

AGREEMENT BETWEEN THE METROPOLITAN  
WATER DISTRICT OF SOUTHERN CALIFORNIA  
AND THE SAN DIEGO COUNTY WATER AUTHORITY  
FOR THE EXCHANGE OF WATER

THIS CONTRACT FOR THE EXCHANGE OF WATER ("Contract") is made and entered into as of November 10, 1998, between The Metropolitan Water District of Southern California (hereinafter "Metropolitan") and the San Diego County Water Authority (hereinafter "SDCWA"). Metropolitan and SDCWA are sometimes referred to as the "Parties".

**RECITALS**

A. SDCWA is a county water authority incorporated under the California County Water Authority Act, Stats. 1943, c.545 as amended, codified at Section 45-1 *et seq.* of the Appendix to the California Water Code, for the purpose of providing its member agencies in San Diego County with a safe, reliable, and sufficient water supply of imported water.

B. Metropolitan is a public agency of the State of California incorporated under the Metropolitan Water District Act, Stats. 1969, ch. 209, as amended, codified at Section 109.1 *et seq.* of the Appendix to the California Water Code, engaged in transporting, storing and distributing water in the counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura, within the State of California.

Approved as to form:

Counsel for Metropolitan:

Counsel for SDCWA:

ACK  
DSIT

C. SDCWA is a member agency of Metropolitan.

D. On April 29, 1998, SDCWA entered into an agreement with the Imperial Irrigation District ("IID"), whereby IID agreed to transfer conserved water to SDCWA in a quantity that commences with 20,000 acre-feet per year for the first Agreement Year (as defined therein), and increases by 20,000 acre-feet each year until a fixed quantity determined by IID, which shall be no less than 130,000 but not to exceed 200,000 acre-feet per year, is reached; this agreement is entitled an "Agreement between Imperial Irrigation District and San Diego County Water Authority for Transfer of Conserved Water" (hereinafter "Transfer Agreement"). For reference, a true and correct copy of the Transfer Agreement as of the date of this Contract is attached hereto as Appendix A.

E. On August 12, 1998, SDCWA and Metropolitan executed a Memorandum of Understanding (MOU) in which they agreed to execute this Contract as a final and complete settlement and compromise of their respective claims regarding the transportation of up to 200,000 acre feet of Conserved Water acquired by SDCWA under the Transfer Agreement; this Contract fulfills the requirements of the MOU. For reference, a true and correct copy of the MOU is attached hereto as Appendix B.

F. SDCWA and Metropolitan agree that (1) the transfer and exchange of Conserved Water contemplated by the Transfer Agreement and this Contract, (2) the adoption of the principle that transfers be from waters being put to reasonable and beneficial uses, and (3) the adoption of the surplus criteria contemplated by this Contract are all in their mutual interest and should be joint goals.

Approved as to form:

Counsel for Metropolitan: ack

Counsel for SDCWA: 2511

## AGREEMENT

NOW THEREFORE, the Parties in consideration of the foregoing recitals and the representations, warranties, covenants and agreements contained in this Contract and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Metropolitan and SDCWA agree to the following terms and conditions of this Contract:

### I.

#### DEFINITIONS AND RULES OF CONSTRUCTION

1.1 Definitions. As used in this Contract these terms, including any grammatical variations thereof, have the following meanings:

- (a) "Administrative Code" means the Metropolitan Water District Administrative Code adopted on January 13, 1987, as in existence on the date of this Contract subject to modification to the extent provided in Paragraph 13.12 of this Contract.
- (b) "Alternative Facilities" means facilities other than facilities owned and operated by Metropolitan.
- (c) "SDCWA's Conditions Precedent" are as set forth in Paragraph 8.2.
- (d) "SDCWA Point of Transfer" is as defined in Paragraph 3.5(a).
- (e) "Bureau" means the Bureau of Reclamation of the United States Department of the Interior.
- (f) "California Plan" means the draft plan dated December 17, 1997,

prepared by the Director to ensure that California can live within the state's

Approved as to form:

Counsel for Metropolitan: *GCK*

Counsel for SDCWA: *DSL*

apportionment of Colorado River water; provided, however, if any final California Plan is approved by the Colorado River Board of California and all the public agencies represented on the Colorado River Board of California, "California Plan" means such final California Plan.

(g) "CEQA" is as defined in Paragraph 9.1.

(h) "Colorado River Aqueduct" means the aqueduct system owned and operated by Metropolitan and transporting water from Lake Havasu on the Colorado River to Lake Mathews in Riverside County, California.



(i) "Commencement Date" means the commencement date defined in and determined pursuant to Paragraph 7.1.

(j) "Conserved Water" means water that is conserved within the jurisdictional boundaries of IID from reasonable and beneficial uses and which is transferred to SDCWA pursuant to the Transfer Agreement.

(k) "Contract Price" means, at any point in time, the applicable amount to be paid per acre-foot of Exchange Water delivered by Metropolitan to SDCWA at the Metropolitan Point(s) of Delivery under this Contract. The Contract Price is determined annually pursuant to Paragraph 5.2, subject to adjustment as provided in Paragraphs 5.3 through 5.6.

(l) "Contract Price Dispute" is as defined in Paragraph 11.2.

(m) "Contract Year" means the period commencing on the Commencement Date and ending on the immediately following December 31, and each calendar year thereafter during the term of this Contract.

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Counsel for Metropolitan:   
Counsel for SDCWA: 

(n) "Department" means the California State Department of Water Resources.

(o) "Director" means the Director of the Department.

(p) "Drought Management Plan" means any plan for the allocation and management of water resources of Metropolitan during a water shortage, as adopted by Metropolitan and in effect at pertinent times during the term of this Contract.

(q) "Exchange Water" means, for each Contract Year, water that is delivered to SDCWA by Metropolitan at the Metropolitan Point(s) of Delivery in a like quantity as the quantity of Conserved Water that SDCWA has Made Available to Metropolitan for the same Contract Year. The Exchange Water may be from whatever source or sources and shall be delivered using such facilities as may be determined by Metropolitan, provided that the Exchange Water delivered in each Contract Year is of like quality to the Conserved Water which is Made Available to Metropolitan at the SDCWA Point of Transfer in such Contract Year.

(r) "IID" is as defined in Recital D.

(s) "Interim Agricultural Water Program" means the program by that name for delivery of water for agricultural uses regulated in Sections 4900 to 4906 of the Administrative Code, including any successor program established by Metropolitan.

(t) "Local Water" means water supplies not served by Metropolitan. Such Local Water includes, for example, ground water, surface water production, recycled water, desalinated water and other water acquired, owned or produced by

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Counsel for Metropolitan: *[Signature]*  
Counsel for SDCWA: *[Signature]*

any of Metropolitan's member agencies, water retailers or other local agencies within Metropolitan's service area (including supplies from projects participating in Metropolitan's Local Projects Program).

(u) "Made Available," "Make Available" or "Making Available." As used herein, Conserved Water will be deemed to have been Made Available when: (1) the Conserved Water has been transferred to SDCWA by IID pursuant to the Transfer Agreement, (2) valid and continuing authorization has been given by the Bureau legally entitling Metropolitan to divert, for the Contract Year in question, Conserved Water from the Colorado River at the SDCWA Point of Transfer, in addition to the water that Metropolitan is otherwise authorized to divert from such River, and (3) all other necessary legal rights, entitlements, approvals and permissions, under the laws of the United States and the State of California or political subdivisions thereof (other than Metropolitan) for diversions from the Colorado River by Metropolitan, if any, have been obtained. "Make Available" and "Making Available" are grammatical variations of "Made Available."

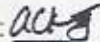

(v) "Metropolitan's Conditions Precedent" are as set forth in Paragraph 8.1.

(w) Metropolitan Point(s) of Delivery is as defined in Paragraph 3.5(b).

(x) "NEPA" is as defined in Paragraph 9.1.

(y) "Secretary" shall mean the United States Secretary of the Interior.

(z) "State Water Project" is as defined in Paragraph 5.4.

Approved as to form:  
Counsel for Metropolitan:   
Counsel for SDCWA: 

(aa) "Termination Date" means the termination date determined under Paragraph 7.1, subject to the provisions of Paragraph 7.2.

(bb) "Transfer Agreement" is as defined in Recital D, subject to modification to the extent provided in Paragraph 13.13 of this Contract.

(cc) "Treated Exchange Water" means Exchange Water that has been treated by filtration and disinfection at a Metropolitan water treatment facility for direct delivery to SDCWA.

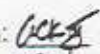
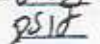
(dd) "Treatment Surcharge" means the difference between (1) Metropolitan's Full Service water rate for treated water in effect during a month in which Treated Exchange Water is delivered and (2) Metropolitan's Full Service water rate for untreated water then in effect, both as determined pursuant to Section 4401 of the Administrative Code.

