) AF in the aggregate during any rolling ten-year period.

(4) **Frequency.** CVWD may not exercise its limited right to an occasional reduction in more than three years in any rolling ten-year period nor more than three years in succession.

(5) **Notice.** CVWD shall provide written notice (the "Occasional Reduction Notice") to IID at least one year prior to the January 1 of any Calendar Year in which the occasional reduction is to take place. Said notice is to specify the Annual Reduction Amount and number of years and contain sufficient information for IID to determine CVWD's compliance with availability, aggregate maximum, and frequency limitations.

3.6 IID Use or Transfer of Non-Acquired Conserved Water. IID shall have the right to use, transfer or Make Available to MWD Conserved Water occasionally not acquired by CVWD, subject to applicable restraints under then existing law. IID shall make reasonable efforts to lawfully use or transfer Conserved Water occasionally not acquired by CVWD to the extent such Conserved Water is not Made Available to MWD pursuant to Article 5 of the IID/MWD Acquisition Agreement. If IID reasonably chooses to use some or all of the non-acquired Conserved Water, CVWD shall be relieved of its payment obligations for the volume used by IID. If IID Makes Available to MWD or lawfully transfers to some other transferee some or all of the Conserved Water occasionally not acquired by CVWD, CVWD will be relieved of its payment obligation in an amount equal to the value of the consideration received by IID in exchange for the transferred Conserved Water; provided, however, that in no event will CVWD have any right to share in or receive any payment as a result of IID's transfer of the Conserved Water. CVWD will also be relieved of its payment obligation to the extent of payments IID would have received should IID decide not to engage in a lawful transfer to a ready, willing and able transferee. CVWD can bring potential transferees to IID's attention for IID's consideration. Should IID be unable to reasonably use or transfer the non-acquired Conserved Water, CVWD will not be relieved of its payment obligation to IID, but will be permitted to use the Conserved Water for any lawful purpose within its jurisdictional boundary. Examples of an IID transfer of non-acquired Conserved Water pursuant to this Section 3.6, including the process, payment requirements and schedule for responses and decisions regarding IID use or transfer, and CVWD's use of Conserved Water outside of Improvement District No. 1, are provided in Attachment 3. The relief of payment provisions of this Section 3.6 take precedence over any provisions of Article 6 or 7.

3.7 Permanent Reduction of Acquired Water. CVWD may permanently waive its rights to acquire some of the First and Second Fifty Thousand Acquisitions and its corresponding

obligation to pay by providing written notice to IID at least two years prior to the January 1 of the Calendar Year in which the unreduced volume would otherwise be obtained, but in no event later than December 31, 2022, specifying the permanent reduction volume (the "**Permanent Reduction Notice**"). The permanent reduction volume below the aggregate acquisition volume of one hundred thousand (100,000) AFY must be in a volume comprised of one or more increments of five thousand (5,000) AFY. The permanent reduction volume will reduce the Second Fifty Thousand Acquisition and thereafter the First Fifty Thousand Acquisition; and, after the Permanent Reduction Notice is provided, the First Fifty Thousand Acquisition and the Second Fifty Thousand Acquisition volumes are deemed appropriately adjusted for purposes of this Agreement. An example of a permanent reduction is provided in Attachment 4.

ARTICLE 4

TERM

4.1 Term.

(1) Agreement. This Agreement shall commence as of the Closing Date and shall terminate on the Termination Date.

(2) Second Fifty Thousand Acquisition. The term for the Second Fifty Thousand Acquisition shall be limited to the shorter of the term for this Agreement or the period from January 1 of Year 1 to December 31 of Year 45.

4.2 Effective Date. The obligations of the Parties under Articles 2, 3, 6, 15, 16 and 17 hereof shall be contingent upon the occurrence of, and shall not become effective until, the Effective Date.

4.3 Effect of Termination. The provisions of Section 3.5 of the QSA are incorporated herein by reference.

ARTICLE 5

PRICE

5.1 First Fifty Thousand Acquisition. The price per AF for the First Fifty Thousand Acquisition shall be Fifty Dollars (\$50.00) in 1999 Dollars.

5.2 Second Fifty Thousand Acquisition. The price per AF for the Second Fifty Thousand Acquisition shall be One Hundred Twenty-Five Dollars (\$125.00) in 1999 Dollars.

ARTICLE 6

PAYMENT

6.1 Schedule for Payments.

(1) Payment Schedule. Invoices for Conserved Water will be sent annually on June 1 by IID to CVWD and, with respect to any Second Fifty Thousand Acquisition amounts, also to MWD. Each invoice will specify the date of mailing, date on which the payment thereunder becomes due, per AF charges, total amount due and owing, and, with respect to any Second Fifty Thousand Acquisition amounts, the portion of the total amount which is subject to MWD's reimbursement obligation to CVWD under the CVWD/MWD Acquisition Agreement. CVWD will send by the following June 15 a statement of acceptance of the invoice, or a statement detailing any disagreement in the per AF charges or the total amount due and owing. Payment of the undisputed amount and fifty percent (50%) of any disputed amount of any such invoice shall be due on the following July 1 ("Due Date"). Payment of the balance of any unpaid disputed amount, or refund of any of the paid disputed amount shall be due on the tenth (10th) business day following final resolution of the payment dispute. As an accommodation, MWD may pay directly to IID on CVWD's behalf any portion of an amount due and owing or disputed under an invoice, and MWD shall be a third-party beneficiary with respect to any payment dispute applicable to all or part of the amount paid by MWD; and IID may pay any refund of any of such paid disputed amount directly to MWD following final resolution of the payment dispute. Notwithstanding, CVWD is fully and solely responsible for the payment to IID of the total amount due for the First Fifty Thousand Acquisition and the Second Fifty Thousand Acquisition.

(2) Amount of Annual Payments. The amount for each annual payment for Conserved Water during any Year is the quantity in AF of Conserved Water available to be acquired as of January 1 of that Year times the applicable price in 1999 Dollars.

6.2 Method of Payment. IID will credit any payment received by IID from MWD pursuant to the reimbursement obligation provisions of the CVWD/MWD Acquisition Agreement against CVWD's payment obligation under Section 6.1; but IID will have no responsibility for any breach or failure by MWD to perform under such provisions. Every payment to IID required under this Agreement must be made in lawful money of the United States of America, to the order of IID, and paid by wire transfer. The initial wire transfer instructions are as follows:

Imperial Irrigation District
01883-80154
Reference, if any

Bank of America
San Francisco
121000358

Payment will be considered made by CVWD upon confirmation of the funds being transferred by CVWD (and, as applicable, by MWD) and received by IID's bank on or before the Due Date, notwithstanding any clearing time or delay in IID's bank releasing funds to IID. IID may change these wire transfer instructions by giving notice to CVWD in accordance with Section 19.6 below. IID will provide a copy of any such notice to MWD in the manner set forth in Section 11.1 of the QSA.

6.3 Late Payments. Payment of the amount required shall be delinquent if not made by or on behalf of CVWD before the close of crediting activity on the Due Date. In the event that CVWD is delinquent in the payment of any amount required, CVWD shall pay an additional charge ("**Late Payment Charge**") equal to two percent (2%) of the delinquent payment for each month or portion thereof that such payment remains delinquent; provided, however, that if the total period of delinquency does not exceed five (5) Business Days, the additional charge shall be equal to one percent (1%) of the delinquent payment.

6.4 Annual Settling-Up Payment. Although the payment provisions set forth above are based on a price as of each July 1 expressed in 1999 Dollars, it is expected that as of the date that the invoice is to be prepared and sent to CVWD (and, as applicable, to MWD) only a United States published estimate of the relevant Inflation Index determinations may be available, with the final relevant index determinations by the United States not being available until a later date. In contemplation of that circumstance, IID shall send a settling-up invoice to CVWD (and, as applicable, to MWD) within sixty (60) days of the United States publication of the relevant Inflation Index final determinations, which identifies any change, as a payment or credit due, in the previously sent invoice which was based on an estimated Inflation Index. Within thirty (30) days of transmission of the settling-up invoice, CVWD will send a statement of acceptance of the settling-up invoice, or a statement detailing any disagreement. The payment by or credit to CVWD (and, as applicable, to MWD) will be due by adding the payment or subtracting the credit, in either case without interest, to the next June 1 invoice sent by IID, with payment due on the following July 1, all as more fully described in Attachment 5. Should there be a disagreement in the payment or credit amount of the settling-up invoice, the payment provisions pending resolution of the dispute will be the same as disputes over the June 1 invoices.

6.5 Payments for Environmental Costs. The method and process for CVWD's payment or reimbursement of certain Environmental Review Process Costs and Environmental Mitigation Costs, as contemplated by Section 10.3 of this Agreement, shall be as set forth in the Environmental Cost Sharing Agreement.

ARTICLE 7

ACQUISITION MECHANISM

7.1 Commencement of Acquisition of Conserved Water. The acquisition of Conserved Water shall be deemed to commence on the Effective Date.

7.2 Acquisition Mechanism and Location. IID performs its obligations to make Conserved Water available for CVWD acquisition under this Agreement by reducing its

Consumptive Use of the Colorado River at Imperial Dam by an amount equal to the Conserved Water to be acquired. When IID acts in that manner, IID has satisfied its obligation to make Conserved Water available for acquisition. CVWD accepts responsibility for the acquired Conserved Water at Imperial Dam. CVWD has no duty to divert any or all of the Conserved Water. The payments by CVWD to IID under this Agreement are to enable CVWD to acquire the Conserved Water and are due whether or not CVWD actually diverts that Conserved Water. CVWD bears the sole risk and responsibility of transporting the Conserved Water to the CVWD service area and any and all Conveyance Losses shall be borne by CVWD.

7.3 CVWD's Scheduling Discretion. CVWD acquires Conserved Water between January 1 and December 31 of each Year. CVWD has the complete discretion within a Year on all matters relating to the scheduling of its diversions from Imperial Dam to the CVWD service area.

ARTICLE 8

PRIORITY 3, 6 AND 7

8.1 Limitation on Diversions. IID and CVWD have agreed to limit and share diversions under Priorities 3, 6 and 7 as explicitly set forth in the QSA.

ARTICLE 9

CONDITIONS TO CVWD'S AND IID'S OBLIGATIONS

9.1 Satisfaction of Conditions. CVWD's rights to acquire and pay for Conserved Water, and IID's obligations to undertake Water Conservation Efforts and Make Available Conserved Water for acquisition by CVWD, are all subject to the satisfaction of the following conditions on or before the dates specified below. CVWD and IID each agree to proceed with reasonable diligence and to use reasonable best efforts to satisfy those conditions for which it has responsibility. To the extent that the SWRCB imposes costs on the Parties for its review and approval of CVWD's acquisition of Conserved Water from IID under this Agreement, IID and CVWD agree to share such costs equally, except that any SWRCB-imposed costs relating to the SWRCB's role in reviewing IID's reasonable and beneficial use of water shall be borne solely by IID. To the extent that the Secretary imposes costs on the Parties for its review and agreement to CVWD's acquisition of Conserved Water from IID under this Agreement, IID and CVWD agree to share such costs equally, except that any Secretary-imposed costs relating to any Secretary role in reviewing IID's reasonable and beneficial uses of water shall be borne solely by IID. Other than with respect to CVWD's obligations for Environmental Review Process Costs and Environmental Mitigation Costs and CVWD's obligations for payment of SWRCB or Secretary expenses spelled out in the preceding two sentences, the amount that CVWD should spend in an effort to satisfy these conditions is committed wholly to CVWD's complete discretion.

(1) QSA. Each of the conditions precedent set forth in Articles 6, 7 and 9 of the QSA shall have been satisfied or waived as of the Closing Date.

(2) **Related Agreements.** Each of the Related Agreements shall be in full force and effect as of the Effective Date.

(3) **Flooding Case Settlement Agreement.** IID and CVWD shall have executed a settlement agreement regarding the sharing of liability in Salton Sea flooding cases in the form attached as Exhibit A.

9.2 Written Waiver of Conditions. The Parties may agree to waive in writing any one or more of the foregoing conditions, in whole or in part; **provided, however,** that neither Party shall waive review in accordance with CEQA or NEPA or other requirements under applicable laws.

9.3 Extension by Agreement. The Parties may agree to extend the date by which any condition must be satisfied or waived.

9.4 Consequence of Failure of Conditions. If the conditions in this Article are not timely satisfied or waived, then this Agreement will be void ab initio, and all rights granted by this Agreement will be terminated and forfeited.

ARTICLE 10

COMPLIANCE WITH ENVIRONMENTAL LAWS

10.1 Compliance With CEQA and NEPA. In executing this Agreement, the Parties recognize and acknowledge that the environmental review and assessment required by CEQA and NEPA have been completed.

10.2 Compliance With Endangered Species Act and Other Applicable Laws. In executing this Agreement, the Parties recognize and acknowledge that they have taken all steps necessary to assess whether the activities described in this Agreement may adversely impact threatened or endangered species, critical habitat or other environmental resources regulated pursuant to the federal Endangered Species Act, the California Endangered Species Act and other applicable state and federal laws relating to the protection of environmental resources (collectively, "Resource Laws"). To the extent required to implement the activities described in this Agreement in compliance with all Resource Laws, and as a condition to implementing such activities, the Parties have undertaken consultation with the U.S. Fish & Wildlife Service ("USFWS") for their respective areas of responsibility and have obtained all necessary permits, approvals and authorizations from USFWS, the California Department of Fish & Game and other resource agencies.

10.3 Payment of Environmental Review Process and Environmental Mitigation Costs. The terms and conditions governing the Parties' respective responsibilities for the payment of Environmental Review Process and Environmental Mitigation Costs associated with the activities and transactions contemplated by this Agreement are set forth in the Environmental Cost Sharing Agreement.

ARTICLE 11

ALLOCATION OF PRIORITY 3 SHORTFALL

11.1 Terms of Allocation. If, for any reason, there is less than three million eight hundred fifty thousand (3,850,000) AF available in any given year to Priorities 1, 2 and 3, CVWD's obligation to acquire and pay for Conserved Water and IID's obligation to make Conserved Water available for acquisition shall continue. Notwithstanding the above, if less than three million four hundred thirty thousand (3,430,000) AFY in the aggregate is available under Priority 3 to IID and CVWD, then any Shortfall ("Shortfall"), defined as the difference between three million four hundred thirty thousand (3,430,000) AFY and the aggregate AFY available to IID and CVWD under Priority 3, shall be allocated and shared as follows; but under no circumstances shall the Consumptive Use of IID remaining under Priority 3 be less than the volume of IID's present-perfected right. An illustration of a Priority 3 shortfall allocation pursuant to this Section 11.1 is provided in Attachment 6.

(1) **Reduction of Priority 3 and Acquired Water.** Subject to IID's retention of its Priority 3 Consumptive Use volume equal to its present-perfected right, shortfalls will be allocated first to either Party's Priority 3 right and thereafter, if necessary, to reduce acquired water under this Agreement.

(2) **Allocation of Shortfall by Consent.** IID and CVWD shall meet as soon as reasonably practicable after each is informed that a Shortfall will or reasonably might occur in order to negotiate a consensual sharing of the Shortfall. If no such consensual resolution is obtained within fifteen (15) days of such meeting, then either Party may commence litigation to resolve the allocation of the Shortfall.

(3) **Allocation of Shortfall by Litigation.** Either IID or CVWD may commence a lawsuit before any appropriate court to resolve the allocation of the Shortfall. Litigation shall not occur in any forum other than a court. The matter shall be tried to a judge, not a jury. In such litigation, both IID and CVWD may assert any right, claim, power or defense related to water rights including priority, purpose or method of use; provided, however, that (i) no judgment shall reduce the Consumptive Use right of IID under Priority 3 to less than the volume associated with IID's present perfected right; (ii) any judgment will be limited only to the allocation of the Shortfall; and (iii) this Agreement, the Implementation Agreement, the Quantification Settlement Agreement, the IID/MWD Acquisition Agreement, the CVWD/MWD Acquisition Agreement, the 1998 IID/SDCWA Transfer Agreement, and the SWRCB and BOR Approvals of any of these agreements shall be inadmissible as evidence and shall not be considered by the court in ruling on the allocation of the Shortfall.

(4) **Provisional Allocation of Shortfall During the Litigation.** During the pendency of any litigation and until a final, nonappealable judgment is entered, IID and CVWD agree to allocate any Shortfall on the basis of seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

(5) **Settling Up After Litigation Concluded.** Upon the entry of a final, nonappealable judgment, the Parties will settle up and allocate the Shortfall in accordance with

the final judgment. The Party who obtained more water under the Provisional Allocation than it would have received under the final judgment is the Debtor Party; the Party who obtained less water under the Provisional Allocation than it would have received under the final judgment is the Creditor Party. The Debtor Party shall repay the Creditor Party the amount it received under the Provisional Allocation in excess of that which it would have received had the final judgment been in effect throughout the Shortfall period. The Debtor Party shall repay in equal annual installments and shall have a repayment period equal to three (3) years for every one (1) year that the litigation was pending. To the extent that Flood Control Releases occur during the repayment period and can be reasonably used or stored by the Creditor Party, the obligation of the Debtor Party is commensurately reduced.

ARTICLE 12

FORCE MAJEURE

12.1 Force Majeure. The risk of a Force Majeure event, such as a natural disaster, act of war or like emergency disrupting IID's Water Conservation Efforts or disrupting CVWD's ability to acquire, divert or receive Conserved Water, shall be borne by the Parties in accordance with the following terms; provided, however, that in no circumstance shall a Priority 3 Shortfall, as described in Article 11 above, an extended drought (even of unexpected magnitude), or a new and unexpected environmental mitigation obligation be deemed a Force Majeure event within the meaning of this Article 12.

