

**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) **OSA.** 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 (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.

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>	