## 1.2 Rules of Construction.

(a) Unless the context clearly requires otherwise:

- (i) The plural and singular forms include the other;
- (ii) "Shall," "will," "must," and "agrees" are each mandatory;
- (iii) "May" is permissive;
- (iv) "Or" is not exclusive;
- (v) "Includes" and "including" are not limiting; and
- (vi) "Between" includes the ends of the identified range.

(b) Headings at the beginning of Articles, paragraphs and subparagraphs of this Contract are solely for the convenience of the Parties, are not a part of this Contract

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Counsel for Metropolitan:   
Counsel for SDCWA: 

and shall not be used in construing it.

(c) The masculine gender shall include the feminine and neuter genders and vice versa.

(d) The word "person" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, water district and other entity of whatever nature, except either Metropolitan or SDCWA or an officer or employee thereof.

(e) Reference to any agreement (including this Contract), document, or instrument means such agreement, document, instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.



(f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including any rules and regulations promulgated thereunder.

## II

### REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of Metropolitan. As a material inducement to SDCWA to enter into this Contract, Metropolitan represents and warrants as follows:

(a) Metropolitan is a metropolitan water district, duly organized, validly existing and in good standing under the laws of the State of California, and subject to satisfaction or waiver of Metropolitan's Conditions Precedent, Metropolitan has all

Approved as to form:  
Counsel for Metropolitan:   
Counsel for SDCWA: 





necessary power and authority to perform its obligations hereunder on the terms set forth in this Contract, and the execution and delivery hereof by Metropolitan and the performance by Metropolitan 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 Metropolitan is a party or by which Metropolitan is bound.

(b) Subject to the satisfaction or waiver of Metropolitan's Conditions Precedent, as and to the extent provided in Paragraph 8.1, this Contract is a valid and binding obligation of Metropolitan, enforceable in accordance with its terms, subject to the requirements of applicable law.

2.2 Representations and Warranties of SDCWA. As a material inducement to Metropolitan to enter into this Contract, SDCWA represents and warrants as follows:

(a) SDCWA is a county water authority, duly organized, validly existing and in good standing under the laws of the State of California, and subject to satisfaction or waiver of SDCWA's Conditions Precedent, SDCWA has all necessary power and authority to perform its obligations hereunder on the terms set forth in this Contract, and the execution and delivery hereof by SDCWA and the performance by SDCWA 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 SDCWA is a party or by which SDCWA is bound.

(b) Subject to the satisfaction or waiver of the Authority's Conditions Precedent, as and to the extent provided in paragraph 8.2, this Contract is a valid and binding obligation of SDCWA enforceable in accordance with its terms, subject to the requirements of applicable law.

Approved as to form:  
Counsel for Metropolitan:   
Counsel for SDCWA: 

(c) SDCWA will have the legal right and will have obtained such approvals and permissions as may be necessary, under applicable laws of the United States and the State of California, to Make Available to Metropolitan Conserved Water pursuant to this Contract.

### III

#### QUANTITY; DELIVERY AND SCHEDULING

##### 3.1 Conserved Water.

(a) SDCWA will Make Available the Conserved Water to Metropolitan at the SDCWA Point of Transfer each Contract Year, in the manner set forth below. The quantity of Conserved Water Made Available to Metropolitan by SDCWA at the SDCWA Point of Transfer each Contract Year shall be the lesser of: (1) the quantity of water which IID transfers to SDCWA under the Transfer Agreement for such period; or (2) 200,000 acre feet. The Conserved Water Made Available in each Contract Year shall be deemed to have been Made Available to Metropolitan in monthly installments, with one-eighth of such Conserved Water deemed to have been Made Available in each of the first eight calendar months of such Contract Year (provided that if the first Contract Year is less than a eight full calendar months, the quantity of Conserved Water deemed to have been Made Available in each month shall be determined by dividing the total quantity for that Contract Year by the number of calendar months or portions thereof in that Contract Year).


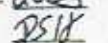
Approved as to form:  
Counsel for Metropolitan: *[Signature]*  
Counsel for SDCWA: *[Signature]*

(b) SDCWA will provide to Metropolitan annual written notice by December 1<sup>st</sup> each Contract Year (or in the case of the first Contract Year, reasonable advance written notice) of the quantity of Conserved Water to be transferred to SDCWA in accordance with the Transfer Agreement and to be Made Available to Metropolitan at the SDCWA Point of Transfer during the immediately following Contract Year. The Conserved Water will be Made Available to Metropolitan by SDCWA in a manner consistent with the Department of the Interior's operations schedule and will be measured as provided in Paragraph 3.4.

3.2 Exchange Water.

(a) Provided that the Conserved Water has been Made Available to Metropolitan at the SDCWA Point of Transfer pursuant to Paragraph 3.1, Metropolitan shall deliver Exchange Water to SDCWA at the Metropolitan Point(s) of Delivery, in compliance with this Contract and in the manner and to the extent set forth below. In any Contract Year, Metropolitan will not be required to deliver an amount of Exchange Water that is greater than the amount of Conserved Water Made Available to Metropolitan in that Contract Year pursuant to Paragraph 3.1(a), subject to the provisions of subparagraphs (b) and (c) of Paragraph 7.2.

(b) Metropolitan's delivery of Exchange Water at the Metropolitan Point(s) of Delivery shall be governed by its rules and regulations for delivery of water set forth in

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Counsel for Metropolitan:   
Counsel for SDCWA: 

Chapter 5 of Division IV of the Administrative Code in the same manner as other water delivered by Metropolitan, except as may otherwise be provided in this Contract.

(c) Without limitation of the foregoing, no later than the December 1st preceding each Contract Year, for the purposes of applying the Treatment Surcharge, SDCWA shall provide to Metropolitan a written request specifying the proportionate amount of Exchange Water that is to be delivered as Treated Exchange Water, provided, however, that the quantity of untreated Exchange Water to be delivered hereunder shall not exceed the capacity of the Metropolitan Points of Delivery dedicated to the conveyance of untreated water.

(d) The Exchange Water to be delivered in any Contract Year shall be delivered in approximately equal monthly installments over the first eight months of the Contract Year so that at the end of the eighth month the aggregate quantity of Exchange Water delivered by Metropolitan will be equal to the total quantity of Conserved Water Made Available to Metropolitan at the SDCWA Point of Transfer for that Contract Year, or at the times and in the amounts as the Parties may otherwise agree.

(e) In the event that the delivery of Exchange Water to the Metropolitan Point(s) of Delivery is temporarily suspended or interrupted during any Contract Year pursuant to Paragraph 3.3 below, the remaining quantity of Exchange Water to be delivered for such Contract Year will be delivered by Metropolitan ratably over the remainder of such Contract Year or as otherwise agreed by the Parties.

(f) Metropolitan shall have the right to deliver Exchange Water utilizing such facilities and by such delivery path as shall be determined by Metropolitan at its sole

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Counsel for Metropolitan: ACK  
Counsel for SDCWA: DSL

discretion. Utilization of a particular delivery path for any such delivery shall not operate as or be deemed to be a commitment to utilize the same delivery path for any future delivery. Metropolitan has not dedicated and shall not be deemed or construed to have dedicated any particular facilities for delivery of the Exchange Water.

3.3 Temporary Shutdown of Metropolitan Facilities. Metropolitan's General Manager shall have the right to control, curtail, interrupt or suspend the delivery of Exchange Water to SDCWA in accordance with Section 4503 of the Administrative Code. SDCWA understands that any number of factors, including emergencies, inspection, maintenance or repair of Metropolitan facilities or the State Water Project Facilities, may result in a temporary and incidental modification of the delivery schedule contemplated in Paragraph 3.2. Metropolitan shall notify SDCWA of any control, curtailment, interruption or suspension of delivery of Exchange Water in accordance with and to the extent set forth in Section 4503 of the Administrative Code, as if the Exchange Water were water served by Metropolitan. Metropolitan agrees that delivery of Exchange Water shall be resumed as soon as possible following any such curtailment, interruption or suspension of delivery. Unless Metropolitan is otherwise relieved of its obligations under the provisions of this Contract, a curtailment, interruption or suspension of the delivery of Exchange Water pursuant to this Paragraph 3.3 shall not change the amount of Exchange Water Metropolitan is obligated to deliver during a Contract Year.

3.4 Measurement of Deliveries. The quantity of Exchange Water delivered in each Contract Year by Metropolitan at the applicable Metropolitan Point(s) of Delivery, which amount will be metered at the Point(s) of Delivery as provided in Section 4506 of the Administrative Code, shall be equal to the quantity of Conserved Water Made

Approved as to form:

Counsel for Metropolitan: *ACB*

Counsel for SDCWA: *DSL*

Available to Metropolitan in such Contract Year at the SDCWA Point of Transfer. The Parties agree that they will be bound by such meter readings.