(1) IID shall be required, at its own expense, to take whatever steps are reasonable to cure or resolve any effects of a Force Majeure event on its ability to undertake or continue its Water Conservation Efforts or otherwise to Make Available Conserved Water, and shall be relieved of any obligation to conserve or Make Available Conserved Water for acquisition by CVWD until the cure or resolution is accomplished. CVWD may withhold payments otherwise due until IID has cured or resolved such effects and Conserved Water again becomes available for acquisition by CVWD.

(2) CVWD shall be required, at its own expense, to take whatever steps are reasonable to cure or resolve a Force Majeure event on its ability to acquire, divert, receive, transport, or direct recharge Conserved Water and, until such cure or resolution is accomplished, shall be relieved of its payment obligations to IID. IID may itself use, or make available for lawful acquisition by others, the Conserved Water for which CVWD would otherwise have paid, and CVWD shall have no right to acquire the Conserved Water until it has cured or resolved such effects and again becomes obligated to make payments to IID.

ARTICLE 13

EMINENT DOMAIN/TAKINGS

13.1 Effect on Agreement. If at any time during the term of this Agreement, any of the Conserved Water to be made available to CVWD by IID pursuant to this Agreement is taken

for any part of the remaining term of this Agreement by lawful exercise of the power of eminent domain by any sovereign, municipality, public or private authority or other person ("taking"), the terms of this Agreement shall not be affected in any way, except that for the period of the taking as to the Conserved Water taken only, IID shall be relieved of its obligation to make such Conserved Water available to CVWD and CVWD shall be relieved of its obligation to pay IID for such Conserved Water. Each Party hereby waives any right it may have under the provisions of Code of Civil Procedure Section 1265.130 to petition the Superior Court to terminate this Agreement.

13.2 Compensation for Taking. The compensation paid for any taking of Conserved Water otherwise to be Made Available to CVWD pursuant to this Agreement (the "subject Conserved Water") shall be separately assessed under Code of Civil Procedure Section 1260.220(a) according to each Party's interest as follows:

(1) CVWD shall be entitled to:

(i) - Any compensation paid for the amount attributable to the market value of the subject Conserved Water for the period from the date of the taking to the earlier of the date of the end of the taking or the term of this Agreement in excess of (x) the present value at the date of the taking of the amounts that CVWD would otherwise be obligated to pay to IID for the subject Conserved Water under this Agreement and (y) the market value, if any, attributed to MWD's unexercised Right of First Refusal and Secondary Option under the IID/MWD Acquisition Agreement with respect to the subject Conserved Water to the extent compensation is allowable therefor under applicable law.

(ii) Any compensation paid for severance damage to CVWD attributable to the taking of the subject Conserved Water; and

(iii) Any compensation paid for loss of goodwill to CVWD attributable to the taking of the subject Conserved Water.

(2) IID shall be entitled to all other compensation paid, including but not limited to:

(i) Any compensation paid for the present value at the date of the taking of the amounts that CVWD would otherwise be obligated to pay to IID for the subject Conserved Water under this Agreement;

(ii) Any compensation paid for severance damage to IID attributable to the taking of the subject Conserved Water; and

(iii) Any compensation paid for the loss of goodwill to IID attributable to the taking of the subject Conserved Water.

(3) Nothing in this Article 13 shall affect the right of either Party to relocation assistance benefits.

(4) Nothing in this Article 13 shall affect the rights or claims of either Party with respect to a taking of some or all of its water rights, including Colorado River water rights.

ARTICLE 14

MISCELLANEOUS

14.1 Retention of Water Rights: No "Property" Rights in Water Rights Created Hereunder. This Agreement does not in any way transfer, assign, encumber, or grant to CVWD any ownership interest in or control over any water rights held by IID, and does not in any way transfer, assign, encumber, or grant to IID any ownership interest or control over any water rights held by CVWD. IID and CVWD covenant and agree not to assert against each other any such interest in or control over any water rights of the other Party.

14.2 Contracts with Landowners. Should IID contract with any Landowners to undertake Water Conservation Efforts, IID shall solely contract with the Contracting Landowners and shall be solely responsible for enforcing the terms of such contracts. IID shall bear the sole responsibility and consequences of a breach by any Contracting Landowner. CVWD shall not be a third-party beneficiary to any of the contracts between the Contracting Landowners and IID, and CVWD shall not have or acquire any rights by virtue of those contracts.

14.3 Water Use Challenges. During the term of this Agreement, and except as to the Allocation of Shortfall provisions of Article 11 above, neither IID or CVWD will challenge the water use practices or reasonableness of water use of the other, or in any way seek to reduce each other's rights to Consumptive Use of Colorado River water or each other's acquisition of Conserved Water as set forth in the QSA.

14.4 Other Transfers of Water by IID. During the term of this Agreement, with the exception of any transfer initiated or to be initiated during a period in which a Shortfall needs to be allocated pursuant to Article 11 above, CVWD hereby consents and will not object to any transfer or use of water by IID outside the Imperial Service Area provided such transfer or use does not result in reduction in water available to CVWD as set forth in the QSA.

14.5 Other Transfers of Water by CVWD. During the term of this Agreement, except as provided in Section 3.6 above, CVWD covenants to not transfer or assign to any person for use outside CVWD Improvement District No. 1, other than for recharge of CVWD Improvement District No. 1: (i) any of its right to Consumptive Use of Colorado River water; or (ii) the right to use any conserved water created by CVWD. An example of a permissible CVWD re-transfer for purposes of this Section 14.6 is provided in Attachment 7.

14.6 CVWD Groundwater Storage of IID Water. CVWD grants to IID the right to store IID water in the groundwater basin in the Coachella Valley and to utilize CVWD's groundwater recharge and extraction facilities upon the payment to CVWD of actual costs, all as more specifically set forth in the Groundwater Storage Agreement attached as Exhibit B.

14.7 Re-Transfer. CVWD has no right to re-transfer Conserved Water acquired from IID. If CVWD exchanges Conserved Water acquired from IID for MWD-delivered water, and if the exchange obligation of each party must be and actually is fulfilled within a single Year, then that exchange is not a re-transfer and is not subject to the prohibition set forth above. Should CVWD reduce its use of Colorado River water in any Year so that MWD can acquire a corresponding amount in that same year pursuant to the terms of the CVWD/MWD Acquisition Agreement, the MWD/CVWD Transfer and Exchange Agreement, the Agreement Between MWD and CVWD for Exchange of Water dated July 7, 1983, or the Advance Delivery Agreement dated June 28, 1984, and should CVWD have previously acquired from MWD a volume of water greater than or equal to the amount that MWD is to acquire and for which CVWD is obligated to make available (including conjunctive use programs), then CVWD's reduction and MWD's acquisition shall not be considered a re-transfer of Conserved Water acquired from IID in that year. Other than as provided in Section 3.6 herein, CVWD shall not use Conserved Water outside of Improvement District No. 1 for purposes other than recharge of Improvement District No. 1. CVWD's non-diversion of Conserved Water in order to make a cure payment under the Inadvertent Overrun and Payback Program, or in order to make a settling up payment to IID of a Shortfall under Article 11 above will not be considered a re-transfer. CVWD will provide IID with information regarding any exchanges with MWD or other allowed uses such that IID is able to timely determine CVWD's compliance with this provision.

14.8 Calendar-Year Limitation. CVWD's right to acquire Conserved Water under this Agreement is not cumulative, and CVWD has no right to any such Conserved Water that it does not divert within the Year. Thus, if CVWD fails to divert all of the Conserved Water to which it is entitled under this Agreement in any one Year, the amount which CVWD is entitled to acquire (and the amount that IID is obligated to Make Available under this Agreement) in any other Year is unaffected.

ARTICLE 15

DEFAULT AND DISPUTES

15.1 Events of Default by CVWD. Each of the following constitutes an "Event of Default" by CVWD under this Agreement:

(1) **Payment.** CVWD fails to pay the required amount by the Due Date. If CVWD fails to pay the required amount by the Due Date, the delinquent payment will also bear a Late Payment Charge as set forth in Section 6.3 until paid in full.

(2) **Other Promises.** CVWD fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe, and such default continues for forty-five (45) days from a Notice of Default being sent in the manner provided in Section 19.6.

(3) **Warranties and Representations.** Any warranty, representation, or other statement made by or on behalf of CVWD and contained (i) in this Agreement or (ii) in any other document furnished in compliance with or in reference to this Agreement is on the date made, or later proves to be, false, misleading, or untrue in any material respect.

15.2 Events of Default by IID. Each of the following constitutes an "Event of Default" by IID under this Agreement:

(1) **Transfer.** IID fails to Make Conserved Water Available for acquisition by CVWD in the quantities and on the schedule specified in this Agreement.

(2) **Other Promises.** IID fails to perform or observe any term, covenant, or undertaking in this Agreement that it is to perform or observe, and such default continues for forty-five (45) days from a Notice of Default being sent in the manner provided in Section 19.6.

(3) **Warranties and Representations.** Any warranty, representation, or other statement made by or on behalf of IID and contained (i) in this Agreement or (ii) in any other document furnished in compliance with or in reference to this Agreement is on the date made, or later proves to be, false, misleading, or untrue in any material respect.

15.3 Certain Disputes Between IID and CVWD. Any disagreements between IID and CVWD concerning the amount of an invoice or settling-up invoice, the calculation or application of the Inflation Index, the calculation of capacity and actual costs for CVWD groundwater storage of IID water, and shall not be Defaults, but instead disputes which are resolved pursuant to Sections 17.1 and 17.2.

15.4 Determination of Reasonableness of Steps Taken to Cure or Resolve Effects of a Force Majeure Event. Any disagreements between IID and CVWD concerning the reasonableness of steps taken by CVWD or IID to cure or resolve the effects of a Force Majeure event shall be resolved pursuant to Sections 17.1 and 17.3.

ARTICLE 16

REMEDIES

16.1 Specific Performance for Defaults. Each Party recognizes and agrees that the rights and obligations set forth in this Agreement for defaults are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party defaults by not performing in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, or otherwise breaches, other than those issues that are Disputes as set forth in Section 15.3, the other Party would likely suffer irreparable harm. Therefore, if either Party breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provisions will be enforceable in a court of equity by a decree of specific performance. This specific-performance remedy is not exclusive and is in addition to any other remedy available to the Parties.

16.2 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise

or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power, or privilege precludes any other or further exercise of a right, power, or privilege granted by this Agreement or otherwise.

16.3 Actions or Proceedings Between the Parties. Each Party acknowledges that it is a "local agency" within the meaning of Section 394(c) of the California Code of Civil Procedure ("CCP"). Each Party further acknowledges that any action or proceeding commenced by one Party against the other would, under Section 394(a) of the CCP, as a matter of law be subject to

- (1) Being transferred to a Neutral County, or
- (2) Instead, having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.
- (3) Each Party hereby:
 - (i) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action or proceeding;
 - (ii) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;
 - (iii) Consents to having any motion under Section 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and
 - (iv) Acknowledges that this Agreement, and in particular this section, may be submitted to the court as part of the moving papers.

Nothing in this Section 16.3, shall impair or limit the ability of a Party to contest the suitability of any particular county to serve as a Neutral County.

ARTICLE 17

RESOLUTION OF DISPUTES

Disputes between the Parties described in Section 15.3, other than disputes arising in connection with an Event of Default, shall be resolved pursuant to the provisions of Sections 17.1 and 17.2 of this Article. All other disputes shall be resolved pursuant to the provisions of Section 17.1 and 17.3 of this Article.

17.1 Meeting of General Managers. Within thirty (30) days of the Parties identifying the existence of a dispute, the General Managers of IID and CVWD shall meet and attempt to resolve the dispute to their mutual satisfaction. Any such resolution shall be in writing and be binding on the Parties.

17.2 Arbitration. Any dispute listed in Section 15.3 arising out of this Agreement which cannot be resolved by agreement shall be resolved through binding arbitration conducted in a Neutral County or such other location as the Parties may agree. Arbitration proceedings may be initiated by either Party sending a demand for arbitration to the other Party in conformance with the Notice provisions of this Agreement. The Parties shall impanel a group of three arbitrators by each selecting an arbitrator of their choice who shall then select the third member of the panel. If the two arbitrators appointed by the Parties cannot agree on the selection of a third arbitrator within ten (10) Business Days from the initiation of the arbitration proceeding, the third neutral arbitrator shall be selected by the presiding judge of the Neutral County Superior Court. At least one of the arbitrators must be a person who has actively engaged in the practice of law with expertise deciding disputes and interpreting contracts. Prior to the commencement of proceedings, the appointed arbitrators will take an oath of impartiality. The Parties shall use their reasonable best efforts to have the arbitration proceeding concluded within ninety (90) Business Days of the selection of the third panel member.

In rendering the award, the arbitrators shall determine the rights and obligations of the Parties according to the substantive and procedural laws of California. All discovery shall be governed by the CCP with all applicable time periods for notice and scheduling provided therein being reduced by one-half (½). The arbitrators may establish other discovery limitations or rules. The arbitration process will otherwise be governed by the Commercial Arbitration Rules of the American Arbitration Association. All issues regarding compliance with discovery requests shall be decided by the arbitrators. A decision by two of three arbitrators will be deemed the arbitration decision. The arbitration decision shall be in writing and shall specify the factual and legal bases for the decision. The decision of such arbitrators shall be final and binding upon the parties, and judgment upon the decision rendered by the arbitration may be entered in the Neutral County superior court.

The costs (including, but not limited to, reasonable fees and expenses of counsel and expert or consultant fees and costs), incurred in an arbitration (including the costs to enforce or preserve the decision) shall be borne by the Party whom the decision is against. If the decision is not clearly against one Party on one or more issues, each Party shall bear its own costs. The arbitration decision shall identify whether any Party shall be responsible for the other Party's costs.

17.3 Trial of Certain Disputes. Any dispute to be resolved pursuant to the provisions of this Section 17.3 shall be determined following trial by a Judge Pro Tempore from a Neutral County appointed by the Presiding Judge of the County in which a complaint is filed pursuant to the venue rules in the California Code of Civil Procedure. The proceeding shall be initiated when one Party sends a copy of the complaint intended to be filed with the Superior Court in the appropriate County. The General Managers and attorneys for the Parties shall meet within ten (10) Business Days of mailing, faxing or e-mail transmission of the proposed complaint to determine whether agreement can be reached on a particular retired Superior Court Judge to preside over the trial. The complaining Party shall thereafter file the complaint in the appropriate County. The Parties agree that at the appropriate time they will stipulate to the appointment by the Presiding Judge of the Superior Court for that County of the retired judge agreed upon as the Judge Pro Tempore to preside over the case for all purposes. If the Parties cannot agree upon a retired judge, the venue, filing and the normal trial procedures for Superior Court cases shall

apply; provided, however, that any judge assigned to the case shall be from a Neutral County. The Parties agree that the issues in the case shall be tried and determined by the Court as nonjury issues.

ARTICLE 18

REPRESENTATIONS AND WARRANTIES

18.1 IID's Representations and Warranties.

(1) Due Authority and Approval. Subject only to any approvals and conditions required under Article 9 of this Agreement and compliance with environmental laws pursuant to Article 10 of this Agreement: (i) IID has all legal power and authority to enter into this Agreement, to implement its Water Conservation Efforts, and to make the Conserved Water available for CVWD acquisition on the terms set forth in this Agreement, and (ii) the execution and delivery of this Agreement and IID's performance of its obligations under the Agreement have been duly authorized by all necessary actions of IID, and no other act or proceeding by IID is necessary to authorize such execution, delivery, or performance.

(2) Signatories. The persons executing this Agreement on behalf of IID have full power and authority to bind IID to the terms of this Agreement. In addition, the persons signing this Agreement on IID's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on the IID's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) Enforceability. Subject only to any approvals required under Article 9 of this Agreement and compliance with environmental laws pursuant to Article 10 of this Agreement, this Agreement constitutes the valid and binding agreement of IID, enforceable against IID in accordance with the terms of the Agreement.

(4) No Conflicts. The execution and implementation of this Agreement do not violate or trigger default under any law or other agreement to which IID is subject.

(5) No Pending or Threatened Disputes. Except as disclosed on Exhibit C attached hereto, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to IID's knowledge, threatened against or affecting IID relating to the performance contemplated by this Agreement, including the adequacy of the Water Conservation Efforts undertaken by IID, IID's Making Conserved Water Available for acquisition by CVWD, and CVWD's payment for such Conserved Water.

(6) Notice of Developments. IID agrees to give prompt notice to CVWD if IID discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Effective Date.

18.2 CVWD's Representations and Warranties.

(1) **Due Authority/Approval.** Subject only to the approvals and conditions required under Article 9 of this Agreement and compliance with environmental laws pursuant to Article 10 of this Agreement: (i) CVWD has all legal power and authority to enter into this Agreement and to acquire the Conserved Water on the terms set forth in this Agreement, and (ii) the execution and delivery of this Agreement and CVWD's performance of its obligations under the Agreement have been duly authorized by all necessary actions of CVWD, and no other act or proceeding by CVWD is necessary to authorize such execution, delivery, or performance.

(2) **Signatories.** The persons executing this Agreement on behalf of CVWD have full power and authority to bind CVWD to the terms of this Agreement. In addition, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on CVWD's behalf personally warrant and represent that they have reviewed the Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to any approvals and conditions required under Article 9 of this Agreement and compliance with environmental laws pursuant to Article 10 of this Agreement, this Agreement constitutes the valid and binding agreement of CVWD, enforceable against CVWD in accordance with the terms of the Agreement.

(4) **No Conflicts.** The execution and implementation of the Agreement do not violate or trigger default under any law or other agreement to which CVWD is subject.

(5) **No Pending or Threatened Disputes.** Except as disclosed on Exhibit D attached hereto, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to CVWD's knowledge, threatened against or affecting CVWD relating to the performance contemplated by this Agreement, including the adequacy of the Water Conservation Efforts undertaken by IID, IID's Making Conserved Water Available for acquisition by CVWD, and CVWD's use of the acquired Conserved Water and its payment for such Conserved Water.

(6) **Notice of Developments.** CVWD agrees to give prompt notice to IID if CVWD discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Effective Date.

ARTICLE 19

GENERAL PROVISIONS

19.1 No Third-Party Rights. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

19.2 Counting Days. Days shall be counted by excluding the first day and including the last day, unless the last day is not a Business Day, and then it shall be excluded. Any act required by this Agreement to be performed by a certain day shall be timely performed if it is completed before 5:00 p.m. Pacific Time on that date, unless otherwise specified. If the day for performing any obligation under this Agreement is not a Business Day, then the time for performing that obligation shall be extended to 5:00 p.m. Pacific Time on the next Business Day.

19.3 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

19.4 Governing Law. California law governs this Agreement and any dispute arising from the contractual relationship between the Parties under the Agreement.

19.5 Binding Effect; No Assignment. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. Neither Party may assign any of its rights or delegate any of its duties under this Agreement. Any Assignment or Delegation made in violation of this Agreement is void and of no force or effect.

19.6 Notices. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to both addressees of each Party. Notice will be sufficiently given for all purposes as follows:

- *Personal Delivery.* When personally delivered to the recipient. Notice is effective on delivery.
- *First-Class Mail.* When mailed first-class to the last address of the recipient known to the Party giving notice. Notice is effective five mail delivery days after it is deposited in a United States Postal Service office or mailbox.
- *Certified Mail.* When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.
- *Overnight Delivery.* When delivered by an overnight delivery service such as Federal Express, charged prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purpose of giving notice are as follows:

To IID:	Imperial Irrigation District 333 E. Barioni Boulevard P.O. Box 937 Imperial, California 92251 Attn: General Manager Telephone: (760) 339-9477
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With a copy to:	Horton, Knox, Carter & Foote 895 Broadway El Centro, California 92243 Attn: John P. Carter, Chief Counsel Telephone: (760) 352-2821
To CVWD:	Coachella Valley Water District P.O. Box 1058 Coachella, California 93326 Attn: General Manager and Chief Engineer Telephone: (760) 398-2651
With a copy to:	Redwine & Sherrill 1950 Market Street Riverside, California 92501 Attn: Gerald Shoaf Telephone: (909) 684-2520

A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service. A Party may change its address by giving the other Party notice of the change in any manner permitted by this Agreement.

19.7 Entire Agreement. This Agreement (including the exhibits and other agreements attached to or referenced in this Agreement) constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the acquisition of Conserved Water by CVWD from IID, and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, nor is either Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

19.8 Time of the Essence. Time is of the essence of and under this Agreement and of every provision thereof.

19.9 Modification. This Agreement may be supplemented, amended, or modified only by the agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by both Parties.

19.10 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of a breach, failure of condition, or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

19.11 Joint Defense. The Parties agree to proceed with reasonable diligence and use reasonable best efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement.

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

<p>"IID"</p>	<p>IMPERIAL IRRIGATION DISTRICT, a California irrigation district</p> <p>By: _____ Its: _____</p>
<p>Approved as to form:</p> <p>By: _____ Its: _____</p>	
<p>"CVWD"</p>	<p>COACHELLA VALLEY WATER DISTRICT, a California county water district</p> <p>By: _____ Its: _____</p>
<p>Approved as to form:</p> <p>By: _____ Its: _____</p>	

AGREEMENT FOR ACQUISITION OF CONSERVED WATER BETWEEN IMPERIAL IRRIGATION DISTRICT AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

THIS AGREEMENT FOR ACQUISITION OF CONSERVED WATER ("Agreement") is made and entered into this ___ day of _____, 2001, by and between IMPERIAL IRRIGATION DISTRICT, a California irrigation district ("IID"), and THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a California metropolitan water district ("MWD"), each of which is at times referred to individually as "Party" and which are at times collectively referred to as "Parties."

RECITALS:

- A. IID is an irrigation district organized under the California Irrigation District Law, codified at §§ 20500 *et seq.* of the California Water Code, and delivers Colorado River water in Imperial County, California for irrigation and potable purposes.
- B. MWD is a metropolitan water district organized under the California Metropolitan Water District Act, § 109-1 of the Appendix to the California Water Code, and delivers Colorado River water in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura Counties, California for domestic and irrigation purposes.
- C. This Agreement is one of several agreements executed and delivered as of the date hereof by the Parties and by other agencies, including Coachella Valley Water District ("CVWD"), pursuant to the Quantification Settlement Agreement among the Parties and CVWD dated as of _____, 2001 (the "QSA"), which settles a variety of long-standing disputes regarding the priority, use and transfer of Colorado River water and establishes the terms for the further distribution of Colorado River water among these entities for up to seventy-five years based upon the water budgets set forth therein.
- D. The Parties do not intend to, and under the Agreement do not in any way, transfer, assign, encumber, or grant to each other any ownership interest in or control over any of each other's water rights.
- E. The Parties intend that this Agreement shall become effective and commence only after compliance with the California Environmental Quality Act, California Public Resources Code §§ 21000 *et seq.* ("CEQA"), and the National Environmental Policy Act, Title 4, United States Code §§ 4321 *et seq.* ("NEPA"), as applicable.

A G R E E M E N T:

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, IID and MWD agree as follows:

ARTICLE 1

DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Incorporated Definitions. The terms with initial capital letters and acronyms that are used in this Agreement shall have the same meanings as set forth in Section 1.1 of the QSA, unless the context otherwise requires.

1.2 Additional Definitions. As used in this Agreement, in addition to the QSA defined terms, the following terms shall have the meanings set forth below:

(1) **Defensive Transfer Agreement.** An agreement by IID to transfer water that meets each of the following requirements: (1) the agreement is reached by IID in response to the threat of a decision or order by a federal or state agency or tribunal acting within its jurisdiction and authority and at least one element of the threatened order or decision would, if issued, (i) involve a determination that IID was not reasonably and beneficially using its water supply or that IID's water supply should be reallocated to another party, class of users, region, purpose or use; and (ii) result in a decrease in IID's annual Consumptive Use entitlement in an amount not less than the quantity to be transferred; (2) IID has reasonable grounds to believe that the threat is substantive and that the threatened decision or order could be entered or imposed; (3) the proposed transferee is not a party that has commenced or is participating adverse to IID in a proceeding that is the source of the threatened decision or order.

(2) **Exempt Transfer.** A transfer of water by IID permitted by Section 16.1(1) (ii) of this Agreement that: (i) in the aggregate with any other qualifying Exempt Transfers does not exceed thirty thousand (30,000) AFY; and (ii) is to a transferee for use within Imperial County; and (iii) occurs after the Effective Date and does not, by its terms, require or contemplate continuation after the Termination Date.

(3) **First Fifty Thousand Acquisition.** As defined in the IID/CVWD Acquisition Agreement.

(4) **Make Available (and grammatical variations thereof).** Conserved Water will be deemed to have been Made Available to MWD in any Year hereunder by means of IID's corresponding reduction in that Year of its Consumptive Use at Imperial Dam in an amount equal to the Conserved Water to be acquired hereunder in that Year by MWD.

(5) **MWD Point of Diversion.** MWD's intake at Lake Havasu or such other point as MWD shall designate.

- (7) NEPA. As defined in Recital E.
- (9) Occasional Reduction Notice. As defined in the IID/CVWD Acquisition Agreement.
- (10) Permitted Transfers. As defined in Section 16.1(1) below.
- (11) Permanent Reduction Notice. As defined in the IID/CVWD Acquisition Agreement, except that such notice shall be deemed to have been given to IID in the event that IID's obligation to Make Conserved Water Available to CVWD under the IID/CVWD Acquisition Agreement terminates as a result of CVWD's breach of that Agreement.
- (12) Postponement Notice. As defined in the IID/CVWD Acquisition Agreement.
- (13) Primary Option. As defined in Section 6.1 below.
- (14) QSA. As defined in Recital C.
- (15) RFR Exercise Notice. As defined in Section 5.1(1) below.
- (16) Right of First Refusal. As defined in Section 5.1 below.
- (17) Second Fifty Thousand Acquisition. As defined in the IID/CVWD Acquisition Agreement.
- (18) Secondary Option. As defined in Section 6.2 below.
- (19) Term. As defined in Section 7.1 below.
- (20) Water Conservation Efforts. The activity, program or project used to generate Conserved Water.

1.3 Rules of Construction and Word Usage. The provisions of Section 1.2 of the QSA are incorporated herein by reference, unless the context requires otherwise.

ARTICLE 2 BASIC PROVISION

Subject in all events to the specific terms and conditions of this Agreement:

(a) IID will compromise certain positions, amend the IID/MWD 1988 Agreement and 1989 Approval Agreement, and cause portions of the All-American Canal to be lined in order to create Conserved Water for acquisition by MWD, grant MWD a Right of First Refusal (defined below) on certain Conserved Water the subject of the IID/CVWD Acquisition Agreement, and grant MWD a Primary and a Secondary Option to acquire certain Conserved Water.

(b) MWD will compromise certain positions, amend the IID/MWD 1988 Agreement and 1989 Approval Agreement, work cooperatively with IID to cause the State of California to pay IID for lining a portion of the All-American Canal, and pay IID for any Conserved Water acquired under exercise of the Right of First Refusal or the Primary or Secondary Option.

(c) IID and MWD agree that at the termination of this Agreement, neither the terms of the Agreement nor the conduct of the Parties in performance of this Agreement confers upon the other any legal or equitable rights that would not have existed in the absence of this Agreement and the Parties' performance hereunder.

ARTICLE 3

IID/MWD 1988 AGREEMENT AND 1989 APPROVAL AGREEMENT

3.1 IID/MWD 1988 Agreement and 1989 Approval Agreement. The IID/MWD 1988 Agreement and the 1989 Approval Agreement shall be amended as set forth in the Amendment to IID/MWD 1988 Agreement and the Amendment to 1989 Approval Agreement, attached as Exhibits A and B, respectively.

ARTICLE 4

ALL-AMERICAN CANAL AND COACHELLA CANAL

4.1 Conserved Water From the All-American Canal and Coachella Canal. The Parties' rights and obligations with respect to Conserved Water resulting from the lining of the All-American Canal and the Coachella Canal shall be as set forth in the Allocation Agreement.

ARTICLE 5

RIGHT OF FIRST REFUSAL

5.1 IID/CVWD Acquisition Right of First Refusal. MWD shall have a right of first refusal ("Right of First Refusal") to acquire, in increments of five thousand (5,000) AFY, Conserved Water made available by IID for acquisition by CVWD, but for which CVWD exercises its rights under Sections 3.5 and 3.7 of the IID/CVWD Acquisition Agreement to Occasionally Reduce or Permanently Reduce the volume of Conserved Water it acquires from IID.

(1) Notice. Within fifteen (15) Business Days of receipt by IID of an Occasional Reduction or Permanent Reduction Notice from CVWD, IID shall provide a copy of the Occasional Reduction or Permanent Reduction Notice to MWD. Within sixty (60) Business Days after MWD's receipt from IID of an Occasional Reduction or Permanent Reduction Notice, MWD shall notify IID of MWD's decision to exercise its Right of First Refusal, including the specific volume of water for which the right is being exercised ("RFR Exercise Notice"). Any

failure to provide IID with a timely RFR Exercise Notice shall be deemed a conclusive rejection by MWD of an election to exercise its Right of First Refusal to any Conserved Water identified in the corresponding Occasional Reduction Notice or Permanent Reduction Notice.

(2) **Exercise of Right of First Refusal.** Upon timely providing the RFR Exercise Notice, MWD shall be entitled to acquire, and IID shall Make Available to MWD, the identified volume of Conserved Water from IID on the same terms, conditions and rights applicable to CVWD's acquisitions as set forth in Articles 2(a), 5 and 6 of the IID/CVWD Acquisition Agreement, except that: (i) the payment shall be one hundred twenty-five dollars (\$125.00) per AF, in 1999 Dollars, plus the amount per AF that CVWD would have paid to IID for environmental review process and mitigation costs had CVWD not exercised its Occasional Reduction or Permanent Reduction rights; and (ii) MWD shall be solely responsible for any and all incremental environmental review process and mitigation costs attributed to exercise of the Right of First Refusal, as set forth in the Environmental Cost Sharing Agreement. An example of the exercise of MWD's Right of First Refusal pursuant to this Section 5.1, including MWD's accompanying payment obligation, is provided in Attachment 1.

ARTICLE 6

OPTION

6.1 MWD Option In Years 2005, 2006 and 2007. MWD shall have an option ("Primary Option"), exercisable by written notice to IID not later than twelve (12) months before the Year for which the Option is being exercised, to acquire from IID two thousand five hundred (2,500) AF of Conserved Water in 2005, five thousand (5,000) AF in 2006, and two thousand five hundred (2,500) AF in 2007.

(1) **Exercise Payment for Primary Option.** Upon timely providing the Primary Option exercise notice, MWD shall be entitled to acquire, and IID shall Make Available to MWD, the applicable volume of Conserved Water from IID on the same terms, conditions and rights applicable to CVWD's acquisitions as set forth in Articles 2(a), 5 and 6 of the IID/CVWD Acquisition Agreement, except that: (i) the payment shall be one hundred twenty-five dollars (\$125.00) in 1999 Dollars per AF; and (ii) MWD shall be solely responsible for any and all incremental environmental review process and mitigation costs attributed to the exercise of the Primary Option as set forth in the Environmental Cost Sharing Agreement.

6.2 Additional MWD Option on Conserved Water. MWD shall have an additional option ("Secondary Option") to acquire from IID five thousand (5,000) AF of Conserved Water in 2007 and up to ten thousand (10,000) AFY in each of 2008 through 2014 to the extent that CVWD could have acquired such volumes of Conserved Water from IID in such Years, but elects pursuant to Section 3.3 or Section 3.4 of the IID/CVWD Acquisition Agreement to acquire less Conserved Water in such years than the maximum volumes otherwise contemplated under Section 3.1 of such Agreement. An example of the exercise of MWD's Secondary Option pursuant to this Section 6.2, including MWD's accompanying payment obligation, is provided in Attachment 2.

(1) **Notices.** Within fifteen (15) Business Days of receipt by IID of a Postponement Notice or an Adjustment Notice from CVWD, IID shall provide a copy of such Notice to MWD. Not later than 120 Business Days after MWD's receipt of such a Notice, MWD shall give IID written notice of its exercise of the Secondary Option with respect to the Year or Years affected by such Notice. Failure to timely provide such notice shall be a conclusive rejection by MWD of an election to exercise its Secondary Option for the Year or Years in question.

(2) **Exercise Payment for Secondary Option.** Upon timely providing the Secondary Option exercise notice, MWD shall be entitled to acquire, and IID shall Make Available to MWD, the applicable volume of Conserved Water from IID on the same terms, conditions and rights applicable to CVWD's acquisitions as set forth in Articles 2(a), 5 and 6 of the IID/CVWD Acquisition Agreement, except that: (i) the payment shall be one hundred twenty-five dollars (\$125.00) in 1999 Dollars per AF; and (ii) MWD shall be solely responsible for any and all incremental environmental review process and mitigation costs attributed to the exercise of the Secondary Option, as set forth in the Environmental Cost Sharing Agreement.

6.3 Environmental Costs Payable by MWD as Consideration for Options. In exchange for the Primary Option and the Secondary Option, MWD shall be obligated to pay or reimburse to IID an aggregate amount equal to the lesser of fifty percent (50%) or \$1.2 million (in 1999 Dollars) of any reasonably determined environmental review process and mitigation costs allocable to the First Fifty Thousand Acquisition in excess of the CVWD Environmental Cost Ceiling and one hundred percent (100%) of any such expenses in excess of a total of \$4.5 million (in 1999 Dollars). MWD's rights under the Primary and Secondary Options shall be independent of any option rights and related obligations of SDCWA and shall be unaffected by SDCWA's or any other person's actions or inactions with respect thereto. For purposes of this Agreement, the amount of environmental review process and mitigation costs allocable to the First Fifty Thousand Acquisition shall be determined in accordance with the Environmental Cost Sharing Agreement.

ARTICLE 7

TERM

7.1 Term. This Agreement shall commence as of the Closing Date and shall terminate on the Termination Date.

7.2 Effective Date. The obligations of the Parties under Articles 2, 3, 4, 5, 6, 8 and 15 hereof shall be contingent upon the occurrence of, and shall not become effective until, the Effective Date.

7.3 Effect of Termination. The provisions of Section 3.5 of the QSA are incorporated herein by reference.

ARTICLE 8
PAYMENTS

8.1 **IID/MWD 1988 Agreement.** MWD shall pay under the IID/MWD 1988 Agreement as set forth in that agreement, as amended.