3.5. Points of Transfer or Delivery.


(a) The SDCWA Point of Transfer. As used herein, the "SDCWA Point of Transfer" shall be Metropolitan's intake at Lake Havasu.


(b) The Metropolitan Point(s) of Delivery. As used herein, the "Metropolitan Point(s) of Delivery" shall be any or all San Diego Pipelines One through Five (inclusive) or at similar facilities that may be constructed in the future at a point near the San Luis Rey River in Northern San Diego County.

3.6 Quality of Exchange Water. Metropolitan in its sole discretion shall have the right to deliver Exchange Water of a quality which exceeds the quality of the Conserved Water which Metropolitan receives, and such Exchange Water shall fully satisfy Metropolitan's obligation to deliver Exchange Water of like quality to such Conserved Water. In such event, Metropolitan's election shall not operate as or be construed to be a commitment to deliver Exchange Water of better quality in the future, and in no event shall SDCWA be deemed to have any right to receive Exchange Water of better quality than the Conserved Water.

3.7 Alternative Facilities. SDCWA may determine, in its sole discretion, permanently to reduce the quantity of Conserved Water to be Made Available to Metropolitan under this Contract to the extent SDCWA decides continually and regularly to transport Conserved Water in such quantity to San Diego County through Alternative

Approved as to form:

Counsel for Metropolitan: 

Counsel for SDCWA: 



Facilities; provided, however, that SDCWA shall furnish to Metropolitan a minimum of five (5) years' advance written notice of such determination. The written notice shall confirm the quantity of Conserved Water (if any) which is to remain to be Made Available to Metropolitan. If SDCWA exercises its right under this Paragraph, Metropolitan's obligation to deliver Exchange Water shall be limited to that specified quantity of Conserved Water that remains to be Made Available to Metropolitan pursuant to this Contact.

#### IV.

#### CHARACTERIZATION OF EXCHANGE WATER

4.1 Exchange Water as an Independent Local Supply. The Exchange Water shall be characterized for the purposes of all of Metropolitan's ordinances, plans, programs, rules and regulations, including any then-effective Drought Management Plan (other than as provided in Paragraph 4.2), in the same manner as the Local Water of other Metropolitan member agencies. In times of water shortages, subject to the reasonable limitations imposed by the Drought Management Plan to maintain continued reliability over an extended drought period, Metropolitan shall use storage and any other available Metropolitan water supplies before interrupting firm deliveries to its member agencies.

4.2 Exception for Interim Agricultural Water Program. Notwithstanding the provisions of Paragraph 4.1, the Exchange Water delivered to SDCWA shall be characterized as Metropolitan water and not as Local Water only for the limited purposes of the interim Agricultural Water Program.

Approved as to form:  
Counsel for Metropolitan:   
Counsel for SDCWA: 

V.

PRICING AND PAYMENTS

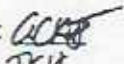

5.1 Payments. SDCWA shall pay the Contract Price for each acre-foot of Exchange Water delivered by Metropolitan at the Metropolitan Point(s) of Delivery.

5.2 Contract Price. For the first 20 Contract Years, the Contract Price shall be \$90 per acre-foot of Exchange Water increased by 1.55% for every calendar year after 1998. For Contract Years 21 through 30, the Contract Price shall be \$80 per acre-foot increased by 1.44% for every calendar year after 1998. A table showing the escalation of the Contract Price pursuant to this Paragraph is attached as Exhibit 1.

5.3 Changes to Reflect the Changes in the Price of Water.

(a) In any Contract Year after the 10th Contract Year, upon not less than sixty (60) days prior written notice to the other Party, either Party can request a change in the Contract Price to be effective for that Contract Year and the succeeding Contract Years. The initial adjustment pursuant to this Paragraph 5.3 will be in effect until the commencement of the next adjustment permitted under the Transfer Agreement. If a further adjustment in the Contract Price is warranted after the initial adjustment, that adjustment will be additive as shown by the example in Exhibit 2.

(b) The change in the Contract Price shall be equal to the change (increase or decrease) in the price of Conserved Water that IID or SDCWA secured or would have been permitted to secure at the most recent prior opportunity to adjust the price of Conserved Water under the terms of the Transfer Agreement. In determining such change, the average price of Conserved Water paid by SDCWA to IID over the previous

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Counsel for Metropolitan:   
Counsel for SDCWA: 





ten year period (the prior average annual price) shall be compared to the average actual or permitted price of Conserved Water projected over the next ten years (projected annual average price). If there are fewer than ten years in the projected period (that is, the adjustment is to occur with less than ten years remaining on the Contract), then the projected annual average price shall be based on the average price of Conserved Water for the remaining period of the Contract. If it is impossible to determine the projected annual average price because of insufficient information regarding the actual or permitted price to be charged for Conserved Water under the terms of the Transfer Agreement, the adjustment will be calculated on an annual basis using actual prices, with a reconciliation (either positive or negative) payment made at the end of the ten year period. The difference between the prior average annual price and the projected average annual price shall cause either of the following changes:

- (i) If the secured or permitted change in the price of Conserved Water under the Transfer Agreement was or could have been positive, the Contract Price shall be reduced by a like amount;
- (ii) If the secured or permitted change in the price of Conserved Water under the Transfer Agreement was or could have been negative, the Contract Price shall be increased by a like amount.

(c) A sample calculation of the change in Contract Price is shown in Exhibit

2. In no event may the Contract Price as adjusted pursuant to this Paragraph 5.3 be less than \$0 per acre-foot.

Approved as to form:  
Counsel for Metropolitan:   
Counsel for SDCWA: 

(d) SDCWA agrees to provide to Metropolitan all data and calculations necessary for determining a Base Contract Price or a Price Redetermination under the Transfer Agreement to assist the Parties in determining the adjusted Contract Price pursuant to this Paragraph 5.3.

5.4 Change in Metropolitan Net Costs. After the 20th Contract Year, either Party may propose (by delivery of a written proposal to the other Party not less than sixty (60) days prior to the end of a Contract Year) adjustments to the Contract Price to be effective in all subsequent Contract Years. Such adjustments shall be necessary to reflect reasonable changes in Metropolitan's net costs (excluding any costs of the State Water Project (defined below)) due to catastrophes or material changes in relevant governmental regulatory requirements applicable to the conveyance of water to San Diego County at a point near the San Luis Rey River, on a proportionate basis as the water conveyed to SDCWA by Metropolitan under this Contract bears to all water delivered by Metropolitan. "State Water Project" means the water, water rights and facilities acquired or constructed pursuant to the Central Valley Project Act (Water Code Sections 11100 et seq.) and the State Water Resources Development Bond Act (Water Code Sections 12930 et seq.), including all associated water conservation facilities, power generation and transmission facilities, canals, pipelines, pumps, dams and other facilities and contacts, of whatever nature, used or available to Metropolitan pursuant to its State Water Contract for use to export water from the Sacramento-San Joaquin Delta area of the State and to import water into the Metropolitan service area. An example

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Counsel for Metropolitan: ACTB  
Counsel for SDCWA: DS18

calculation of such an adjustment in the Contract Price is shown in Exhibit 3. Subject to Paragraph 5.5, the adjusted Contract Price shall become the Contract Price for all purposes hereunder when agreed to by the Parties or when finally determined by the Director pursuant to Paragraph 11.2 below.

5.5 Relationship of Price Adjustments. The price adjustments authorized by Paragraphs 5.3 and 5.4 are independent; provided, however, that the dollar amounts ascribed to annual escalation adjustments, pursuant to Paragraph 5.2, shall be included in the applicable adjusted Contract Price in subsequent Contract Years; and provided, further, that, if adjustments under both Paragraphs 5.3 and 5.4 shall be applicable with respect to the same Contract Year, the change in the Contract Price shall be the sum of both adjustments, positive or negative, but in no event shall the net adjusted Contract Price for any Contract Year be less than \$0.

5.6 Effective Date of Adjustments. An adjustment in the Contract Price shall be effective as of the first day of the Contract Year in which the adjustment is made pursuant to this Contract.

5.7 Billing and Payments. For the first eight (8) months of each Contract Year, Metropolitan shall mail monthly invoices to SDCWA in accordance with the provisions of Administrative Code Section 4507 and SDCWA shall make monthly payments of amounts due pursuant to Paragraph 5.1 in accordance with the provisions of Administrative Code Sections 4507 and 4508. The amount of each monthly billing and payment pursuant to this Contract shall be the quantity of Exchange Water to be

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Counsel for Metropolitan: *ACKP*

Counsel for SDCWA: *RSK*

delivered by Metropolitan at the Metropolitan Point(s) of Delivery during the applicable Contract Year, multiplied by the applicable Contract Price as of the commencement of that Contract Year, divided by eight (8).

5.8 Treatment Surcharge. SDCWA shall pay an amount equal to the Treatment Surcharge, in addition to the Contract Price, for each acre-foot of Treated Exchange Water.