8.2 **All-American Canal.** MWD and IID shall cooperate to cause the State of California to make available to IID sufficient funds to pay or reimburse any and all expenses associated with concrete lining of the portions of the All-American Canal from Pilot Knob to Drop 3, including expenses associated with planning, design, construction, environmental review and mitigation.

8.3 **MWD Payments Upon Exercise of Right of First Refusal, Primary Option or Secondary Option.** MWD shall make payments to IID for Conserved Water Made Available to it by reason of its exercise of its Right of First Refusal, Primary Option, or Secondary Option, on the same terms, conditions and rights applicable to CVWD under Article 6 of the IID/CVWD Acquisition Agreement.

ARTICLE 9
ACQUISITION MECHANISM

9.1 **Acquisition Mechanism and Location.** IID performs its obligations to make Conserved Water available for MWD acquisition as contemplated by this Agreement by reducing its Consumptive Use at Imperial Dam by an amount equal to the Conserved Water to be acquired. When IID acts in that manner, IID has satisfied its obligation to make Conserved Water available for acquisition hereunder. MWD accepts responsibility for any arrangements and facilities necessary for it to divert the acquired Conserved Water at the MWD Point of Diversion. MWD has no duty to divert any or all of the Conserved Water. The payments by MWD to IID are for the conservation and acquisition of the Conserved Water, whether or not MWD actually diverts that Conserved Water.

9.2 **MWD's Scheduling Discretion.** MWD shall acquire Conserved Water Made Available to it in any Year between January 1 and December 31 of such Year. MWD shall have complete discretion within such Year on all matters relating to the scheduling of its diversions.

ARTICLE 10
PRIORITIES 3, 4, 5, 6 AND 7

10.1 **Limitation on Diversions.** IID and MWD have agreed to limit diversions under Priorities 3, 4, 5, 6 and 7 as explicitly set forth in the QSA.

ARTICLE 11

CONDITIONS TO MWD'S AND IID'S OBLIGATIONS

11.1 Satisfaction of Conditions. MWD's rights to acquire and pay for Conserved Water, and IID's obligations to undertake Water Conservation Efforts and Make Available Conserved Water for acquisition by MWD, are all subject to the satisfaction of the following conditions on or before the dates specified below. MWD and IID each agree to proceed with reasonable diligence and to use reasonable best efforts to satisfy those conditions for which it has responsibility.

(1) **QSA.** Each of the conditions precedent set forth in Articles 6, 7 and 9 of the QSA shall have been satisfied or waived as of the Closing Date.

(2) **Related Agreements.** Each of the Related Agreements shall be in full force and effect as of the Effective Date.

11.2 Written Waiver of Conditions. The Parties may agree to waive in writing any one or more of the foregoing conditions, in whole or in part; provided, however, that neither Party shall waive review in accordance with CEQA or NEPA or other requirements under applicable laws.

11.3 Extension by Agreement. The Parties may agree to extend the date by which any condition must be satisfied or waived.

11.4 Consequence of Failure of Conditions. If the conditions in this Article are not timely satisfied or waived, then this Agreement will be void ab initio, and all rights granted by this Agreement will be terminated and forfeited.

ARTICLE 12

COMPLIANCE WITH ENVIRONMENTAL LAWS

12.1 Compliance with CEQA and NEPA. In executing this Agreement, the Parties recognize and acknowledge that the environmental review and assessment required by CEQA and NEPA have been completed.

12.2 Compliance With Endangered Species Act and Other Applicable Laws. In executing this Agreement, the Parties recognize and acknowledge that they have taken all steps necessary to assess whether the activities described in this Agreement may adversely impact threatened or endangered species, critical habitat or other environmental resources regulated pursuant to the federal Endangered Species Act, the California Endangered Species Act and other applicable state and federal laws relating to the protection of environmental resources

(collectively, "Resource Laws"). To the extent required to implement the activities described in this Agreement in compliance with all Resource Laws, and as a condition to implementing such activities, the Parties have undertaken consultation with the U.S. Fish & Wildlife Service ("USFWS") for their respective areas of responsibility and have obtained all necessary permits, approvals and authorizations from USFWS, the California Department of Fish & Game, and other resource agencies.

12.3 Payment of Environmental Review and Mitigation Costs. The terms and conditions governing the Parties' respective responsibilities for the payment of environmental review and mitigation costs associated with the activities and transactions contemplated by this Agreement are set forth in Articles 5 and 6 hereof and, otherwise, in the Environmental Cost Sharing Agreement.

ARTICLE 13 FORCE MAJEURE

13.1 Force Majeure. The risk of a Force Majeure event, shall be borne by the Parties in accordance with the following terms; provided, however, that in no circumstance shall a Priority 3 shortfall, as described in Article 11 of the IID/CVWD Acquisition Agreement, an extended drought (even of unexpected magnitude), or a new and unexpected environmental mitigation obligation be deemed to constitute a Force Majeure event within the meaning of this Article 13; and provided, further, that a disruption in MWD's ability to divert or to store Conserved Water shall not be a Force Majeure event within the meaning of this Article 13 if and to the extent MWD has the ability either to store or to divert such water.

(1) IID shall be required, at its own expense, to take whatever steps are reasonable to cure or resolve any effects of a Force Majeure event on its ability to conserve and Make Available Conserved Water, and shall be relieved of any obligation to conserve or Make Available Conserved Water for acquisition by MWD until the cure or resolution is accomplished. MWD may withhold payments otherwise due until IID has cured or resolved such effects and Conserved Water again becomes available for acquisition by MWD.

(2) MWD shall be required, at its own expense, to take whatever steps are reasonable to cure or resolve a Force Majeure event on its ability to acquire, divert, transport, store or receive Conserved Water and, until such cure or resolution is accomplished, shall be relieved of its payment obligations to IID. IID may itself use, or make available for lawful acquisition by others, the Conserved Water for which MWD would otherwise have paid, and MWD shall have no right to acquire the Conserved Water until it has cured or resolved such effects and again becomes obligated to make payments to IID.

ARTICLE 14 EMINENT DOMAIN/TAKINGS

14.1 Effect on Agreement. If at any time during the term of this Agreement, any of the Conserved Water to be made available to MWD by IID pursuant to this Agreement is taken for any part of the remaining term of this Agreement by lawful exercise of the power of eminent domain by any sovereign, municipality, public or private authority or other person ("taking"), the terms of this Agreement shall not be affected in any way, except that for the period of the taking as to the Conserved Water taken only, IID shall be relieved of its obligation to Make such Conserved Water Available to MWD and MWD shall be relieved of its obligation to pay IID for such Conserved Water. Each Party hereby waives any right it may have under the provisions of Code of Civil Procedure Section 1265.130 to petition the Superior Court to terminate this Agreement.

14.2 Compensation for Taking. The compensation paid for any taking of Conserved Water otherwise to be Made Available to MWD pursuant to this Agreement (the "subject Conserved Water") shall be separately assessed under Code of Civil Procedure Section 1260.220(a) according to each party's interest as follows:

(1) MWD shall be entitled to:

(i) Any compensation paid for the amount attributable to the market value of the subject Conserved Water (or, with respect to any of MWD's unexercised Right of First Refusal or Secondary Option hereunder, the market value of such contingent interest in Conserved Water to the extent compensation is allowable therefor under applicable law) for the period from the date of the taking to the earlier of the date of the end of the taking or the term of this Agreement in excess of the present value at the date of the taking of the amounts that MWD would otherwise be obligated to pay to IID for the subject Conserved Water under this Agreement;

(ii) Any compensation paid for severance damage to MWD attributable to the taking of the subject Conserved Water (or contingent interest in Conserved Water); and

(iii) Any compensation paid for loss of goodwill to MWD attributable to the taking of the subject Conserved Water (or contingent interest in Conserved Water).

(2) IID shall be entitled to all other compensation paid, including but not limited to:

(i) Any compensation paid for the present value at the date of the taking of the amounts that MWD would otherwise be obligated to pay to IID for the subject Conserved Water under this Agreement;

(ii) Any compensation paid for severance damage to IID attributable to the taking of the subject Conserved Water; and

(iii) Any compensation paid for the loss of goodwill to IID attributable to the taking of the subject Conserved Water.

(3) Nothing in this Article 14 shall affect any right of either Party to relocation assistance benefits.

(4) Nothing in this Article 14 shall affect the rights or claims of either Party with respect to a taking of some or all of its water rights, including Colorado River water rights.

ARTICLE 15 MISCELLANEOUS

15.1 Retention of Water Rights; No "Property" Rights in Water Rights Created Hereunder. This Agreement does not in any way transfer, assign, encumber, or grant to MWD any ownership interest in or control over any water rights held by IID, and does not in any way transfer, assign, encumber, or grant to IID any ownership interest or control over any of water rights held by MWD. IID and MWD covenant and agree not to assert against each other any such interest in or control over water rights of the other Party.

15.2 Acquisition of Colorado River Water. During the term of this Agreement, IID and MWD each consent to the other acquiring Colorado River water from any person on any terms; provided, however, that each Party reserves the right to object to any such acquisition on the sole basis that the proposed acquisition would materially reduce the water otherwise available to it under the QSA.

15.3 Re-Transfer. MWD may not re-transfer Conserved Water acquired from IID pursuant to Articles 5 and 6 hereof, but MWD may exchange such Conserved Water for other water supplies of like quantity if the exchange obligation of each party to the exchange is fulfilled within a single Year. There shall be no limitation hereunder on MWD's right to exchange water where other sources of water are available in sufficient quantity to effect the exchange. MWD will provide IID with information regarding any exchange where such other sources are not available in sufficient quantity so that water acquired pursuant to Articles 5 or 6 hereof must be used in whole or in part for such exchange, such that IID is able to timely determine MWD's compliance with this provision. MWD's delivery of Conserved Water acquired from IID to its member agencies on the same terms and conditions that it delivers Colorado River water otherwise diverted by MWD shall not be considered a re-transfer.

15.4 Calendar-Year Limitation. MWD's right to acquire Conserved Water under this Agreement is not cumulative, and MWD has no right to any such Conserved Water that it does not divert within the Agreement Year. Thus, if MWD fails to divert all of the Conserved Water to which it is entitled under this Agreement in any one Agreement Year, the amount which MWD is entitled to acquire (and the amount that IID is obligated to make available under this Agreement) in any other Agreement Year is unaffected.

15.5 Shortage Years. In the event that the Colorado River water available to IID in any Year would be less than the amount necessary to satisfy IID's present perfected right for that Year, the Conserved Water otherwise to be made available to MWD under the provisions of

Articles 5 and 6 hereof may be retained by IID to an extent up to but not greater than the amount needed to satisfy such right. A quantity of Conserved Water equal to that retained by IID under this provision shall be made available to MWD in the first Year when doing so would not cause IID's present perfected right to be unsatisfied in such Year. No payments will be due from MWD with respect to any Conserved Water retained by IID pursuant to this Section 15.5 until such water is made available to MWD. An example of IID's retention of Conserved Water in a shortage year pursuant to this Section 15.5 is provided in Attachment 3.

ARTICLE 16 PEACE TREATY

16.1 Peace Treaty Elements.

(1) Before the start of Year 21, IID shall make no transfers of water other than "Permitted Transfers," which shall be limited to: (i) transfers contemplated under Section 2.1 of the QSA, (ii) transfers that qualify as Exempt Transfers, and (iii) transfers made under a qualifying Defensive Transfer Agreement.

(2) During the Term of this Agreement, unless and until IID enters into an agreement or otherwise seeks to transfer water in a transaction that does not qualify as a Permitted Transfer, MWD shall not (i) pursue any legislative, administrative or judicial proceeding, or take any other action that would reduce IID's Consumptive Use entitlement, or (ii) divert any water that IID is ordered to conserve as the result of a challenge to IID's water supply; provided, however, that MWD may at any time challenge a proposed IID transfer, on any grounds, so long as that challenge is limited in scope to whether the proposed transfer is legally or contractually permitted. IID and MWD do not agree whether the above requirement of 16.1(2)(ii), that MWD shall not "divert any water that IID is ordered to conserve," precludes MWD from diverting water which is made available by an order that IID reduce its Consumptive Use. Any dispute over the interpretation of this phrase of section 16.1(2)(ii) shall be resolved under the binding arbitration process set forth in section 17.2 of this Agreement and the arbitrators shall resolve any such dispute without regard to parol evidence.

(3) IID shall provide MWD with 60 days' prior written notice of any proposed transfer of Colorado River water by it, other than transfers contemplated under Section 2.1 of the QSA, including a description of the volume of water proposed to be transferred and an explanation why IID believes that the transfer would be permitted hereunder, upon the any of the following events:

(i) IID has determined that there exist conditions warranting a Defensive Transfer Agreement;

(ii) IID has determined to explore whether to make a new transfer of any kind, in which event notice shall be given before IID discusses a possible transfer with any potential transferee;

- (iii) IID has entered into a transfer agreement; or
- (iv) IID has sought approval of a transfer or any aspect thereof.

(4) IID shall provide MWD with the first opportunity to be the transferee under any proposed Defensive Transfer Agreement. Upon notice by IID that it is interested in obtaining an offer for a Defensive Transfer Agreement, MWD shall have ninety (90) days to submit such an offer to IID. Upon receipt of MWD's offer, if one is made: (i) IID shall accept or not accept the offer, but shall in no event solicit competing offers from any other person or entity if MWD's offer is to acquire transferred water at the same per acre-foot price contemporaneously being paid or to be paid by SDCWA under the 1998 IID/SDWCA Transfer Agreement (an "SDCWA Offer"); or (ii) in the event MWD does not make an SDCWA Offer within the ninety (90) day period, IID shall, in its sole discretion, be free to seek, and to accept or reject, offers for Defensive Transfer Agreements from any person or entity, including MWD.

(5) Any dispute between IID and MWD as to whether a proposed transfer as to which IID has given timely notice pursuant to subsection (3) above constitutes a Defensive Transfer Agreement shall be settled promptly by binding arbitration, as provided in Section 17.2, commenced within thirty (30) days after written notice is provided by IID to MWD that, notwithstanding MWD's objections to IID's explanation provided pursuant to subsection (3) above, IID believes the proposed transfer meets the requirements for a Defensive Transfer Agreement.

ARTICLE 17

DISPUTE RESOLUTION

17.1 Nature of Dispute or Claim. Disputes between IID and MWD arising under this Agreement shall be resolved in accordance with the procedures described in this Article 17.

(1) Disputes between the Parties on the following subjects shall be resolved under the binding arbitration process set forth in Section 17.2: (i) the amount of any payment claimed by IID to be due and owing from MWD; (ii) the calculation or application of the Inflation Index; (iii) the reasonableness of steps taken by MWD or IID to cure or resolve the effects of a Force Majeure event under Article 13; and (iv) fulfillment of the qualifying requirements for a proposed Defensive Transfer Agreement.

(2) All other disputes and claims arising under this Agreement shall be resolved in an action or proceeding between the Parties, subject to the terms and conditions set forth in Section 17.3, unless otherwise mutually agreed.

17.2 Arbitration. Disputes on the subjects specified in Section 17.1 that cannot be resolved by agreement shall be resolved through binding arbitration conducted in a Neutral County or such other location as the Parties may agree.

(1) An arbitration proceeding may be initiated by either Party sending a demand for arbitration to the other Party in conformance with the Notice provisions set forth in Section 20.6 of this Agreement. The Parties shall impanel a group of three arbitrators by each designating an arbitrator of their choice who shall then select the third panel member. If the two arbitrators appointed by the Parties cannot agree on the selection of a third arbitrator within ten (10) Business Days after their designation, the third arbitrator shall be selected by the presiding judge of the Superior Court in the county in which the proceeding will be held. At least one of the arbitrators must be a person who has actively engaged in the practice of law with expertise deciding disputes and interpreting contracts. The arbitrators shall take an oath of impartiality prior to the commencement of the arbitration proceeding. The Parties shall use their reasonable best efforts to conclude the arbitration proceeding within ninety (90) Business Days of the selection of the third panel member.

(2) The arbitrators shall conduct the proceeding in accordance with the procedural laws of California, and shall determine the rights and obligations of the Parties in accordance with substantive state and, if applicable, federal law. Discovery shall be governed by the California Code of Civil Procedure ("CCP"), with all applicable time periods for notice and scheduling provided therein reduced by one-half (½). Notwithstanding the preceding sentence, the arbitrators may establish other discovery limitations or rules. The arbitration process will otherwise be governed by the Commercial Arbitration Rules of the American Arbitration Association. All issues regarding compliance with discovery requests shall be decided by the arbitrators. A decision by two of three arbitrators will be deemed the arbitration decision. The arbitration decision shall be in writing and shall specify the factual and legal bases for the decision. The decision of such arbitrators shall be final and binding upon the parties, and judgment upon the decision rendered by the arbitration may be entered in the Neutral County superior court.

(3) The costs (including, but not limited to, reasonable fees and expenses of counsel and expert or consultant fees and costs), incurred in an arbitration (including the costs to enforce or preserve the decision) shall be borne by the Party whom the decision is against. If the decision is not clearly against one Party on one or more issues, each Party shall bear its own costs. The arbitration decision shall identify whether any Party shall be responsible for the other Party's costs.

17.3 Actions or Proceedings Between the Parties. Disputes on subjects other than those specified in Section 17.1(1) that cannot be resolved by agreement shall be resolved in an action or proceeding between the Parties subject to the following provisions.

(1) Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the CCP. Each Party further acknowledges that any action or proceeding commenced by one Party against the other would, under § 394(a) of the CCP, as a matter of law be subject to (i) being transferred to a Neutral County, or (ii) instead, having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.

(2) Each party hereby:

(i) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action or proceeding;

(ii) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;

(iii) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and

(iv) Acknowledges that this Agreement, and in particular this section, may be submitted to the court as part of the moving papers.

(3) Nothing in this section 17.3 shall impair or limit the ability of a Party to contest the suitability of any particular county to serve as a Neutral County.

ARTICLE 18

REMEDIES

18.1 Specific Performance. Each Party recognizes and agrees that the rights and obligations set forth in this Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party does not perform in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, or otherwise breaches, the other Party would likely suffer irreparable harm. Therefore, if either Party breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to this Agreement. Accordingly, in any court controversy concerning this Agreement, this Agreement's provisions will be enforceable in a court of equity by a decree of specific performance. This specific performance remedy is not exclusive and is in addition to any other remedy available to the Parties.

18.2 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any such right or remedy, the non-breaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power, or privilege precludes any other or further exercise of a right, power, or privilege granted by this Agreement or otherwise.

ARTICLE 19

REPRESENTATIONS AND WARRANTIES

19.1 IID's Representations and Warranties.

(1) **Due Authority and Approval.** Subject only to any approvals and conditions contemplated under Article 11 of this Agreement and compliance with environmental laws pursuant to Article 12 of this Agreement: (i) IID has all legal power and authority to enter into this Agreement, to implement its Water Conservation Efforts, and to make the Conserved Water available for MWD acquisition on the terms set forth in this Agreement, and (ii) the execution and delivery of this Agreement and IID's performance of its obligations under the Agreement have been duly authorized by all necessary actions of IID, and no other act or proceeding by IID is necessary to authorize such execution, delivery, or performance.

(2) **Signatories.** The persons executing this Agreement on behalf of IID have full power and authority to bind IID to the terms of this Agreement. In addition, the persons signing this Agreement on IID's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on IID's behalf personally warrant and represent that they have reviewed this Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to any approvals and conditions contemplated under Article 11 of this Agreement and compliance with environmental laws pursuant to Article 12 of this Agreement, this Agreement constitutes the valid and binding agreement of IID, enforceable against IID in accordance with the terms of the Agreement.

(4) **No Conflicts.** The execution and implementation of this Agreement do not violate or trigger default under any law or other agreement to which IID is subject.

(5) **No Pending or Threatened Disputes.** Except as disclosed in Exhibit C attached hereto, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to IID's knowledge, threatened against or affecting IID relating to the performance contemplated by this Agreement, including the adequacy of the water conservation efforts undertaken by IID, IID's making Conserved Water available for acquisition by MWD, and MWD's payment for such Conserved Water.

(6) **Notice of Developments.** IID agrees to give prompt notice to MWD if IID discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Effective Date.

19.2 MWD's Representations and Warranties

(1) **Due Authority/Approval.** Subject only to the approvals and conditions contemplated under Article 11 of this Agreement and compliance with environmental laws pursuant to Article 12 of this Agreement: (i) MWD has all legal power and authority to enter into this Agreement and to acquire the Conserved Water on the terms set forth in this Agreement, and (ii) the execution and delivery of this Agreement and MWD's performance of its obligations under the Agreement have been duly authorized by all necessary actions of MWD, and no other act or proceeding by MWD is necessary to authorize such execution, delivery, or performance.

(2) **Signatories.** The persons executing this Agreement on behalf of MWD have full power and authority to bind MWD to the terms of this Agreement. In addition, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have such power and authority. Furthermore, the persons signing this Agreement on MWD's behalf personally warrant and represent that they have reviewed the Agreement, understand its terms and conditions, and have been advised by counsel regarding the same.

(3) **Enforceability.** Subject only to any approvals and conditions contemplated under Article 11 of this Agreement and compliance with environmental laws pursuant to Article 12 of this Agreement, this Agreement constitutes the valid and binding agreement of MWD, enforceable against MWD in accordance with the terms of the Agreement.

(4) **No Conflicts.** The execution and implementation of the Agreement do not violate or trigger default under any law or other agreement to which MWD is subject.

(5) **No Pending or Threatened Disputes.** Except as disclosed in Exhibit D attached hereto, there are no actions, suits, legal or administrative proceedings, or governmental investigations pending or, to MWD's knowledge, threatened against or affecting MWD relating to the performance contemplated by this Agreement, including the adequacy of the water conservation efforts undertaken by IID, IID's Making Conserved Water Available for acquisition by MWD, and MWD's payment for such Conserved Water.

(6) **Notice of Developments.** MWD agrees to give prompt notice to IID if the MWD discovers that any of its own representations and warranties were untrue when made or determines that any of its own representations and warranties will be untrue as of the Effective Date.

ARTICLE 20

GENERAL PROVISIONS

20.1 No Third-Party Rights. This Agreement is made solely for the benefit of the Parties and their respective permitted successors and assigns (if any). Except for such a permitted successor or assign, no other person or entity may have or acquire any right by virtue of this Agreement.

20.2 Counting Days. Days shall be counted by excluding the first day and including the last day, unless the last day is not a Business Day, and then it shall be excluded. Any act required by this Agreement to be performed by a certain day shall be timely performed if it is completed before 5:00 p.m. Pacific Time on that date, unless otherwise specified. If the day for performing any obligation under this Agreement is not a Business Day, then the time for performing that obligation shall be extended to 5:00 p.m. Pacific Time on the next Business Day.

20.3 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

20.4 Governing Law. California law shall govern this Agreement and any dispute arising from the contractual relationship between the Parties under the Agreement; provided, however, that federal law shall be applied as appropriate to the extent that it bears on the resolution of any claim or issue relating to the permissibility of a proposed transfer under Article 16.

20.5 Binding Effect; No Assignment. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. Neither Party may assign any of its rights or delegate any of its duties under this Agreement. Any Assignment or Delegation made in violation of this Agreement is void and of no force or effect.

20.6 Notices. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to both addressees of each Party. Notice will be sufficiently given for all purposes as follows:

- *Personal Delivery.* When personally delivered to the recipient. Notice is effective on delivery.
- *First-Class Mail.* When mailed first-class to the last address of the recipient known to the Party giving notice. Notice is effective five mail delivery days after it is deposited in a United States Postal Service office or mailbox.
- *Certified Mail.* When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.
- *Overnight Delivery.* When delivered by an overnight delivery service such as Federal Express, charged prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purpose of giving notice are as follows:

To IID:	Imperial Irrigation District 333 E. Barioni Boulevard P.O. Box 937 Imperial, California 92251 Attn: General Manager Telephone: (760) 339-9477
With a copy to:	Horton, Knox, Carter & Foote 895 Broadway El Centro, California 92243 Attn: John P. Carter, Chief Counsel Telephone: (760) 352-2821
To MWD:	The Metropolitan Water District of Southern California

	P.O. Box 54153 Los Angeles, California 90054 Attn: General Manager Telephone: (213) 217-6000
With a copy to:	The Metropolitan Water District of Southern California P.O. Box 54153 Los Angeles, California 90054 Attn: General Counsel Telephone: (213) 217-6115

A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

A Party may change its address by giving the other Party notice of the change in any manner permitted by this Agreement.

20.7 Entire Agreement. This Agreement (including the exhibits and other agreements attached to or referenced in this Agreement) constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the acquisition of Conserved Water by MWD from IID, and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, nor is either Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

20.8 Time of the Essence. Time is of the essence of and under this Agreement and of every provision thereof.

20.9 Modification. This Agreement may be supplemented, amended, or modified only by the agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by both Parties.

20.10 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Agreement is effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of a breach, failure of condition, or right or remedy is or may be deemed a waiver of any other breach, failure, right or remedy, whether similar or not. In addition, no waiver will constitute a continuing waiver unless the writing so specifies.

20.11 Joint Defense. The Parties agree to proceed with reasonable diligence and use reasonable best efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement.

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

<p>"IID"</p>	<p>IMPERIAL IRRIGATION DISTRICT, a California irrigation district</p> <p>By: _____ Its: _____</p>
<p>Approved as to form:</p> <p>By: _____ Its: _____</p>	
<p>"MWD"</p>	<p>THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a California metropolitan water district</p> <p>By: _____ Its: _____</p>
<p>Approved as to form:</p> <p>By: _____ Its: _____</p>	

**AGREEMENT FOR ACQUISITION OF CONSERVED WATER BETWEEN
IMPERIAL IRRIGATION DISTRICT AND THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

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**AGREEMENT FOR ACQUISITION OF WATER BETWEEN
COACHELLA VALLEY WATER DISTRICT AND THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

THIS AGREEMENT FOR ACQUISITION OF WATER ("Agreement") is made and entered into this ___ day of _____, 2001, by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("MWD"), a California metropolitan water district, and COACHELLA VALLEY WATER DISTRICT ("CVWD"), a California county water district, each of which is at times referred to individually as "Party" and which are at times collectively referred to as "Parties."

RECITALS:

- A. IID is an irrigation district organized under the California Irrigation District Law, codified at §§ 20500 et seq. of the California Water Code, and delivers Colorado River water in Imperial County, California for irrigation and potable purposes.
- B. MWD is a metropolitan water district organized under the California Metropolitan Water District Act, § 109-1 of the Appendix to the California Water Code, and delivers Colorado River water in Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, Counties, California for domestic and irrigation purposes.
- C. CVWD is a county water district organized under the California County Water District Law, codified at §§ 30000 et seq. of the California Water Code, and delivers Colorado River water in Riverside County, California for irrigation and potable purposes.
- D. This Agreement is one of several agreements executed and delivered as of the date hereof by the Parties and by other agencies, including IID, pursuant to the Quantification Settlement Agreement among the Parties and IID dated as of _____, 2001 (the "QSA"), which settles a variety of long-standing disputes regarding the priority, use and transfer of Colorado River water and establishes the terms for the further distribution of Colorado River water among these entities for up to seventy-five years based upon the water budgets set forth therein.
- E. The QSA provides, in part, that certain parties thereto shall enter into a binding agreement wherein IID shall have the obligation to provide and CVWD shall have the right to acquire up to fifty thousand (50,000) acre feet of Conserved Water per year and an additional fifty thousand (50,000) acre feet per year of Conserved Water on the terms and conditions set forth therein. Pursuant thereto, IID and CVWD intend to execute on even date with this Agreement, subject to the satisfaction or waiver of the conditions precedent set forth in the QSA, that certain Agreement for Acquisition of Conserved Water between Imperial Irrigation District and Coachella Valley Water District. Pursuant to the IID/CVWD Acquisition Agreement, CVWD may at its election occasionally reduce or permanently reduce, upon notice given to IID, its obligation to acquire the Conserved Water.

F. MWD has certain rights to take and pay for the Conserved Water in the event that CVWD chooses not to acquire the Conserved Water pursuant to the IID/CVWD Acquisition Agreement.

G. Pursuant to the IID/CVWD Acquisition Agreement, IID's obligation to make available and CVWD's right to acquire the Second Fifty Thousand Acquisition shall terminate on the earlier of the termination of the IID/CVWD Acquisition Agreement or the end of Year 45 (as that term is defined in the QSA) ("Expiration Date").

H. MWD has agreed to pay or reimburse CVWD for a portion of CVWD's cost to acquire the Second Fifty Thousand Acquisition along with certain other associated costs and expenses in accordance with the terms and conditions set forth in the QSA.

I. Beginning in Year 46, as such term is defined in the QSA, IID is to be relieved of its obligation to provide the Second Fifty Thousand Acquisition to CVWD, and MWD is to provide or cause to be provided to CVWD up to Fifty Thousand (50,000) acre feet of water per year as Replacement Water for the Second Fifty Thousand Acquisition, on the terms and conditions set forth herein.

J. The QSA further provides, in part, that the Parties hereto are to enter into, subject to the satisfaction or waiver of the conditions precedent set forth in the QSA, an agreement wherein MWD is to transfer to CVWD thirty-five thousand (35,000) acre feet per year of water ("Entitlement Water") to which MWD is entitled pursuant to the State Water Resources Development System, authorized and constructed pursuant to California Water Code §§ 12930, et seq. ("State Water Project") in exchange for CVWD Colorado River supplies ("MWD/CVWD Transfer and Exchange Agreement").

K. The Parties desire to set forth terms and conditions of the above described arrangements.

L. The Parties do not intend to, and under the Agreement do not in any way, transfer, assign, encumber, or grant to each other any ownership interest in or control over each other's water rights.

M. The Parties intend that this Agreement shall become effective and commence only after compliance with the California Environmental Quality Act, California Public Resources Code §§ 2100 et seq. ("CEQA"), and the National Environmental Policy Act, Title 4, United States Code §§ 4321 et seq. ("NEPA"), as applicable.

AGREEMENT

NOW THEREFORE, in consideration of the covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, CVWD and MWD agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **Incorporated Definitions.** The terms with initial capital letters and acronyms that are used in this Agreement shall have the same meanings as set forth in Section 1.1 of the QSA, unless the context otherwise requires.

1.2 **Additional Definitions.** As used in this Agreement, in addition to the QSA defined terms, the following terms shall have the meanings set forth below:

- (1) **Due Date.** As defined in Section 3.3 of this Agreement.
- (2) **Entitlement Water.** As defined in Recital J.
- (3) **Environmental Cost Amount.** As defined in Section 3.1 of this Agreement.
- (4) **Environmental Review Process Costs.** As defined in the Environmental Cost Sharing Agreement.
- (5) **Environmental Mitigation Costs.** As defined in the Environmental Cost Sharing Agreement.
- (6) **First Fifty Thousand Acquisition.** As defined in the IID/CVWD Acquisition Agreement.
- (7) **Expiration Date.** As defined in Recital G.
- (8) **NEPA.** As defined in Recital M.
- (9) **Occasional Reduction Notice.** As defined in the IID/CVWD Acquisition Agreement.
- (10) **Permanent Reduction Notice.** As defined in the IID/CVWD Acquisition Agreement.
- (11) **Postponement Notice.** As defined in the IID/CVWD Acquisition Agreement.
- (12) **Primary Option.** As defined in the IID/MWD Acquisition Agreement.
- (13) **QSA.** As defined in Recital D.

- (14) **Replacement Water.** As defined in Section 4.1 of this Agreement.
- (15) **RFR Exercise Notice.** As defined in the IID/MWD Acquisition Agreement.
- (16) **Right of First Refusal.** As defined in the IID/MWD Acquisition Agreement.
- (17) **Second Fifty Thousand Acquisition.** As defined in the IID/CVWD Acquisition Agreement.
- (18) **Secondary Option.** As defined in the IID/MWD Acquisition Agreement.
- (19) **State Water Project.** As defined in Recital J.

1.3 **Rules of Construction and Word Usage.** The provisions of Section 1.2 of the QSA are incorporated herein by reference, unless the context requires otherwise.

ARTICLE 2 BASIC PROVISION

Subject in all events to the specific terms and conditions of this Agreement:

- (a) CVWD will compromise certain positions, amend the 1989 Approval Agreement, and cause portions of the Coachella Canal to be lined in order to create Conserved Water for acquisition by MWD.
- (b) MWD will compromise certain positions, amend the 1989 Approval Agreement, work cooperatively with CVWD to cause the State of California to pay for lining a portion of the Coachella Canal, reimburse CVWD for certain costs associated with CVWD's acquisition of Conserved Water from IID and provide CVWD with Replacement Water.
- (c) CVWD and MWD agree that at the termination of this Agreement, neither the terms of the Agreement nor the conduct of the Parties in performance of this Agreement confers upon the other any legal or equitable rights that would not have existed in the absence of this Agreement and the Parties' performance hereunder.

ARTICLE 3 REIMBURSEMENT FOR A PORTION OF COST FOR CONSERVED WATER

3.1 **Second Fifty Thousand Acquisition Price.** The QSA and the IID/CVWD Acquisition Agreement provide that CVWD shall have the right to acquire the Second Fifty Thousand Acquisition from IID for One Hundred Twenty-Five Dollars (\$125.00) in 1999 Dollars per AF plus an amount per AF determined by reference to the Environmental Review

Process Costs and Environmental Mitigation Costs incurred by IID directly associated with the acquisition of the Second Fifty Thousand Acquisition by CVWD ("**Environmental Cost Amount**").

3.2 Reimbursement Obligations. MWD hereby agrees to reimburse CVWD for a portion of the amount actually paid by CVWD to IID for acquisition of the Second Fifty Thousand Acquisition as follows:

(1) An amount equal to Seventy-five Dollars (\$75.00) in 1999 Dollars per AF for the first (1st) Twenty Thousand (20,000) AF per year of the Second Fifty Thousand Acquisition,

(2) An amount equal to Forty-two Dollars and Fifty Cents (\$42.50) in 1999 Dollars per AF for the amount of water exceeding Twenty Thousand (20,000) AF per year of the Second Fifty Thousand Acquisition up to a maximum of Thirty Thousand (30,000) AF per year; and

(3) An amount determined pursuant to the Environmental Cost Sharing Agreement pertaining to the difference between the Environmental Cost Amount paid by CVWD in conjunction with (1) and (2) and Three Dollars and Fifty Cents (\$3.50) in 1999 Dollars per AF per year.