## VI.

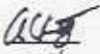

### ADDITIONAL NOTIFICATIONS

6.1 Confirmation of Water Conservation. SDCWA will provide a written report to Metropolitan, prior to March 31 of each Contract Year, describing the method by which any Conserved Water that was Made Available to Metropolitan in the prior year was conserved, including a description of conservation projects resulting in the Conserved Water and the quantity of Conserved Water conserved by each project.

6.2 Notice of Developments.

(a) After the Commencement Date, SDCWA agrees to give prompt notice to Metropolitan if it discovers that any of its own representations and warranties herein were untrue when made or determines that any of its own representations and warranties will be untrue as of any date during the term of this Contract.

(b) After the Commencement Date, Metropolitan agrees to give prompt notice to SDCWA if it discovers that any of its own representations and warranties herein were untrue when made or determines that any of its own representations and warranties will be untrue as of any date during the term of this Contract.

Approved as to form:  
Counsel for Metropolitan:   
Counsel for SDCWA: 

**VII.**  
**TERM**

7.1 Commencement and Expiration. Except to the extent provided in Paragraph 10.7, this Contract shall become effective on the Commencement Date and shall expire on the Termination Date. The "Commencement Date" shall be the first date upon which all of Metropolitan's Conditions Precedent and SDCWA's Conditions Precedent have been satisfied or waived and Conserved Water has been Made Available to Metropolitan pursuant to Paragraph 3.1. This Contract shall expire and shall thereupon terminate on December 31 of the thirtieth (30th) calendar year starting on January 1 of first calendar year in which SDCWA completes Making Available the first 20,000 acre feet of Conserved Water to Metropolitan, or shall terminate as otherwise provided in Paragraph 7.2.

7.2 Force Majeure.

(a) If the performance, in whole or in part, of the obligations of the respective Parties, or either of them to Make Available Conserved Water or to deliver Exchange Water (as the case may be) under this Contract is prevented by acts or failure to act of any agency, court or other government authority, or any other person, by natural disaster (such as earthquake, fire, drought or flood), contamination or outbreak of a water borne disease, war, strikes, lockouts, act of God, or acts of civil or military authority, by the operation of applicable law, or by any other cause beyond the control of the affected Party or Parties, whether similar to the causes specified herein or not, the obligation of the affected Party or Parties to cause the delivery of the Conserved Water or to deliver the

Approved as to form:

Counsel for Metropolitan: ACE

Counsel for SDCWA: DSIT

Exchange Water (as the case may be) under this Contract shall be suspended from the time and to the extent that the performance thereof is prevented, but reasonable diligence shall be observed by the affected Party or Parties, so far as it lies in their power, in performing such respective obligations in whole or in part under this Contract. In the event such performance of either of the Parties under this Contract is prevented as described above, then during the period of such prevention, performance by the non-affected Party under this Contract shall be excused until such prevention ceases, at which time both the Parties shall become obligated to resume and continue performance of their respective obligations hereunder during the term of this Contract. Notwithstanding the foregoing, no such prevention shall suspend or otherwise affect any payment obligations for Exchange Water actually delivered or any obligation of either Party to indemnify the other pursuant to Paragraph 13.10, or shall extend the term of this Contract beyond the Termination Date, except as provided in Paragraph 7.2(c) below.

(b) In the event the performance by Metropolitan or SDCWA is prevented as described above, the Parties agree actively to cooperate and use their reasonable best efforts, without diminution of any storage or other rights Metropolitan or SDCWA may have, to support a request to the Bureau for emergency storage in Lake Mead or Lake Havasu for the Conserved Water, if it would avoid the waste or loss of the Conserved Water.

(c) In the event the delivery of Exchange Water by Metropolitan is prevented as described in Paragraph 7.2(a) above, and in the event Conserved Water has been stored as contemplated by Paragraph 7.2(b) above, and such stored

Approved as to form:  
Counsel for Metropolitan: ACE  
Counsel for SDCWA: RSY

Conserved Water is Made Available to Metropolitan, the term of this Contract shall be extended, for a period not to exceed five years, without the necessity for further action by either Party, if and to the extent necessary to permit Metropolitan to complete the delivery of Exchange Water in a quantity equal to such stored Conserved Water.

7.3 Survival. Notwithstanding the foregoing or anything to the contrary in this Contract, the provisions in Paragraphs 5.1, 12.5, 13.2, 13.3, 13.8, 13.10 and 13.15 and Articles X and XI shall survive the termination of this Contract, provided that such termination occurs after the Commencement Date.

#### VIII.

#### CONDITIONS PRECEDENT

8.1 Metropolitan's Conditions Precedent. Metropolitan's obligations under this Contract are subject to satisfaction of the following conditions on or before the dates specified below, unless satisfaction of a specified condition or conditions is waived in writing by Metropolitan:

(a) All conditions precedent to commencement of the Initial Term of the Transfer Agreement shall have been fully satisfied, and the Initial Term shall have commenced, and Metropolitan shall have received a certification to such effects from SDCWA.

(b) The promulgation and application by the Secretary of the Interior (the "Secretary") of surplus criteria, including river re-operations, that are

Approved as to form:  
Counsel for Metropolitan: *ACE*  
Counsel for SDCWA: *PSIT*

sufficient, together with those other water supplies that are under the control of Metropolitan, to assure that the Colorado River Aqueduct is full at least through 2015.

(c) The establishment and completion of a process, acceptable to the Secretary and the State of California, in which the Colorado River Board and the California public agencies that hold contracts with the Secretary for delivery of Colorado River water would participate, which quantifies or otherwise resolves Colorado River agricultural water entitlements in a manner that will assure that water conserved from reasonable and beneficial uses can be transferred from an agricultural to an urban agency.

(d) There shall have been legal authorization, appropriation, and a legally binding commitment of the State of California to provide the sum of two hundred thirty-five million dollars (\$235,000,000) for the purposes described in subparagraphs (i) and (ii) below. The Parties agree that the authorization and appropriation by the Legislature of the State of California of two hundred thirty-five million dollars (\$235,000,000) pursuant to Water Code sections 12561 and 12562 shall, as in effect on November 1, 1998, meet the authorization and appropriation requirements of this subparagraph (d).

(i) The Director will provide two hundred million dollars (\$200,000,000) of financing for, and arrange for the completion of, by not later than December 31, 2006, or such later date as may be required by extraordinary circumstances which could not have been reasonably anticipated, the lining of portions of the

Approved as to form:  
Counsel for Metropolitan: *UCKE*  
Counsel for SDCWA: *RSK*



All-American Canal and the Coachella Branch of that canal. The allocation of the water conserved from those lining projects to be made available to Metropolitan shall have been determined by resolution through one or more written agreements among Metropolitan and the IID, the Palo Verde Irrigation District, the Coachella Valley Water District and the San Luis Rey settlement parties, reached after consultation with the Director and the Secretary.

- (ii) The Director will provide thirty-five million dollars (\$35,000,000) of financing for, and arrange for the completion of, by not later than December 31, 2006 or such later date as may be required by extraordinary circumstances which could not have been reasonably anticipated, the installation of recharge, extraction, and distribution facilities for groundwater conjunctive use programs necessary to implement the California Plan and arrange for the transfer of all of the water stored through those programs to Metropolitan for the benefit of its member agencies.

- (e) Metropolitan shall have received a certificate from SDCWA (1) updating the representations and warranties made in Paragraph 2.2 as of the Commencement Date,

Approved as to form:  
Counsel for Metropolitan: *ACW*  
Counsel for SDCWA: *RLT*

and (2) verifying compliance as of the Commencement Date with all applicable environmental laws with respect to the activities contemplated by this Contract.

(f) SDCWA shall not have breached any of its material obligations under this Contract.

(g) No event described in Paragraph 7.2 shall have occurred and be continuing.

8.2 SDCWA's Conditions Precedent. SDCWA's obligations under this Contract are subject to satisfaction of the following conditions for SDCWA's benefit on or before the dates specified below, unless satisfaction of a specified condition or conditions is waived in writing by SDCWA:

(a) All conditions precedent to commencement of the Initial Term of the Transfer Agreement shall have been fully satisfied and the Initial Term shall have commenced.

(b) SDCWA shall have received a certificate from Metropolitan updating the representations and warranties made in Paragraph 2.1 as of the Commencement Date.

(c) Metropolitan shall not have breached any of its material obligations under this Contract.

(d) No event described in Paragraph 7.2 shall have occurred and be continuing.

8.3 Failure of Conditions. If Metropolitan's Conditions Precedent are not satisfied or waived in writing by Metropolitan and SDCWA's Conditions Precedent are not satisfied or waived in writing by SDCWA, in each case on or before December 31,

Approved as to form:

Counsel for Metropolitan: *UCER*

Counsel for SDCWA: *PSLT*

2006, then this Contract will be void, and all rights and obligations provided hereunder will be terminated.