3.3 MWD Payments of Reimbursement Obligations. Promptly after receipt by CVWD and MWD of an annual invoice from IID with respect to water acquired pursuant to the Second Fifty Thousand Acquisition, as contemplated by Section 6.1 of the IID/CVWD Acquisition Agreement, the appropriate officers of CVWD and MWD shall meet and confer with a view to reaching agreement on behalf of CVWD and MWD as to the accuracy (or inaccuracy) of such invoice and the substance of any joint communication to be timely made to IID with respect to the amounts due and owing by each of CVWD and MWD to IID.

(1) MWD shall pay directly to IID, by the Due Date and in the manner set forth in Sections 6.1 and 6.2 of the IID/CVWD Acquisition Agreement, MWD's share of any undisputed amount of each such invoice, plus fifty percent (50%) of its share of any jointly disputed amount. MWD also shall pay directly to IID the balance of any unpaid disputed amount, and shall be entitled to receive directly from IID MWD's share of any refund of a paid disputed amount, following final resolution of the payment dispute with IID.

(2) In the event that CVWD and MWD disagree, or are for any reason unable timely to reach agreement, as to the proper amount of MWD's reimbursement obligation under Section 3.2 with respect to any annual invoice from IID, MWD shall, at least two Business Days prior to the June 15 following the date of such invoice, provide to CVWD a written statement detailing MWD's position as to the proper amount of its reimbursement obligation thereunder and, on or before the Due Date, shall pay directly to IID with respect to such invoice the amount that MWD has determined to be proper and shall pay to CVWD fifty percent (50%) of the difference between such amount and the amount the CVWD has determined to be MWD's proper reimbursement (but not in excess of the amount specifically allocated to MWD on the IID invoice). In any such event, CVWD shall assume unilateral responsibility for providing the

appropriate statement to IID, and for making all required payments to IID (net of any payment made to IID by MWD) with respect to the IID invoice in question, pursuant to Section 6.1 of the IID/CVWD Acquisition Agreement.

(3) Any dispute between CVWD and MWD over the proper amount of MWD's reimbursement obligation shall be resolved pursuant to Section 12.1(1). Payment of the balance of any unpaid disputed amount or any refund of any of the disputed amount paid by MWD (including, in either case, late payment charges with respect to such amount accruing from the Due Date, as calculated in the manner set forth in section 3.6) shall be due and payable on the tenth (10th) Business Day following final resolution of the payment dispute.

(4) The Parties acknowledge that CVWD is directly liable to IID for the full payment for the Second Fifty Thousand Acquisition, and that, as an accommodation to the Parties, IID will accept direct payment from both MWD and CVWD. However, if MWD fails timely to pay IID any amount to be paid by MWD directly to IID in accordance with this Section 3.3, and if CVWD instead pays such amount to IID, MWD shall promptly reimburse such amount to CVWD together with late payment charges accruing from the date such payment was originally due to be paid by MWD to IID, as determined in accordance with Section 3.6.

3.4 Payments. Any payment to CVWD required under this Agreement must be made in lawful money of the United States of America, to the order of CVWD, and paid by wire transfer. The initial wire transfer instructions are as follows:

COACHELLA VALLEY WATER DISTRICT

Wire to:
 Union Bank of California
 445 S. Figueroa Street
 Los Angeles, CA 90071
 ABA No. 122000496
 Contact Person: Donna Tredway

Credit to: Coachella Valley Water District
 Account No. 2740013028

3.5 Timing of Payment. Payment will be considered made by MWD upon confirmation of the funds being transferred and received by CVWD's bank, notwithstanding any clearing time or delay in the CVWD's bank releasing funds to CVWD. CVWD may change these wire transfer instructions by giving notice in accordance with Section 15.12 below.

3.6 Late Payments. Payment of any amount required to be paid to CVWD shall be delinquent if not received by CVWD before the close of crediting activity on the date any such payment is due. In the event that MWD is delinquent in the payment to CVWD of any amount required, MWD shall pay a late payment charge equal to two percent (2%) of the delinquent payment for each month or portion thereof that such payment remains delinquent, provided,

however, that if the total period of delinquency does not exceed five (5) Business Days, the additional charge shall be equal to one percent (1%) of the delinquent payment.

3.7 Settling-Up Invoice. Promptly after receipt by CVWD and MWD of an IID settling-up invoice, as contemplated by Section 6.4 of the IID/CVWD Acquisition Agreement, the appropriate officers of CVWD and MWD shall meet and confer with a view to reaching agreement on behalf of CVWD and MWD as to the accuracy (or inaccuracy) of such invoice and the substance of any joint communication to be timely made to IID with respect to the amounts due and owing by each of CVWD and MWD to IID or the amounts of credit to which each of CVWD and MWD shall be entitled. Should there be a disagreement between CVWD and MWD, or failure timely to reach agreement, concerning the payment or credit amounts of the IID settling-up invoice, the payment provisions pending resolution of the dispute will be the same as those applicable to disputes between CVWD and MWD over IID invoices as provided in Section 3.3 above.

ARTICLE 4 REPLACEMENT WATER

4.1 MWD Replacement Water Obligation. The QSA and the IID/CVWD Acquisition Agreement relieve IID of the obligation to provide the Second Fifty Thousand Acquisition to CVWD on the Expiration Date. MWD shall provide or cause to be provided to CVWD up to Fifty Thousand (50,000) AF of water per year to replace the Conserved Water theretofore provided by IID to CVWD ("**Replacement Water**") beginning on the day after the Expiration Date and continuing until the Termination Date. The extent of MWD's obligation to make the water available to CVWD if it is Colorado River water is to reduce MWD's diversions from the Colorado River below that which it would otherwise have been absent this obligation to permit the water so made available to be delivered by the Secretary to Imperial Dam. In the event that the Replacement Water obligation is fulfilled by non-Colorado River water, the Parties will work cooperatively to make all necessary arrangements to have the water delivered to CVWD at a mutually agreed upon delivery point. CVWD has no duty to divert any or all of the Replacement Water. The payments by CVWD to MWD for Replacement Water are due and payable whether or not CVWD diverts the water.

4.2 Permanent Reduction of Replacement Water. MWD's obligation to provide or cause to be provided Replacement Water will be reduced incrementally in reverse order to the extent of any water which is the subject of a Permanent Reduction Notice.

4.3 Occasional Reductions to Replacement Water. CVWD shall have a limited right to occasionally reduce the amount of Replacement Water. This limited right is subject to the following terms and conditions:

(1) **Annual Reduction Amount.** The occasional reductions shall be in a volume comprised of one or more increments of five thousand (5,000) AF.

(2) **Aggregate Reduction Maximum.** CVWD may not reduce its acquisition of Replacement Water by more than one hundred thousand (100,000) AF in the aggregate during any rolling ten-year period.

(3) **Frequency.** CVWD may not exercise its limited right to an occasional reduction in more than three years in any rolling ten-year period nor more than three years in succession.

(4) **Notice.** CVWD shall provide written notice to MWD at least one year prior to the January 1 of any Calendar Year in which the occasional reduction is to take place. The notice shall specify the annual reduction amount and number of years and contain sufficient information for MWD to determine CVWD, compliance with aggregate maximum, and frequency limitations.

4.4 MWD Use or Transfer of Non-Acquired Replacement Water. MWD shall have the right to use or transfer the Replacement Water occasionally not acquired by CVWD subject to applicable restraints under then existing law. MWD shall make reasonable efforts to lawfully use or transfer Replacement Water occasionally not acquired by CVWD. If MWD reasonably chooses to use some or all of the non-acquired Replacement Water, CVWD shall be relieved of its payment obligations for the volume used by MWD. If MWD lawfully transfers some or all of the Replacement Water occasionally not acquired by CVWD, CVWD shall be relieved of its payment obligation in an amount equal to the value of the consideration received by MWD in exchange for the transferred Replacement Water, provided however, that in no event will CVWD have any right to share in or receive any payment as a result of MWD's transfer of the Replacement Water. CVWD will also be relieved of its payment obligations to the extent of payments MWD would receive should the MWD decide not to engage in a lawful transfer to a ready, willing and able transferee. CVWD can bring potential transferees to MWD's attention for MWD's consideration. Should MWD be unable to reasonably use or transfer the non-acquired Replacement Water, CVWD shall not be relieved of its payment obligation to MWD, but will be permitted to use the Replacement Water for any lawful purpose within its jurisdictional boundary.

4.5 Replacement Water Price. CVWD shall pay to MWD for the Replacement Water an amount equal to Fifty Dollars (\$50.00) in 1999 Dollars per AF for the first Twenty Thousand (20,000) AF of Replacement Water per year, Eighty-Two Dollars and Fifty Cents (\$82.50) in 1999 Dollars per AF for Replacement Water exceeding Twenty Thousand (20,000) AF of water per year up to a maximum of Thirty Thousand AF per year, plus in each case an amount equal to the lesser of (i) Three Dollars and Fifty Cents (\$3.50) in 1999 Dollars per AF, or (ii) the actual annualized cost incurred by MWD to comply with federal, state and local environmental laws and regulations, denoted as mitigation costs directly associated with making the water available to CVWD at Imperial Dam

4.6 Invoices. Invoices will be sent by MWD annually on June 1, and specify the date of mailing, date on which the payment becomes due, per acre-foot charges, and total amount due and owing. CVWD will send by the following June 15 a statement of acceptance of the invoice, or a statement detailing any disagreement in the per acre-foot charges or the total amount due and owing. Payment of the undisputed amount and fifty per cent (50%) of any

disputed amount of any such invoice shall be due on the following July 1. Payment of the balance of any unpaid disputed amount, or refund of any of the paid disputed amount shall be due on the tenth (10th) Business Day following final resolution of the payment dispute.

4.7 Amount of Annual Payments. The amount for each annual payment is the quantity in AF of Replacement Water available to be acquired as of January 1 of that Year times the applicable price in 1999 Dollars.

4.8 Method of Payment. Every payment to MWD required under this Agreement must be made in lawful money of the United States of America, to the order of MWD and paid by wire transfer. The initial wire transfer instructions are as follows:

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Wire to:

Bank of America

Metropolitan Water District of Southern California

Credit to:

Account No. 1459350937

ABA No. 121000358

Payment will be considered made by CVWD upon confirmation of the funds being transferred and received by MWD's bank on or before the Due Date, notwithstanding any clearing time or delay in MWD's bank releasing funds to MWD. MWD may change these wire transfer instructions by giving notice in accordance with Section 15.12 below.

4.9 Late Payments. Payment of the amount required shall be delinquent if not received by MWD before the close of crediting activity on the date such payment is due. In the event that CVWD is delinquent in the payment of any amount required, CVWD shall pay a late payment charge equal to two percent (2%) of the delinquent payment for each month or portion thereof that such payment remains delinquent, provided, however, that if the total period of the delinquency does not exceed five (5) Business Days, the additional charge shall be equal to one percent (1%) of the delinquent payment.

4.10 Annual Settling-Up Payment. Although the payment provision set forth above are based on a price as of each July 1 expressed in 1999 Dollars, as adjusted by the Inflation Index, it is expected that as of the date that the invoice is to be prepared and sent to CVWD, only a United States published estimate of the relevant Inflation Index determinations may be available, with the final determination by the United States not being available until a later date. In contemplation of that circumstance, MWD shall send a settling-up invoice to CVWD within sixty (60) days of the United States publication of the relevant Inflation Index final determinations which identifies any change, as a payment or credit due, in the previously sent invoice. Within thirty (30) days of transmission of the MWD settling-up invoice, CVWD will send a statement of acceptance of the settling-up invoice, or a statement detailing any disagreement. The payment by or credit to CVWD will be due by adding the payment or subtracting the credit, in either case without interest, to the next June 1 invoice sent by MWD, with payment due on the following July 1. Should there be a disagreement in the payment or

credit amount of the MWD settling-up invoice, the payment provisions pending resolution of the dispute will be the same as disputes over the June 1 invoices.

4.11 Schedule. CVWD shall, on an annual basis, prepare a schedule for the delivery of the Replacement Water for the next succeeding calendar year. MWD shall initiate or cause to be initiated making such water available to CVWD at Imperial Dam and shall make such water available pursuant to such schedule unless otherwise mutually agreed.

4.12 No Cumulative Rights. CVWD's right to acquire Replacement Water under this Agreement is not cumulative and CVWD has no right to any such Replacement Water that it does not divert within the Agreement Year. Thus, if CVWD fails to divert all of the Replacement Water to which it is entitled under this Agreement in any one Agreement Year, the amount which CVWD is entitled to acquire and the amount that MWD is obligated to make available under this Agreement in any other Agreement Year is unaffected.

4.13 Environmental Compliance. Subject to the payment requirement set forth in Section 4.5 above, MWD shall, prior to the Termination Date, at its sole cost and expense, be responsible for compliance with all environmental laws and all requirements of the Federal Endangered Species Act and the California Endangered Species Act, arising out of or in connection with making the Replacement Water available to CVWD at Imperial Dam and for compliance with all conditions and mitigation measures of each such consent or permit which must be satisfied for the purposes of making available the Replacement Water at Imperial Dam. The term "environmental laws" shall include, without limitation, CEQA, NEPA, the Endangered Species Act and other applicable state and federal environmental laws. In addition to the foregoing, MWD shall, at its sole cost and expense, apply for and obtain all necessary consents, approvals, permits, licenses or entitlements, if any, from all governmental authorities, including, but not limited to, the United States Fish and Wildlife Service and the California Department of Fish and Game for the purposes of making available Replacement Water at Imperial Dam.

ARTICLE 5 APPROVAL AGREEMENT WATER

5.1 IID/MWD 1988 Agreement and 1989 Approval Agreement. The IID/MWD 1988 Agreement and the 1989 Approval Agreement shall be amended as set forth in the Amendment to IID/MWD 1988 Agreement and the Amendment to 1989 Approval Agreement, which Amendments are attached to the IID/MWD Acquisition Agreement as Exhibits A and B, respectively. The Agreement to Supplement Approval Agreement between MWD and CVWD dated December 19, 1989 shall be amended as set forth in the Amendment to Agreement to Supplement Approval Agreement, which amendment is attached hereto as Exhibit A.

ARTICLE 6 EXCHANGE AND TRANSFER OF STATE WATER PROJECT WATER

6.1 **MWD/CVWD Transfer and Exchange Agreement.** The transfer of 35,000 AF of MWD's State Water Project entitlement in exchange for a portion of CVWD Colorado River water supplies shall be as set forth in MWD/CVWD Transfer and Exchange Agreement.

ARTICLE 7
CONDITIONS TO CVWD's and MWD's OBLIGATIONS

7.1 **Satisfaction of Conditions.** CVWD's rights to reimbursement and to acquire and pay for Replacement Water, and MWD's obligations to provide Replacement Water and to reimburse CVWD, are all subject to the satisfaction of the following conditions on or before the dates specified below. CVWD and MWD each agree to proceed with reasonable diligence and to use reasonable best efforts to satisfy those conditions for which it has responsibility.

(1) **QSA.** The conditions precedent set forth in Articles 6, 8 and 9 of the QSA have each been satisfied or waived as of the Closing Date.

(2) **Related Agreements.** Each of the Related Agreements shall be in full force and effect as of the Effective Date.

7.2 **Written Waiver of Conditions.** The Parties may agree to waive in writing any one or more of the foregoing conditions, in whole or in part; provided, however, that neither Party shall waive review in accordance with CEQA or NEPA or other requirements under applicable laws.

7.3 **Extension by Agreement.** The Parties may agree to extend the date by which any condition must be satisfied or waived.

7.4 **Consequence of Failure of Conditions.** If the conditions in this Article are not timely satisfied or waived, then this Agreement will be void ab initio, and all rights granted by this Agreement will be terminated and forfeited.

ARTICLE 8
PRIORITIES 3, 4, 5, 6 AND 7

8.1 **Limitation on Diversions.** CVWD and MWD have agreed to limit diversions under Priorities 3, 4, 5, 6 and 7 as explicitly set forth in the QSA.

ARTICLE 9
NOTICE OF OCCASIONAL AND PERMANENT REDUCTIONS

9.1 **MWD Rights of First Refusal.** CVWD acknowledges the importance of, and acquiesces in, MWD's rights to acquire from IID any portions of the First or Second Fifty Thousand Acquisitions that CVWD determined not to acquire in accordance with its rights to Occasional and/or Permanent Reductions, all as provided for Sections 3.5 and 3.7 of the

IID/CVWD Acquisition Agreement, as well as the importance of the Secondary Option discussed below.

9.2 **CVWD Notices.** CVWD shall provide a copy of its Occasional Reduction Notice or Permanent Reduction Notice to MWD at the same time that the notice is provided to IID in accordance with Section 3.5 and 3.7 of the IID/CVWD Acquisition Agreement.

9.3 **MWD Notices.** MWD shall provide a copy to CVWD of its RFR Exercise Notice to either exercise its Right of First Refusal or its decision to decline the exercise of its Right of First Refusal at the same time that the RFR Exercise Notice is provided to IID in accordance with the terms of Section 5.1 of the IID/MWD Acquisition Agreement. By declining to exercise its Right of First Refusal MWD does not waive its rights, if any, under the QSA and Related Agreements, to challenge any transaction by CVWD and/or IID to make the Conserved Water available to others.

9.4 **MWD Rejection of RFR.** MWD's failure to provide the RFR Exercise Notice in accordance with Section 5.1 of the IID/MWD Acquisition Agreement shall be a conclusive rejection by MWD of its election to exercise its Right of First Refusal to any of the Conserved Water identified in the Occasional or Permanent Reduction Notice.