## IX.

### COMPLIANCE WITH APPLICABLE LAWS


9.1 Applicable Laws. This Contract and the activities described herein are contingent upon and subject to compliance with all applicable laws, including, to the extent applicable, the National Environmental Policy Act, Title 4, United States Code §§ 4321 et seq.; 40 Code of Federal Regulations §§ 1500.1 et seq. ("NEPA"), and California Public Resources Code Sections 21000 et seq.; 14 California Code of Regulations §§ 15000 et seq. ("CEQA").


## X.

### MISCELLANEOUS COVENANTS

10.1 Impact on Transfer Agreement. Nothing in this Contract shall be construed to amend the Transfer Agreement. Metropolitan will not object to SDCWA's assertion that this Contract will facilitate the satisfaction of the transportation contingency in the Transfer Agreement, and agrees that this Contract may be relied upon by SDCWA to support that assertion before the "Effective Date" of the Transfer Agreement (as "Effective Date" is defined in that Agreement). Insofar as the Transfer Agreement is consistent with and implemented in accordance with state and federal law and the California Plan, Metropolitan shall not oppose approval or implementation of that Agreement before the California State Water Resources Control Board, the Bureau, the

Approved as to form:

Counsel for Metropolitan: 

Counsel for SDCWA: 

United States Department of the Interior or in any other judicial or administrative proceedings

10.2 Existing Rights. Nothing in Paragraph 10.1 of this Contract shall be construed to constitute a waiver or preclude the enforcement or pursuit of any claim or right, including the surplus criteria anticipated by Paragraph 8.1(b) of this Contract or the quantification anticipated by Paragraph 8.1(c) of this Contract, by Metropolitan pertaining to the waters of the Colorado River and arising out of (1) any state or federal constitution, statute or regulation, or (2) any contract entered into by a federal agency.

10.3 Support for Surplus Criteria. SDCWA will use reasonable best efforts to support all reasonable efforts by Metropolitan to promote and secure surplus criteria on the Colorado River with the objective of maintaining a full Colorado River Aqueduct.

10.4 Report to Legislature. The Parties shall report as requested to the Legislature of the State of California on the implementation of this Contract.

10.5 Covenants of Good Faith. This Contract is subject to reciprocal obligations of good faith and fair dealing.

10.6 Extension or Renewal. SDCWA recognizes that the term of this Contract is limited to thirty (30) years, that SDCWA does not have a right to extension or renewal of such thirty-year term, and that the Transfer Agreement calls for a 45-year term.

10.7 Effective Date. The provisions of this Article X shall be effective upon execution of this Contract.

Approved as to form:

Counsel for Metropolitan: ACK

Counsel for SDCWA: DSH

## XI.

### DISPUTE RESOLUTION

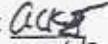
11.1 Reasonable Best Efforts to Resolve by Mediation. The Parties shall exercise reasonable best efforts to resolve all disputes arising under this Contract through non-binding mediation by the Director; provided that any disputes over adjustments in the Contract Price pursuant to Paragraph 5.4 shall be submitted to binding arbitration by the Director pursuant to Paragraph 11.2. In the event mediation is unsuccessful, then the Parties reserve their respective rights to all legal and equitable remedies except as expressly provided herein.

11.2 Arbitration of Disputes over Contract Price.

(a) Metropolitan and SDCWA mutually consent to the final resolution by binding arbitration of all claims or disputes over adjustments in the Contract Price pursuant to Paragraph 5.4 (each, a "Contract Price Dispute"). Each party agrees to give the other at least ten (10) days written notice of any Contract Price Dispute, with a copy to the Director. The notice shall identify and describe the nature of the Contract Price Dispute and state the facts upon which such Contract Price Dispute is based. The copy of such notice provided to the Director shall be mailed by first-class mail to the Director at California Department of Water Resources, Attn.: Director, P.O. Box 942836, Sacramento, California 94236-0001.

(b) The Director shall have the sole and exclusive authority to resolve all Contract Price Disputes. In resolving such Contract Price Disputes, the Director shall

Approved as to form:

Counsel for Metropolitan: 

Counsel for SDCWA: 

apply the applicable substantive law of the State of California (and/or the United States). The procedures governing any such Contract Price Dispute shall be as agreed by the Parties, or, if, there is no such agreement, as determined by the Director. The Director shall have the right to retain such experts and attorneys, as he deems necessary for the determination of each Contract Price Dispute. The Director's decision shall be final and binding upon the Parties.

(c) The fees and expenses of the Director in connection with the arbitration proceedings, including the reasonable fees and expenses of experts and attorneys retained by the Director, shall be shared equally by the Parties. Each Party shall pay its own costs and attorneys' fees, if any.

## XII.

### EVENTS OF DEFAULT; REMEDIES

12.1 Events of Default by SDCWA. Each of the following constitutes an "Event of Default" by SDCWA under this Contract if not cured within 30 days of receiving written notice from Metropolitan of such matter:

(a) Subject to Paragraphs 7.2 and 9.1, SDCWA fails to Make Available to Metropolitan Conserved Water as required under this Contract.

(b) SDCWA fails to perform or observe any other term, covenant or undertaking that it is to perform or observe under this Contract.

(c) Any representation, warranty or statement made by or on behalf of the SDCWA and contained in this Contract or in any exhibit, certificate or other document furnished pursuant to this Contract is on the date made or later proves to be false,

Approved as to form:

Counsel for Metropolitan: *ACM*

Counsel for SDCWA: *DSIT*

misleading or untrue in any material respect.

12.2 Events of Default by Metropolitan. Each of the following constitutes an "Event of Default" by Metropolitan under this Contract if not cured within 30 days of receiving written notice from SDCWA of such matter:

(a) Subject to Paragraphs 7.2 and 9.1, Metropolitan fails to deliver the Exchange Water as required under this Contract.

(b) Metropolitan fails to perform or observe any other term, covenant or undertaking that it is to perform or observe under this Contract.

(c) Any representation, warranty or statement made by or on behalf of Metropolitan and contained in this Contract or in any exhibit, certificate or other document furnished pursuant to this Contract is on the date made or later proves to be false, misleading or untrue in any material respect.

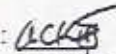
12.3 Remedies Generally. If an Event of Default occurs, the non-breaching Party will have all rights and remedies provided at law or in equity against the breaching Party.

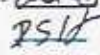
12.4 Enforcement of Transfer and Exchange Obligations.

(a) Any Event of Default as defined in Paragraph 12.1(a) or 12.2(a) may be remedied by an order of specific performance.

(b) So long as no Event of Default as defined in Paragraph 12.1(a) has occurred and is continuing, and so long as SDCWA tenders to Metropolitan full payment of the Contract Price when due, Metropolitan shall not suspend or delay, in whole or in part, delivery of Exchange Water as required under this Contract on

Approved as to form:

Counsel for Metropolitan: 

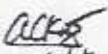
Counsel for SDCWA: 

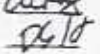
account of any breach, or alleged breach, by SDCWA unless first authorized to do so by a final judgment. So long as no Event of Default as defined in Paragraph 12.2(a) has occurred and is continuing, SDCWA shall not suspend or delay, in whole or in part, Making Available Conserved Water as required under this Contract on account of any breach, or alleged breach, by Metropolitan unless first authorized to do so by a final judgment. A violation of the provisions of this subparagraph (b) may be remedied by an order of specific performance.

(c) In the event of a dispute over the Contract Price, SDCWA shall pay when due the full amount claimed by Metropolitan; provided, however, that, during the pendency of the dispute, Metropolitan shall deposit the difference between the Contract Price asserted by SDCWA and the Contract Price claimed by Metropolitan in a separate interest bearing account. If SDCWA prevails in the dispute, Metropolitan shall forthwith pay the disputed amount, plus all interest earned thereon, to SDCWA. If Metropolitan prevails in the dispute, Metropolitan may then transfer the disputed amount, plus all interest earned thereon, into any other fund or account of Metropolitan.

12.5 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 Contract be exclusive; each such right or remedy is cumulative and in addition to any other remedy provided in this Contract 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

Approved as to form:

Counsel for Metropolitan: 

Counsel for SDCWA: 



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 Contract or otherwise.

12.6. 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 the other would, under § 394(a) of the CCP, as a matter of law be subject to

- (a) being transferred to a "Neutral County," or instead
- (b) having a disinterested judge from a Neutral County assigned by the Chairman of the Judicial Council to hear the action or proceeding.
- (c) A "Neutral County" is any county other than Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego or Ventura. In the event an action is filed by either party against the other to enforce this Contract 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;

Approved as to form:  
Counsel for Metropolitan: *ACE*  
Counsel for SDCWA: *RSK*

(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 Contract, and in particular this Paragraph 12.6, may be submitted to the court as part of the moving papers.

(d) Nothing in this Paragraph 12.6, however, impairs or limits the ability of a Party to contest the suitability of any particular county to serve as a Neutral County, or operates to waive any other rights.

### XIII.

#### GENERAL PROVISIONS

13.1 No Third-Party Rights. This Contract 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 Contract.

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

Approved as to form:

Counsel for Metropolitan: ACK

Counsel for SDCWA: BIT

13.3 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws provisions.

13.4 Binding Effect; No Assignment. This Contract 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 Contract. Any assignment or delegation made in violation of this Contract is void and of no force or effect.

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

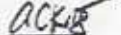
*Personal Delivery*. When personally delivered to the recipient. Notice is effective on delivery.


*First-Class Mail*. When mailed first-class, postage prepaid, 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, charges prepaid or charged to the sender's account.

Approved as to form:

Counsel for Metropolitan: 

Counsel for SDCWA: 

Notice is effective on delivery, if delivery is confirmed by the delivery service.

*Facsimile Transmission.* Notice is effective on receipt, provided that a copy is mailed by first-class mail on the facsimile transmission date.

Addresses for purpose of giving notice are as follows:

To Metropolitan: **Metropolitan Water District**

Attn.: General Manager

*Address for U.S. Mail*

P.O. Box 54153

Los Angeles, CA 90054-0153

*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:

**Metropolitan Water District**

Attn.: General Counsel

To SDCWA:

**San Diego County Water Authority**

Attn.: General Manager

3211 Fifth Avenue

San Diego, CA 92103

Approved as to form:

Counsel for Metropolitan: ACK

Counsel for SDCWA: 256

Telephone: 619-682-4202

Facsimile: 619-299-3450

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

**San Diego County Water Authority**

Attn.: General Counsel

Telephone: 619-682-4113

Facsimile: 619-295-2815

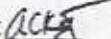
(a) A correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission by the Party to be notified will be deemed effective as of the first date that notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery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


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

13.6 Entire Agreement. This Contract (including the exhibits but not the appendices attached hereto) constitutes the final, complete, and exclusive statement of the terms of the Contract between the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Contract by, nor is either Party relying on, any representation or warranty outside those expressly set forth in this Contract.

13.7 Time of the Essence. If the day on which performance of any act or the occurrence of any event hereunder (except the delivery of Exchange Water) is due is not

Approved as to form:

Counsel for Metropolitan: 

Counsel for SDCWA: 

a business day, the time when such performance or occurrence shall be due shall be the first business day (as defined in Section 4507 of the Administrative Code) occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Contract for the performance of any act will be strictly construed, time being of the essence of this Contract.

13.8 Modification. This Contract 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 both Parties.

13.9 Waiver. No waiver of a breach, failure of condition, or any right or remedy contained in or granted by the provisions of this Contract 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.

13.10 Indemnification

(a) SDCWA shall indemnify Metropolitan pursuant to Section 4502 of the Administrative Code against liability in connection with acts of SDCWA after Metropolitan's delivery of the Exchange Water, to the same extent as is required with respect to water supplied by Metropolitan to a member public agency. Such indemnification shall be in addition to any indemnification rights available under applicable law and to any other remedy provided under this Contract.

Approved as to form:  
Counsel for Metropolitan: ACW  
Counsel for SDCWA: PSH

(b) Metropolitan shall indemnify SDCWA pursuant to Section 4502 of the Administrative Code against liability in connection with Metropolitan's delivery of the Exchange Water to the same extent as is required with respect to water supplied by Metropolitan to a member public agency. Such indemnification shall be in addition to any indemnification rights available under applicable law and to any other remedy provided under by this Contract.

(c) Notwithstanding anything in this Contract to the contrary, each Party agrees to proceed with reasonable diligence and use reasonable good faith efforts to jointly defend any lawsuit or administrative proceeding by any person other than the Parties challenging the legality, validity, or enforceability of this Contract.

13.11 Authority of the Legislature. In the event the contingencies for a transfer of Conserved Water to SDCWA under the provisions of the Transfer Agreement have not been satisfied in full prior to December 31, 2006, nothing in this Contract will limit the authority of the Legislature of the State of California to allocate or reallocate water.

13.12 Right to Amend the Code. Notwithstanding anything to the contrary in this Contract, express or implied, Metropolitan shall have the right to amend the Administrative Code at its sole discretion, except that, for the purposes of this Contract, no such amendment shall have the effect of changing or modifying the Conditions Precedent set forth in Paragraphs 8.1 and 8.2, the obligation of Metropolitan to deliver Exchange Water hereunder or the Contract Price of such Exchange Water, unless such effect is first approved by the Board of Directors of SDCWA.

Approved as to form:

Counsel for Metropolitan: ACFB

Counsel for SDCWA: PSH

13.13 Right to Amend Transfer Agreement. Notwithstanding anything to the contrary in this Contract, express or implied, the Authority shall have the right to amend the Transfer Agreement at its sole discretion, except that, for purposes of this Contract, no such amendment shall have the effect of changing or modifying the Conditions Precedent set forth in Paragraphs 8.1 and 8.2, the obligation of SDCWA to Make Available Conserved Water hereunder, or the Contract Price payable by SDCWA with respect to any Exchange Water, or be binding on Metropolitan unless such effect is first approved by the Board of Directors of Metropolitan.

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


13.15 Audit. Each Party shall be responsible for assuring the accuracy of its books, records and accounts of billings, payments, metering of water, and other records (whether on hard copy or in electronic or other format) evidencing the performance of its obligations pursuant to this Contract and shall maintain all such records for not less than three years. Each Party will have the right to audit the other Party's books and records relating to this Contract for purposes of determining compliance with this Contract during the term hereof and for a period of three years following termination of this Contract. Upon reasonable notice, each Party shall cooperate fully with any such audit and shall permit access to its books, records and accounts as may be necessary to conduct such audit.

Approved as to form:  
Counsel for Metropolitan: ACE  
Counsel for SDCWA: PSK

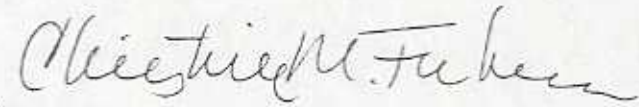


IN WITNESS WHEREOF, the Parties have executed this Contact as of the date first written above.

The Metropolitan Water District of Southern California

By:   
John V. Foley, Chairman

The San Diego County Water Authority

By:   
Christine M. Frahm, Chair

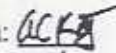

Approved as to form:  
Counsel for Metropolitan:   
Counsel for SDCWA: 

Exhibit 1  
Exchange Fee Schedule

Year	Exchange Fee	
	Contract Years 1 - 20	Contract Years 21 - 30
1998	\$90.00	\$80.00
1999	\$91.40	\$81.15
2000	\$92.81	\$82.32
2001	\$94.25	\$83.51
2002	\$95.71	\$84.71
2003	\$97.19	\$85.93
2004	\$98.70	\$87.17
2005	\$100.23	\$88.42
2006	\$101.78	\$89.69
2007	\$103.36	\$90.99
2008	\$104.96	\$92.30
2009	\$106.59	\$93.62
2010	\$108.24	\$94.97
2011	\$109.92	\$96.34
2012	\$111.63	\$97.73
2013	\$113.36	\$99.14
2014	\$115.11	\$100.56
2015	\$116.90	\$102.01
2016	\$118.71	\$103.48
2017	\$120.55	\$104.97
2018	\$122.42	\$106.48
2019	\$124.31	\$108.01
2020	\$126.24	\$109.57
2021	\$128.20	\$111.15
2022	\$130.18	\$112.75
2023	\$132.20	\$114.37
2024	\$134.25	\$116.02
2025	\$136.33	\$117.69
2026	\$138.45	\$119.38
2027	\$140.59	\$121.10
2028	\$142.77	\$122.85
2029	\$144.98	\$124.62
2030	\$147.23	\$126.41
2031	\$149.51	\$128.23
2032	\$151.83	\$130.08
2033	\$154.18	\$131.95

## EXHIBIT 2 - SECTION 5.3 PRICE ADJUSTMENT

This exhibit illustrates how an adjustment may occur to the Contract Price for Exchange Water pursuant to Article V, Section 5.3 of the Contract.

Under the terms of the Transfer Agreement, IID and SDCWA have the right to seek an adjustment to the price paid by SDCWA to IID for Conserved Water. Under those conditions where the price of Conserved Water is adjusted by IID or SDCWA, the Contract Price for Exchange Water shall be adjusted accordingly. Further, in the event the price paid by SDCWA to IID for Conserved Water could have been adjusted, the Contract Price for Exchange water may be adjusted at the request of Metropolitan or SDCWA.

The first opportunity for an adjustment to the Contract Price for Exchange Water will be Contract Year 11. An adjustment in the Contract Price will persist for a period of at least ten years. No adjustments in the Contract Price will be made unless the price paid by SDCWA to IID for Conserved Water is adjusted pursuant to the terms of the Price Redetermination as defined in the Transfer Agreement.