ARTICLE 10 OPTION WATER

10.1 **Additional MWD Options on Conserved Water.** CVWD acknowledges the importance of, and acquiesces in, MWD's rights pursuant to the Primary Option to acquire from IID two thousand five hundred (2,500) AF of Conserved Water in 2005, five thousand (5,000) AF in 2006 and two thousand five hundred (2,500) AF in 2007. CVWD also acknowledges the importance of, and acquiesces in, MWD's rights pursuant to the Secondary Option to acquire from IID five thousand (5,000) AF of Conserved Water in 2007 and up to ten thousand (10,000) AFY in each of 2008 through 2014 to the extent that CVWD could have acquired such volumes of Conserved Water from IID in such Years, but elects pursuant to Section 3.3 or Section 3.4 of the IID/CVWD Acquisition Agreement to acquire less Conserved Water in such years than the maximum volumes otherwise contemplated under Section 3.1 of such Agreement.

(1) **Notices.** CVWD shall provide a copy of any Postponement Notice and/or Adjustment Notice to MWD at the same time that such notice is provided to IID in accordance with Sections 3.3 and 3.4 of the IID/CVWD Acquisition Agreement.

(2) **Exercise of Primary and Secondary Options.** MWD shall send to CVWD a copy of any MWD notice to IID of the exercise of MWD's rights under the Primary Option or the Secondary Option as provided in Article 6 of the IID/MWD Acquisition Agreement.

ARTICLE 11 TERM

11.1 **Term.** This Agreement shall commence as of the Closing Date and shall terminate on the Termination Date.

11.2 **Effective Date.** The obligations of the Parties under Articles 2, 3, 4, 5, 6, 8, 9, 10 and 15 hereof shall be contingent upon the occurrence of, and shall not become effective until, the Effective Date.

11.3 **Effect of Termination.** The provisions of Section 3.5 of the QSA are incorporated herein by reference.

ARTICLE 12 DEFAULTS AND DISPUTES

12.1 **Nature of Dispute or Claim.** Disputes between CVWD and MWD arising under this Agreement shall be resolved in accordance with the procedures described in this Article 12.

(1) Disputes between the Parties on the following subjects shall be resolved under the binding arbitration process set forth in Section 12.2: (i) the amount of any payment claimed by CVWD to be due and owing from MWD; (ii) the amount of any payment claimed by MWD to be due and owing from CVWD; (iii) the calculation or application of the Inflation Index; and (iv) the reasonableness of steps taken by CVWD or MWD to cure or resolve the effects of a Force Majeure event under Section 15.1;

(2) All other disputes and claims arising under this Agreement shall be resolved in an action or proceeding between the Parties, subject to the terms and conditions set forth in Section 12.3, unless otherwise mutually agreed.

12.2 **Arbitration.** Disputes on the subjects specified in Section 12.1 that cannot be resolved by agreement shall be resolved through binding arbitration conducted in a Neutral County or such other location as the Parties may agree.

(1) An arbitration proceeding may be initiated by either Party sending a demand for arbitration to the other Party in conformance with the Notice provisions set forth in Section 15.12 of this Agreement. The Parties shall impanel a group of three arbitrators by each designating an arbitrator of their choice who shall then select the third panel member. If the two arbitrators appointed by the Parties cannot agree on the selection of a third arbitrator within ten (10) Business Days after their designation, the third arbitrator shall be selected by the presiding judge of the Superior Court in the county in which the proceeding will be held. At least one of the arbitrators must be a person who has actively engaged in the practice of law with expertise deciding disputes and interpreting contracts. The arbitrators shall take an oath of impartiality prior to the commencement of the arbitration proceeding. The Parties shall use their reasonable best efforts to conclude the arbitration proceeding within ninety (90) Business Days of the selection of the third panel member.

(2) The arbitrators shall conduct the proceeding in accordance with the procedural laws of California, and shall determine the rights and obligations of the Parties in

accordance with substantive state and, if applicable, federal law. Discovery shall be governed by the California Code of Civil Procedure ("CCP"), with all applicable time periods for notice and scheduling provided therein reduced by one-half (1/2). Notwithstanding the preceding sentence, the arbitrators may establish other discovery limitations or rules. The arbitration process will otherwise be governed by the Commercial Arbitration Rules of the American Arbitration Association. All issues regarding compliance with discovery requests shall be decided by the arbitrators. A decision by two of three arbitrators will be deemed the arbitration decision. The arbitration decision shall be in writing and shall specify the factual and legal bases for the decision. The decision of such arbitrators shall be final and binding upon the parties, and judgment upon the decision rendered by the arbitration may be entered in the Neutral County superior court.

(3) The costs (including, but not limited to, reasonable fees and expenses of counsel and expert or consultant fees and costs), incurred in an arbitration (including the costs to enforce or preserve the decision) shall be borne by the Party whom the decision is against. If the decision is not clearly against one Party on one or more issues, each Party shall bear its own costs. The arbitration decision shall identify whether any Party shall be responsible for the other Party's costs.

12.3 Actions or Proceedings Between the Parties. Disputes on subjects other than those specified in Section 12.1(1) that cannot be resolved by agreement shall be resolved in an action or proceeding between the Parties subject to the following provisions:

(1) Each Party acknowledges that it is a "local agency" within the meaning of § 394(c) of the CCP. Each Party further acknowledges that any action or proceeding commenced by one Party against the other would, under § 394(a) of the CCP, as a matter of law be subject to (i) being transferred to a Neutral County, or (ii) instead, having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.

(2) Each party hereby:

(i) Stipulates to the action or proceeding being transferred to a Neutral County or to having a disinterested judge from a Neutral County assigned to hear the action or proceeding;

(ii) Waives the usual notice required under the law-and-motion provisions of Rule 317 of the California Rules of Court;

(iii) Consents to having any motion under § 394(c) heard with notice as an ex parte matter under Rule 379 of the California Rules of Court; and

(iv) Acknowledges that this Agreement, and in particular this section, may be submitted to the court as part of the moving papers.

(3) Nothing in this Section 12.3 shall impair or limit the ability of a Party to contest the suitability of any particular county to serve as a Neutral County.

ARTICLE 13

REMEDIES

13.1 Specific Performance. Each Party recognizes and agrees that the rights and obligations set forth in this Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party defaults by not performing in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, or otherwise breaches, the other Party would likely suffer irreparable harm. Therefore, if either Party breaches this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to the Agreement. Accordingly, in any court controversy concerning this Agreement, the Agreement's provision will be enforceable in a court of equity by a decree of specific performance. This specific performance remedy is not exclusive and is in addition to any other remedy available to the Parties.

13.2 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or in equity. If the nonbreaching Party fails to exercise or delays in exercising any such right or remedy, the nonbreaching Party does not thereby waive that right or remedy. In addition, no single or partial exercise of any right, power or privilege precludes any other or further exercise of a right, power or privilege granted by this Agreement or otherwise.

ARTICLE 14

EMINENT DOMAIN/TAKINGS

14.1 Effect on Agreement. If at any time during the term of this Agreement, any of the Replacement Water to be made available to CVWD by MWD pursuant to this Agreement is taken for any part of the remaining term of this Agreement by lawful exercise of the power of eminent domain by any sovereign, municipality, public or private authority or other person ("taking"), the terms of this Agreement shall not be affected in any way, except that for the period of the taking as to the Replacement Water taken only, MWD shall be relieved of its obligation to make such Replacement Water available to CVWD and CVWD shall be relieved of its obligation to pay MWD for such Replacement Water. Each Party hereby waives any right it may have under the provisions of Code of Civil Procedure Section 1265.130 to petition the Superior Court to terminate this Agreement.

14.2 Compensation for Taking. The compensation paid for any taking of Replacement Water otherwise to be made available to CVWD pursuant to this Agreement (the "subject Replacement Water") shall be separately assessed under Code of Civil Procedure Section 1260.220(a) according to each party's interest as follows:

(1) CVWD shall be entitled to:

(i) Any compensation paid for the amount attributable to the market value of the subject Replacement Water for the period from the date of the taking to the earlier of the date of the end of the taking or the term of this Agreement in excess of the present value at the date of the taking of the amounts that CVWD would otherwise be obligated to pay to MWD for the subject Replacement Water under this Agreement;

(ii) Any compensation paid for severance damage to CVWD attributable to the taking of the subject Replacement Water; and

(iii) Any compensation paid for loss of goodwill to CVWD attributable to the taking of the subject Replacement Water.

(2) MWD shall be entitled to all other compensation paid, including but not limited to:

(i) Any compensation paid for the present value at the date of the taking of the amounts that CVWD would otherwise be obligated to pay to MWD for the subject Replacement Water under this Agreement;

(ii) Any compensation paid for severance damage to MWD attributable to the taking of the subject Replacement Water; and

(iii) Any compensation paid for the loss of goodwill to MWD attributable to the taking of the subject Replacement Water.

(3) Nothing in this Article 14 shall affect any right of either Party to relocation assistance benefits.

(4) Nothing in this Article 14 shall affect the rights or claims of either Party with respect to a taking of some or all of its water rights, including Colorado River water rights.

ARTICLE 15

GENERAL PROVISIONS

15.1 Force Majeure. If the performance, in whole or in part, of the obligations of the respective Parties under this Agreement is hindered, interrupted or prevented by wars, strikes, lockouts, fire, acts of God or by other acts of military authority, or by any cause beyond the control of the respective Parties hereto, whether similar to the causes herein specified or not, such obligations of the respective Parties under this Agreement shall be suspended to the extent and for the time the performance thereof is affected by any such act. Upon the cessation of any such hindrance, interruption or prevention, both Parties shall become obligated to resume and continue performance of their respective obligations under this Agreement. Notwithstanding any

act described in this Section, the Parties shall diligently undertake all reasonable effort to perform this Agreement.

15.2 Records. Each of the Parties shall maintain and make available for inspection by the other Party, during regular office hours, accurate records pertaining to the times and amounts of exchange deliveries and to the costs, disbursements and receipts with respect to the construction, operation and maintenance of structures for the delivery of water to CVWD.

15.3 Exchange Information. CVWD shall consult with MWD in advance of providing information and shall provide MWD copies of the information CVWD provides to IID regarding any exchanges with MWD pursuant to Section 14.7 of the IID/CVWD Acquisition Agreement.

15.4 No Conveyance. This Agreement shall not be construed as a conveyance, abandonment or waiver of any right to the use of water which is held or owned by CVWD, or a conveyance, abandonment or a waiver of any right to the use of water which is held or owned by MWD. Nor shall it be construed as conferring any right whatsoever upon any person, firm, corporation or other public or private entity not a Party to this Agreement.

15.5 Governing Law. California law shall govern this Agreement and any dispute arising from the contractual relationship between the Parties under the Agreement; provided, however, that federal law shall be applied as appropriate to the extent it bears on the resolution of any claim or issue relating to the permissibility of any exercise of rights referenced in Article 9 or Article 10.

15.6 Binding Effect; No Assignment. This Agreement is and will be binding upon and will inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities. Neither Party may assign any of its rights or delegate any of its duties under this Agreement. Any Assignment or Delegation made in violation of this Agreement is void and of no force or effect.

15.7 Due Authority. Any person signing this Agreement represents that he/she has full power and authority to do so, and, that his/her signature is legally sufficient to bind the Party on whose behalf he/she is signing.

15.8 Entire Agreement. This Agreement (including the exhibits and other agreements attached to or referenced in this Agreement) constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the acquisition of 1989 Approval Agreement Water, Replacement Water and Exchange Water by CVWD from MWD and the payment and reimbursement obligations of the Parties for Conserved Water, and supercedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, nor is either Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

15.9 Modification. This Agreement may be supplemented, amended, or modified only by the agreement of the Parties. No supplement, amendment, or modification will be binding unless it is in writing and signed by both Parties.

15.10 Time of the Essence. Time is of the essence of and under this Agreement and of every provision thereof.

15.11 Joint Defense. The Parties agree to proceed with reasonable diligence and use reasonable best efforts to jointly defend any lawsuit or administrative proceeding challenging the legality, validity, or enforceability of any term of this Agreement, or any Party's right to act in accordance with any of the terms of this Agreement.

15.12 Notice. All notices, requests, demands, or other communications under this Agreement must be in writing, and sent to both addresses of each Party. Notice will be sufficiently given for all purposes as follows:

- *Personal Delivery.* When personally delivered to the recipient. Notice is effective on delivery.
- *First-Class Mail.* When mailed first-class to the last address of the recipient known to the Party giving notice. Notice is effective five mail delivery days after it is deposited in a United States Postal Service office or mailbox.
- *Certified Mail.* When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.
- *Overnight Delivery.* When delivered by an overnight delivery service such as Federal Express, charged prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purposes of giving notice are as follows:

To MWD:

For U.S. Mail:

Metropolitan Water District of Southern California
Attention: General Manager
P.O. Box 54153
Los Angeles, CA 90054-0153

For personal or overnight delivery:

Metropolitan Water District of Southern California
Attention: General Manager
700 North Alameda Street
Los Angeles, CA 90012
Telephone: 213-217-6211
Facsimile: 213-217-6655

With a copy to:

Attention: General Counsel
Addresses as provided above

To CVWD:

For U.S. Mail:

Coachella Valley Water District
Attention: General Manager-Chief Engineer
P.O. Box 1058
Coachella, CA 92236

For personal or overnight delivery:

Coachella Valley Water District
Attention: General Manager-Chief Engineer
Avenue 52 and Highway 111
Coachella, CA 92236
Telephone: 760-398-2651
Facsimile: 760-398-3711

With a copy to:

Gerald D. Shoaf, Esq.
Steven B. Abbott, Esq.
Redwine and Sherrill
1950 Market Street
Riverside, CA 92501-1720
Telephone: 909-684-2520
Facsimile: 909-684-9583

A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service. A Party may change its address by giving the other Party notice of the change in any manner permitted by this Agreement.

15.13 Counting Days. Days shall be counted by excluding the first day and including the last day, unless the last day is not a Business Day, and then it shall be excluded. Any act required by this Agreement to be performed by a certain day shall be timely performed if it is completed before 5:00 p.m. Pacific Time on that date, unless otherwise specified. If the day for performing any obligation under this Agreement is not a Business Day, then the time for performing that obligation shall be extended to 5:00 p.m. Pacific Time on the next Business Day.

15.14 Ambiguities. Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement. A rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in interpreting this Agreement, including any amendments or modifications.

15.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is

attached to another counterpart identical thereto, except for having additional signature page executed by the other Party to this Agreement attached thereto.

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

<p>"MWD"</p>	<p>THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a California metropolitan water district</p> <p>By: _____ Its: _____</p>
<p>Approved as to form:</p> <p>By: _____ Its: _____</p>	
<p>"CVWD"</p>	<p>COACHELLA VALLEY WATER DISTRICT, a California county water district</p> <p>By: _____ Its: _____</p>
<p>Approved as to form:</p> <p>By: _____ Its: _____</p>	

**AGREEMENT FOR ACQUISITION OF WATER BETWEEN
COACHELLA VALLEY WATER DISTRICT AND THE
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

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IMPLEMENTATION AGREEMENT

The United States by and through the Secretary of the Interior (Secretary) hereby agrees with the Imperial Irrigation District (IID), the Coachella Valley Water District (CVWD), the Metropolitan Water District of Southern California (MWD), (these three districts are collectively referred to herein as the Districts), and the San Diego County Water Authority (SDCWA) as follows:

A. Predicates to Operative Terms

1. By regulations dated September 28, 1931, the Secretary incorporated the schedule of priorities provided in the Seven Party Agreement dated August 18, 1931, and established priorities One through Seven for use of the waters of the Colorado River within the State of California. The regulations were promulgated pursuant to the Boulder Canyon Project Act (BCPA) and required that contracts be entered into for the delivery of water within those priorities.
2. The Secretary has entered into contracts with, among others, the Palo Verde Irrigation District (PVID), IID, CVWD, and MWD and for the delivery of Colorado River water pursuant to Section 5 of the BCPA (Section 5 Contracts). Under those Section 5 Contracts, PVID, IID, CVWD and MWD have certain rights to the delivery of Colorado River water.
3. IID and MWD have entered into an Agreement for the Implementation of a Water Conservation Program and Use of Conserved Water dated December 22, 1988 (1988 Agreement); IID, MWD, PVID and CVWD have entered into a related Approval Agreement, dated December 19, 1989 (1989 Approval Agreement); and MWD and CVWD have entered into an Agreement to Supplement Approval Agreement, dated December 19, 1989 (1989 Supplemental Agreement).
4. IID and SDCWA have entered into an Agreement for Transfer of Conserved Water, dated April 29, 1998, a Conditional Amendment Agreement dated as of _____ (as amended, the 1998 IID/SDCWA Transfer Agreement), and an Early Transfer Agreement dated as of _____, (IID/SDCWA Early Transfer Agreement).
5. SDCWA and MWD have entered into an Agreement for the Exchange of Water, dated November 10, 1998 and an Amendment Agreement dated as of _____, (as amended, the MWD/SDCWA Exchange Agreement).
6. CVWD, IID and MWD have entered into a Quantification Settlement Agreement dated as of _____ (QSA).
7. IID, CVWD, MWD, PVID, the San Luis Rey Indian Water Rights Settlement Parties and the Secretary have entered into an Agreement pertaining to the water to be conserved from the All American Canal Lining Project and the Coachella Canal Lining Project of even date herewith (Allocation Agreement).