The following steps should be followed when determining the appropriate change in the Contract Price for Exchange Water:

### **Step One - Determine Whether a Price Adjustment is Necessary**

After Contract Year 10, an adjustment to the Contract Price of Exchange Water is permitted where (1) an adjustment in the price paid by SDCWA to IID for Conserved Water has been made pursuant to the Price Redetermination procedure described in the Transfer Agreement or (2) the conditions are ripe for an adjustment under Price Redetermination and SDCWA or IID fails to seek an adjustment under the Transfer Agreement and either Metropolitan or SDCWA elects to request an adjustment under this Contract. If the events necessary for a Price Redetermination have not been attained, no price adjustment is necessary.

### **Step Two - Determine the Magnitude of the Price Adjustment**

The average price paid by SDCWA to IID for Conserved Water for the ten year period in which such price has been adjusted pursuant to the Price Redetermination procedure will be compared to the average price paid by SDCWA to IID in the prior ten years. The amount of the positive or negative change in the average annual price of Conserved Water provides the basis for an adjustment in the Contract Price of Exchange Water.

### **Step Three - Adjust the Contract Price for Exchange Water**

If the average price paid by SDCWA to IID for Conserved Water for the ten year period beginning after the price paid by SDCWA to IID for Conserved Water has been (or could

have been) adjusted pursuant to the Price Redetermination procedure in the Transfer Agreement is **higher** than the average price paid by SDCWA to IID for conserved water during the prior ten years, the Contract Price will be adjusted **downward** in each future year by an amount equal to the difference in average prices. This adjustment will be applied in each year unless another Price Redetermination is made.

Conversely, if the average price paid by SDCWA to IID for Conserved Water for the ten year period beginning after the price paid by SDCWA to IID for Conserved Water has been (or could have been) adjusted pursuant to the Price Redetermination procedure in the Transfer Agreement is **lower** than the average price paid by SDCWA to IID for Conserved Water during the prior ten years, the Contract Price will be adjusted **upward** in each future year by an amount equal to the difference in average prices. This adjustment will be applied in each year unless another Price Redetermination is made.

### **Compounding Price Adjustments**

In the event that a price adjustment is warranted due to a cost change as identified in Section 5.4 of the Contract, the appropriate adjustment will be added to the Contract Price, before the price adjustment described above and in Section 5.3.

In the event that a second price adjustment is required, due to a change in the price paid by SDCWA to IID for Conserved Water as a result of a subsequent Price Redetermination, the change in the average price will be calculated as described in Step 2 above. Any change will be offset against the prior adjustment (either positive or negative), before a change to the Contract Price for Exchange Water is made. For example, if in Contract Years 11-20 the price adjustment was a positive \$30 per acre-foot (that is the price paid by SDCWA to IID for Conserved water had been reduced) and the price adjustment in Contract Years 21-30 was a negative \$20 per acre-foot (the price to be paid by SDCWA to IID for Conserved Water was \$20 higher in years 21-30 than in years 11-20), then the adjustment to the Contract Price in years 21-30 would be a positive \$10 per acre-foot.

### **Examples**

#### Scenario 1: Price Adjustments in Year 11 and Year 21

Table 1 shows what would happen if the average price that SDCWA pays IID for Conserved Water in years 11-20 is equal to \$250/acre-foot and the average price SDCWA pays IID in years 1-10 is equal to \$300/acre-foot. In this case, the Contract Price for Exchange Water would increase in year 2014 (year 11) by \$50 per acre-foot. As shown in the example, the price in 2014 increases from \$115.11/acre-foot to \$165.11/acre-foot. Further, the Contract Price in the succeeding nine years also increases by \$50/acre-foot, as shown in the last column labeled "Adjusted Contract Price."

In this example, it is also assumed that the average price paid by SDCWA to IID for Conserved Water in years 21-30 of the Contract is equal to \$290/acre-foot. Thus, the average price is \$40/acre-foot more than the average price paid by SDCWA to IID for Conserved water in years 11-20. As a result, the adjusted Contract Price for Exchange Water is calculated as follows:

$$\text{Adjusted Contract Price} = \text{Contract Price} + \text{Adjustment}_{11-20} + \text{Adjustment}_{21-30}$$

where,

$\text{Adjustment}_{11-20}$  = The adjustment in years 11-20 in dollars/acre-foot

$\text{Adjustment}_{21-30}$  = The adjustment in years 21-30 in dollars/acre-foot

Contract Price = Contract Price for Exchange Water defined in the Contract

In this example, in years 21-30, the Contract Price for Exchange Water, after adjustment would be equal to the Contract Price plus \$10/acre-foot.

$$\text{Adjusted Contract Price} = \text{Contract Price} + \$50/\text{af} + (-\$40/\text{af}) = \text{Contract Price} + \$10/\text{af}$$

The Contract Price for years 21-30 is shown in the column "Adjusted Contract Price"

#### Scenario 2: Price Adjustments in Year 16 and Year 26

Table 2 shows what would happen if the average price that SDCWA pays IID for Conserved Water in years 16-25 is equal to \$250/acre-foot and the average price SDCWA pays IID in years 6-15 is equal to \$300/acre-foot. In this case, the Contract Price for Exchange Water would increase in year 2019 (year 16) by \$50 per acre-foot. As shown in the example, the price in 2019 increases from \$124.31/acre-foot to \$174.31/acre-foot. Further, the Contract Price in the succeeding nine years also increases by \$50/acre-foot, as shown in the last column labeled "Adjusted Contract Price." After year 21, the adjustment is applied to the Contract Price shown in the column labeled "Contract Price in Years 21-30."

In this example, it is also assumed that the average price paid by SDCWA to IID for Conserved Water in years 26-30 of the Contract is equal to \$290/acre-foot. Thus, the average price is \$40/acre-foot more than the average price paid by SDCWA to IID for Conserved water in years 16-25. As a result, the adjusted Contract Price for Exchange Water is calculated as follows:

$$\text{Adjusted Contract Price} = \text{Contract Price} + \text{Adjustment}_{16-25} + \text{Adjustment}_{26-30}$$

where,

$\text{Adjustment}_{16-25}$  = The adjustment in years 16 - 25 in dollars/acre-foot

Adjustment<sub>26-30</sub> = The adjustment in years 26 -30 in dollars acre-foot  
Contract Price = Contract Price for Exchange Water defined in the Contract

In this example, in years 26-30, the Contract Price for Exchange Water, after adjustment would be equal to the Contract Price plus \$10/acre-foot.

Adjusted Contract Price = Contract Price + \$50/af + (-\$40/af) = Contract Price + \$10/af

The Contract Price for years 26-30 is shown in the column "Adjusted Contract Price"

### Scenario 3: Price Adjustment in Year 16

Table 3 shows what would happen if the average price that SDCWA pays IID for Conserved Water in years 16-25 is equal to \$250/acre-foot and the average price SDCWA pays IID in years 6-15 is equal to \$300/acre-foot. In this case, the Contract Price for Exchange Water would increase in year 2019 (year 16) by \$50 per acre-foot. As shown in the example, the price in 2019 increases from \$124.31/acre-foot to \$174.31/acre-foot. Further, the Contract Price in the succeeding nine years also increases by \$50/acre-foot, as shown in the last column labeled "Adjusted Contract Price." After year 21, the adjustment is applied to the Contract Price shown in the column labeled "Contract Price in Years 21-30." In this example it is assumed that no further Price Redetermination occurs. Therefore, the \$50/acre-foot adjustment is carried through the end of the Contract, as shown in the column labeled "Adjusted Contract Price."