8. CVWD and MWD have entered into a Transfer and Exchange Agreement for 35,000 acre-feet of State Water Project entitlement for Colorado River water of even date herewith (CVWD/MWD Transfer and Exchange Agreement).
9. The 1988 Agreement, the 1989 Approval Agreement, and the 1989 Supplemental Agreement have been modified by Amendatory Agreements of even date herewith to reflect the terms of the QSA (as modified, the Amended 1988 and 1989 Agreements).
10. IID and CVWD have entered into an Agreement for Acquisition of Conserved Water (IID/CVWD Acquisition Agreement).
11. CVWD and MWD have entered into an Agreement for Acquisition of Water (CVWD/MWD Acquisition Agreement).
12. IID and MWD have entered into an Agreement for Acquisition of Conserved Water (IID/MWD Acquisition Agreement).
13. IID, CVWD, MWD and SDCWA desire that, for a temporary period, Priority 3a and 6a Colorado River water be delivered by the Secretary in the manner contemplated by the QSA and the other agreements specifically referenced herein.
14. The Secretary has determined that appropriate environmental review and compliance for this Implementation Agreement (Agreement) has been completed under federal law.
15. The Secretary finds that the water budget components of the QSA and the water budget components of the other agreements specifically referenced herein facilitate and will benefit the Secretary's management of the Colorado River.
16. The Secretary has the authority to enter into this Implementation Agreement on behalf of the United States pursuant to the BCPA, the Decree in Arizona v. California, and other applicable authorities.

B. Operative Terms

1. **Priorities 1, 2, 3b, 6b, and 7 are not affected by this Agreement.**
2. **Water Delivery Contracts**
 - a. The Secretary agrees to deliver Colorado River water in the manner set forth in this Agreement during the Quantification Period. The Quantification Period shall commence on the Effective Date of the QSA and shall end on the Termination Date of the QSA. The Secretary shall begin to deliver water in the manner set forth in this Agreement when the Quantification Period begins and shall cease delivering water in the manner provided in this Agreement when the Quantification Period ends; provided, however, that the Secretary's delivery commitment to the San Luis Rey Indian Water Rights Settlement Parties shall not terminate at the

end of the Quantification Period but shall instead continue, pursuant to Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended, subject to the terms of the Allocation Agreement.

- b. The Districts' respective Section 5 Contracts shall remain in full force and effect throughout the Quantification Period and with this Agreement shall govern the delivery of Colorado River water during the Quantification Period.
- c. At the end of the Quantification Period, the Agreement shall terminate; provided, however, that the rights of the Districts under their respective Section 5 Contracts shall be subject to any continuing reparation requirements under any agreements relating to the impacts of delivering surplus; and provided, further, the Secretary shall continue to deliver for the benefit of the San Luis Rey Indian Water Rights Settlement Parties, a maximum of 16,000 AFY of water made available by the lining of portions of the All American Canal and the Coachella Canal in accordance with Section 2.a of this Agreement.

3. Priority 3a - IID's Entitlement

- a. Except as otherwise provided in this Section B.3, or as otherwise determined under the Inadvertent Overrun Program and the Decree Accounting Program referenced in Section B.8.a hereof, the Secretary shall deliver Colorado River water to IID in an amount up to but not more than IID's QSA Priority 3a consumptive use quantification cap of 3.1 million AFY less the amount of water equal to that conserved by IID for the benefit of others as outlined in paragraphs b, c, d, e and f below. Colorado River water acquired by IID pursuant to a transaction permitted under the QSA or a Related Agreement (as defined in the QSA) and, where necessary, approved by the Secretary after appropriate environmental compliance, shall not count against this cap.
- b. **The Amended 1988 and 1989 Agreements**
 - i. IID has implemented water conservation measures for the benefit of MWD under the Amended 1988 and 1989 Agreements and has reduced IID's diversion of Colorado River water accordingly by up to 110,000 AFY.
 - ii. The Secretary shall deliver Priority 3a water for the benefit of MWD in an amount equal to that amount of water conserved by IID for the benefit of MWD in accordance with the terms of the Amended 1988 and 1989 Agreements.

c. **1998 IID/SDCWA Transfer Agreement**

- i. IID has agreed to implement water conservation measures for the benefit of SDCWA under the circumstances specified in the 1998 IID/SDCWA Transfer Agreement and to reduce IID's diversions of Colorado River water accordingly by up to 200,000 AFY.
- ii. The Secretary shall deliver Priority 3a water for the benefit of SDCWA, in an amount equal to that water conserved by IID for the benefit of SDCWA, in accordance with the terms, including the point of delivery, of the 1998 IID/SDCWA Transfer Agreement. At SDCWA's election, the Secretary shall deliver that water to the intake facilities for the Colorado River Aqueduct and SDCWA may then exchange up to 200,000 AFY of Colorado River water with MWD at Lake Havasu pursuant to, and during the term of, the MWD/SDCWA Exchange Agreement.
- iii. The rights and interests of SDCWA under this Agreement are limited to those provided in Section B.3.a., this Section B.3.c., and in Sections B.9, B.10 and B.11 hereof.

d. **Conserved Water for CVWD**

- i. IID has agreed to implement water conservation measures for the benefit of CVWD under the circumstances specified in the IID/CVWD Acquisition Agreement in order to reduce IID's diversion of Priority 3a water by amounts up to a total of 100,000 AFY.
- ii. The Secretary shall deliver such amount of Priority 3a water to CVWD at Imperial Dam, as and to the extent requested by CVWD in an amount equal to that amount of water conserved by IID for the benefit of CVWD in accordance with the terms of the IID/CVWD Acquisition Agreement. This water shall be in addition to CVWD's entitlement to Priority 3a water under Section B.4. hereof. In the event CVWD declines a portion of this water, and the water is not delivered to others in accordance with Section 5.e. of this Agreement so that CVWD is required to pay IID under the terms of Section 3.6 of the IID/CVWD Acquisition Agreement, the declined water may then be used by CVWD for any lawful purpose anywhere within CVWD's jurisdictional area.

e. **Canal Lining Projects**

- i. Pursuant to California Water Code Sections 12560-12565, the State of California has agreed to provide funds to construct a new lined canal parallel to the unlined portion of the All American Canal from Pilot Knob to Drop 3 (the AAC Project), and to line the unlined portion of the Coachella Canal.

- ii. The Secretary shall deliver Priority 3a water, available as a result of the AAC Project, to MWD, and/or to IID, and make available Colorado River water for the benefit of the San Luis Rey Indian Water Rights Settlement Parties, in accordance with the terms of the Allocation Agreement and in accordance with Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended.

f. **Miscellaneous and Indian Present Perfected Rights**

- i. In any given Year (as Year is defined in the QSA), the Secretary may reduce the amount of water otherwise available for IID's consumptive use by up to 11,500 AFY as a result of the satisfaction within the State of California of the miscellaneous and Indian present perfected rights recognized in the Decree in Arizona v. California, as amended and supplemented.
- ii. If the aggregate volume of such miscellaneous and Indian present perfected rights used in any year is less than 14,500 AF, then the maximum amount of reduction will be in accordance with the terms of the IID/CVWD Acquisition Agreement.
- iii. Any such reduction shall be charged to IID's rights under Priorities 3a, 6a, or 7 to the extent such rights exist and water is available, as elected by IID for such year.
- iv. Nothing herein waives the ability of IID to challenge the exercise of particular miscellaneous or Indian present perfected rights.

4. **Priority 3a - CVWD's Entitlement**

- a. Except as otherwise provided in this Section B.4., or as otherwise determined under the Inadvertent Overrun Program and Decree Accounting Program referenced in Section B.8.a. hereof, the Secretary shall deliver Colorado River water to CVWD in an amount up to but not more than CVWD's QSA Priority 3a consumptive use quantification cap of 330,000 AFY less an amount of water equal to that conserved by CVWD for the benefit of others, as outlined in paragraphs c. and d. below. Colorado River water acquired by CVWD pursuant to a transaction permitted under the QSA, or a Related Agreement (as defined in the QSA) and, where necessary, approved by the Secretary after appropriate environmental compliance, shall not count against this cap.
- b. CVWD may utilize Colorado River water, in accordance with the provisions of Section 4.5 of the QSA, outside of Improvement District No. 1 for the purpose of maximizing the effectiveness of Improvement District No.1's water use and recharge programs, so long as such utilization occurs within Coachella Valley and is otherwise consistent with the applicable provisions of the QSA.

c. **Canal Lining Projects**

The Secretary shall deliver Priority 3a water, available as a result of the lining of the unlined portion of the Coachella Canal to MWD and/or IID, and make available Colorado River water for the benefit of the San Luis Rey Indian Water Rights Settlement Parties, as and to the extent provided under the Allocation Agreement and in accordance with Section 106 of Public Law 100-675, 102 Stat. 4000 et seq., as amended.

d. **Miscellaneous and Indian Present Perfected Rights**

- i. In any given Year (as Year is defined in the QSA), the Secretary may reduce the amount of water otherwise available for CVWD's consumptive use by up to 3,000 AFY as a result of the satisfaction within the State of California of the miscellaneous and Indian present perfected rights recognized in the Decree in Arizona v. California, as amended and supplemented.
- ii. If the aggregate volume of such miscellaneous and Indian present perfected rights used in any year is less than 14,500 AF, then the maximum amount of reduction will be in accordance with the terms of the IID/CVWD Acquisition Agreement.
- iii. Any such reduction shall be charged to CVWD's rights under Priorities 3a, 6a, or 7 to the extent such rights exist and water is available, as elected by CVWD for such year.
- iv. Nothing herein waives the ability of CVWD to challenge the exercise of particular miscellaneous and Indian present perfected rights.

5. **MWD's Entitlement**

- a. Except as otherwise provided in this Section B.5., or as otherwise determined under the Inadvertent Overrun Program and Decree Accounting Program referenced in Section B.8.a hereof, the Secretary shall deliver Colorado River water to MWD in an amount up to but not more than 550,000 AFY under Priority 4 and 662,000 AFY under Priority 5; provided, however, if in any given calendar year the use of Colorado River water in accordance with Priorities 1 and 2, together with the use of Colorado River water on PVID Mesa lands in accordance with Priority 3b, exceeds 420,000 AFY, the Secretary will reduce the amount of water available to MWD in Priorities 4, 5 or 6 by the amount that such use exceeds 420,000 AFY. To the extent that the amount of water used in accordance with Priorities 1, 2 and 3b is less than 420,000 AFY, the Secretary shall deliver to MWD the difference.

b. **MWD's Entitlement to be Made Available to CVWD**

- i. The Secretary shall deliver to CVWD at Imperial Dam 20,000 AFY of Priority 3a water made available by MWD under the Amended 1989 Agreement.
- ii. The Secretary shall deliver to CVWD at Imperial Dam up to 50,000 AFY of water made available by MWD in Year 46 (as Year 46 is defined in the QSA) and thereafter under the CVWD/MWD Acquisition Agreement.
- iii. The Secretary shall deliver to CVWD at Imperial Dam up to 35,000 AFY of water under the terms of the CVWD/MWD Transfer and Exchange Agreement.

c. **Miscellaneous and Indian Present Perfected Rights**

- i. In any given Year (as Year is defined in the QSA), the Secretary may reduce the amount of water otherwise available for MWD's consumptive use by the amount necessary to satisfy within the State of California the miscellaneous and Indian present perfected rights, recognized in the Decree in Arizona v. California, as amended and supplemented, to the extent those uses exceed 14,500 AF.
 - ii. Any such reduction shall be charged at MWD's election to any Priority pursuant to which MWD has water available.
 - iii. Nothing herein waives the ability of MWD to challenge the exercise of particular miscellaneous and Indian present perfected rights.
- d. CVWD may decline to take a portion of the water to be conserved by IID pursuant to the IID/CVWD Acquisition Agreement. In this event, the Secretary shall instead deliver such portion of water to IID or MWD, or to other unspecified water users, as and to the extent requested by any of them; provided, however, that any such request must be in accordance with the provisions of the IID/MWD Acquisition Agreement; and provided, further, that any such delivery to an unspecified user is, where necessary, subject to Secretarial approval and must be otherwise lawful and will be subject to any necessary environmental review.

6. **Priority 6a Entitlements**

- a. Except as otherwise provided under the Interim Surplus Guidelines, or under the agreements contemplated by those guidelines, the Secretary will deliver Priority 6a water to MWD, IID and CVWD in the following order and volumes: (i) 38,000 AFY to MWD; (ii) 63,000 AFY to IID; and (iii) 119,000 AFY to CVWD.

- b. Any water not used by MWD, IID or CVWD as set forth above will be available to satisfy the next listed amount in Section 6.a. Any additional water available for Priority 6.a shall be delivered by the Secretary in accordance with IID and CVWD's entitlements under their respective Section 5 Contracts in effect as of October 15, 1999.

7. **Reasonable and Beneficial Use**

- a. The Secretary has considered the water budget components and transactions contemplated by the QSA. Because of the substantial commitment by IID to implement water conservation measures in accordance with the terms of the QSA and its related agreements, the Secretary has determined no action by the United States Department of the Interior is necessary to consider whether the past use of Colorado River water by IID satisfies applicable requirements for reasonable and beneficial use.
- b. The QSA contemplates major conservation activities to be implemented by IID over the course of many years. The Secretary will take IID's conservation measures and the schedule of implementation under the QSA and the related agreements into account in connection with any future assessment of IID's reasonable and beneficial use of water. Subject to IID's implementation of such conservation measures, and absent any material adverse change in IID's irrigation practices or material advances in technology associated with economically feasible irrigation efficiency, and assuming the continuing effectiveness of the QSA, the Secretary, as of the date of the execution of this Agreement, does not anticipate any need to assess IID's reasonable and beneficial use of water prior to Year 20 (as Year 20 is defined in the QSA).

8. **Decree Accounting**

- a. The Secretary acknowledges the ongoing importance to the QSA of the Secretary's recently adopted Inadvertent Overrun Program, adopted _____, and the Decree Accounting Program, adopted _____, which are consistent in all material respects with that contemplated by the QSA and set forth in Exhibit B thereto. The Secretary also acknowledges that the application of such Programs during the Quantification Period has been determined by each of IID, CVWD and MWD to be essential to their willingness to enter into the QSA's related agreements and this Agreement. Accordingly, so long as there is full and timely implementation of the water budget components of the QSA, the Secretary will not materially modify the Inadvertent Overrun Program for a 30 year period (during which the implementation of the California plan to reduce its use to 4.4 million acre-feet per year is anticipated), absent extraordinary circumstances such as significant Colorado River infrastructure failures, and subject to the provisions of Section 9 of this Agreement. In the event that extraordinary circumstances arise, the

Secretary will consult with the Districts and other interested parties before initiating any material change. If at any time implementation of the water budget components falls short of the requirements of the QSA, the Secretary may, after consultation with the Districts and other interested parties, change or alter the Inadvertent Overrun Program, including but not limited to putting into effect an immediate payback policy for inadvertent overruns.

- b. The Secretary also acknowledges the ongoing importance to the QSA, and to the willingness of each of IID, CVWD and MWD to enter into the QSA's related agreements and this Agreement, of the recently adopted Interim Surplus Guidelines and the accompanying Record of Decision.

9. Shortages

- a. The Secretary's authority under II.B.3 of the Decree in Arizona v. California is not limited in any way by this Agreement, by the QSA, or by the QSA's related agreements which include all agreements specifically referenced herein.
- b. If for any reason there is less than 3.85 million AF available under Priorities 1, 2 and 3 during the Quantification Period, any water which is made available by the Secretary to IID shall be delivered to IID, CVWD, MWD and SDCWA in accordance with the shortage sharing provisions in the 1998 IID/SDWCA Transfer Agreement and the Acquisition Agreements.

10. Amendments

- a. This Agreement may be modified or amended only by written amendment signed by the Secretary, IID, CVWD, and MWD (and, with respect to any modification or amendment of this Section B.3.a., B.3.c., B.10., B.11. or B.12., also by SDCWA).
 - i. No amendment of the QSA or of any of the QSA's related agreements, including the agreements specifically referenced in this Agreement, shall modify or otherwise affect any right or obligation of the Secretary with respect to the limitations on, or the timing or volume of, any Colorado River water deliveries to be made hereunder without the Secretary's written consent.

11. Reservation of Legal Positions

- a. IID, CVWD, MWD and SDCWA do not agree on the nature or scope of rights to the delivery, use or transfer of Colorado River water within the State of California.
- b. IID, CVWD, MWD and SDCWA agree not to use this Agreement or any provision hereof, as precedent for purposes of evidence, negotiation or

agreement on any issue of California or federal law in any administrative, judicial or legislative proceeding, including without limitation, any attempt by IID and SDCWA to obtain future approval of any water transaction.

- c. By executing this Agreement, the Districts and SDCWA are not estopped from asserting in any administrative, judicial or legislative proceeding, including those involving the United States, that neither this Agreement nor any of its terms was necessary or required in order to effectuate the transactions contemplated herein.

12. **Relation to Reclamation Law**

- a. This Agreement shall not be deemed to be a new or amended contract for the purpose of Section 203(a) of the Reclamation Reform Act of 1982 (Public Law 97-293, 93 Stat. 1263).

UNITED STATES SECRETARY OF THE
INTERIOR

Bruce Babbitt

COACHELLA VALLEY WATER DISTRICT

By _____
Tom Levy
General Manager-Chief Engineer

IMPERIAL IRRIGATION DISTRICT

By _____
Jesse Silva
General Manager

THE METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

By _____
Ronald R. Gastelum
General Manager

SAN DIEGO COUNTY WATER AUTHORITY

By _____
Maureen Stapleton
General Manager