Exhibit 2 Table 1

Contract Price Adjustment for Change in Price of Water

(\$50 AF Decrease in Conserved Water Price Year 11 and \$40 AF Increase in Conserved Water Price Year 21)

Contract Prices

Year	Contract Year	Contract Years 1 - 20	Contract Years 21 - 30	Adjusted Contract Price
1998		\$90.00	\$80.00	\$90.00
1999		\$91.40	\$81.15	\$91.40
2000		\$92.81	\$82.32	\$92.81
2001		\$94.25	\$83.51	\$94.25
2002		\$95.71	\$84.71	\$95.71
2003		\$97.19	\$85.93	\$97.19
2004	1	\$98.70	\$87.17	\$98.70
2005	2	\$100.23	\$88.42	\$100.23
2006	3	\$101.78	\$89.69	\$101.78
2007	4	\$103.36	\$90.99	\$103.36
2008	5	\$104.96	\$92.30	\$104.96
2009	6	\$106.59	\$93.62	\$106.59
2010	7	\$108.24	\$94.97	\$108.24
2011	8	\$109.92	\$96.34	\$109.92
2012	9	\$111.63	\$97.73	\$111.63
2013	10	\$113.36	\$99.14	\$113.36
2014	11	\$115.11	\$100.56	\$165.11
2015	12	\$116.90	\$102.01	\$166.90
2016	13	\$118.71	\$103.48	\$168.71
2017	14	\$120.55	\$104.97	\$170.55
2018	15	\$122.42	\$106.48	\$172.42
2019	16	\$124.31	\$108.01	\$174.31
2020	17	\$126.24	\$109.57	\$176.24
2021	18	\$128.20	\$111.15	\$178.20
2022	19	\$130.18	\$112.75	\$180.18
2023	20	\$132.20	\$114.37	\$182.20
2024	21		\$116.02	\$126.02
2025	22		\$117.69	\$127.69
2026	23		\$119.38	\$129.38
2027	24		\$121.10	\$131.10
2028	25		\$122.85	\$132.85
2029	26		\$124.62	\$134.62
2030	27		\$126.41	\$136.41
2031	28		\$128.23	\$138.23
2032	29		\$130.08	\$140.08
2033	30		\$131.95	\$141.95

Exhibit 2 Table 2

Contract Price Adjustment for Change in Price of Water  
 (\$50/AF Decrease in Conserved Water Price Year 16 and \$40/AF Increase in Conserved Water Price Year 26)

## Contract Prices

Year	Contract Year	Contract Years 1 - 20	Contract Years 21 - 30	Adjusted Contract Price
1998		\$90.00	\$80.00	\$90.00
1999		\$91.40	\$81.15	\$91.40
2000		\$92.81	\$82.32	\$92.81
2001		\$94.25	\$83.51	\$94.25
2002		\$95.71	\$84.71	\$95.71
2003		\$97.19	\$85.93	\$97.19
2004	1	\$98.70	\$87.17	\$98.70
2005	2	\$100.23	\$88.42	\$100.23
2006	3	\$101.78	\$89.69	\$101.78
2007	4	\$103.36	\$90.99	\$103.36
2008	5	\$104.96	\$92.30	\$104.96
2009	6	\$106.59	\$93.62	\$106.59
2010	7	\$108.24	\$94.97	\$108.24
2011	8	\$109.92	\$96.34	\$109.92
2012	9	\$111.63	\$97.73	\$111.63
2013	10	\$113.36	\$99.14	\$113.36
2014	11	\$115.11	\$100.56	\$115.11
2015	12	\$116.90	\$102.01	\$116.90
2016	13	\$118.71	\$103.48	\$118.71
2017	14	\$120.55	\$104.97	\$120.55
2018	15	\$122.42	\$106.48	\$122.42
2019	16	\$124.31	\$108.01	\$174.31
2020	17	\$126.24	\$109.57	\$176.24
2021	18	\$128.20	\$111.15	\$178.20
2022	19	\$130.18	\$112.75	\$180.18
2023	20	\$132.20	\$114.37	\$182.20
2024	21		\$116.02	\$166.02
2025	22		\$117.69	\$167.69
2026	23		\$119.38	\$169.38
2027	24		\$121.10	\$171.10
2028	25		\$122.85	\$172.85
2029	26		\$124.62	\$134.62
2030	27		\$126.41	\$136.41
2031	28		\$128.23	\$138.23
2032	29		\$130.08	\$140.08
2033	30		\$131.95	\$141.95



Exhibit 2 Table 3  
 Contract Price Adjustment for Change in Price of Water  
 (\$50 AF Decrease in Conserved Water Price Year 16)

Year	Contract Year	Contract Prices		Adjusted Contract Price
		Contract Years 1 - 20	Contract Years 21 - 30	
1998		\$90.00	\$80.00	\$90.00
1999		\$91.40	\$81.15	\$91.40
2000		\$92.81	\$82.32	\$92.81
2001		\$94.25	\$83.51	\$94.25
2002		\$95.71	\$84.71	\$95.71
2003		\$97.19	\$85.93	\$97.19
2004	1	\$98.70	\$87.17	\$98.70
2005	2	\$100.23	\$88.42	\$100.23
2006	3	\$101.78	\$89.69	\$101.78
2007	4	\$103.36	\$90.99	\$103.36
2008	5	\$104.96	\$92.30	\$104.96
2009	6	\$106.59	\$93.62	\$106.59
2010	7	\$108.24	\$94.97	\$108.24
2011	8	\$109.92	\$96.34	\$109.92
2012	9	\$111.63	\$97.73	\$111.63
2013	10	\$113.36	\$99.14	\$113.36
2014	11	\$115.11	\$100.56	\$115.11
2015	12	\$116.90	\$102.01	\$116.90
2016	13	\$118.71	\$103.48	\$118.71
2017	14	\$120.55	\$104.97	\$120.55
2018	15	\$122.42	\$106.48	\$122.42
2019	16	\$124.31	\$108.01	\$174.31
2020	17	\$126.24	\$109.57	\$176.24
2021	18	\$128.20	\$111.15	\$178.20
2022	19	\$130.18	\$112.75	\$180.18
2023	20	\$132.20	\$114.37	\$182.20
2024	21		\$116.02	\$166.02
2025	22		\$117.69	\$167.69
2026	23		\$119.38	\$169.38
2027	24		\$121.10	\$171.10
2028	25		\$122.85	\$172.85
2029	26		\$124.62	\$174.62
2030	27		\$126.41	\$176.41
2031	28		\$128.23	\$178.23
2032	29		\$130.08	\$180.08
2033	30		\$131.95	\$181.95

### Exhibit 3 - Paragraph 5.4 Cost Adjustment

Paragraph 5.4 provides for an adjustment in the Contract Price to reflect changes in Metropolitan's cost of deliveries due to catastrophes or material changes in governmental regulations. The adjustment provides that the Exchange Water will bear a proportionate share of increases in costs resulting from such events. Such cost adjustments are permitted after the 20<sup>th</sup> Contract Year. This exhibit demonstrates how such cost adjustments are calculated. The following examples show how costs that are capitalized would be recovered in the Contract Price adjustment, as well as those costs that are expensed and recovered in a single year.

#### **Example 1 - Capitalized Cost and Expense**

In this example it is assumed that a catastrophic event occurred in Contract year 25, requiring the rebuilding of the pipelines providing water to the Metropolitan Point of Delivery at a cost of \$220 million. Of this total, \$20 million is expensed in the 25<sup>th</sup> year and \$200 million is capitalized. The \$200 million is assumed to be amortized over a thirty year period. Given an assumed interest rate of 6%, the amortized cost of this expenditure is \$14,529,782. Further, it is assumed that the quantity of Exchange Water is equal to 200,000 acre-feet per year, and that Metropolitan total deliveries, including Exchange Water, in the 25<sup>th</sup> Contract year are equal to 2,200,000.

The formula for calculating the adjustment is:

$$\text{Adjustment} = \text{Amortized Cost} / \text{MWD Deliveries}_t + \text{Expense}_t / \text{Deliveries}_t$$

where,

Adjustment = the adjustment to the Contract Price in dollars/acre-foot

Amortized Cost = amortized capital cost

MWD Deliveries<sub>t</sub> = the quantity of all water, including Exchange Water,  
delivered by Metropolitan in year t

Expense<sub>t</sub> = costs expensed in year t

Therefore, the adjustment in Contract Year 25 is equal to:

$$\$15.69/\text{acre-foot} = \$14,529,782 / 2,200,000 \text{ af} + \$20,000,000 / 2,200,000 \text{ af}$$

In the following five Contract Years, the adjustment would be equal to \$6.60/acre-foot, assuming Metropolitan deliveries remain at 2,200,000 acre-feet per year.

## Example 2 - Expense

In this example it is assumed that a new regulation is implemented, causing Metropolitan to incur an annual expense of \$20 million per year to deliver water in the system. This expense is not caused by events on the State Water Project, but is applied to all water delivered by Metropolitan. Further it is assumed that the first year of that expense is in Contract year 25. This new operating expense, which is the result of a material change in government regulations is accounted as an expense in the Metropolitan system. Further, it is assumed that the quantity of Exchange Water is equal to 200,000 acre-feet per year, and that Metropolitan total deliveries, including Exchange Water, in the 25<sup>th</sup> Contract year are equal to 2,200,000.

The formula for calculating the adjustment is:

$$\text{Adjustment} = \text{Expense}_t / \text{MWD Deliveries}_t$$

where,

Adjustment	= the adjustment to the Contract Price in dollars/acre-foot
Expense	= annual change in operating cost for year t
MWD Deliveries <sub>t</sub>	= the quantity of all water delivered, including Exchange Water, by Metropolitan in year t

Therefore, the adjustment in Contract Year 25 is equal to:

$$\$9.09/\text{acre-foot} = \$20,000,000/2,200,000 \text{ acre-feet}$$

## Cumulative Impact

An adjustment under Paragraph 5.4 is added to the Contract Price in the year that the adjustment is applicable.