

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

THIS AGREEMENT FOR ACQUISITION OF CONSERVED WATER ("**Agreement**") is made and entered into by IMPERIAL IRRIGATION DISTRICT, a California irrigation district ("**IID**"), and COACHELLA VALLEY WATER DISTRICT, a California county water district ("**CVWD**"), as of December _____, 2002. IID and CVWD are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

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

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

C. This Agreement is one of several agreements executed and delivered as of the date hereof by the Parties and by other agencies, including Metropolitan Water District ("MWD"), pursuant to the Quantification Settlement Agreement among the Parties and MWD dated as of December ____, 2002 (the "**QSA**"), which settles a variety of long-standing disputes regarding the priority, use, and transfer of Colorado River water and establishes the terms for the further distribution of Colorado River water among these entities for up to seventy-five years based upon the water budgets set forth therein.

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

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

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

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

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

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

A G R E E M E N T:

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

ARTICLE 1

DEFINITIONS AND RULES OF CONSTRUCTION

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

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

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

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

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

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

ARTICLE 2

BASIC PROVISION

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

- (a) IID will compromise certain positions and cause Water Conservation Efforts to be undertaken (by IID or by contracts with Landowners) to create Conserved Water for acquisition by CVWD and reduce the Consumptive Use of Colorado River water by IID.
- (b) CVWD will compromise certain positions, acquire Conserved Water from the IID use such Conserved Water for CVWD Improvement District No. 1 (subject to Section 3.6 below) and pay IID for the Conserved Water available for acquisition.
- (c) IID and CVWD agree that at the termination of this Agreement, neither the terms of the Agreement nor the conduct of the Parties in performance of this Agreement confers upon the other any legal or equitable rights that would not have existed in the absence of this Agreement and the Parties' performance thereunder.

ARTICLE 3

ACQUISITION QUANTITY

3.1 First Fifty Thousand Acquisition.

Subject to Sections 3.3 and 3.4 below, the quantity of Conserved water acquired by CVWD during the Calendar Year 2008 shall be four thousand (4,000) AF and shall ramp up by four thousand (4,000) AFY each year in Calendar Years 2009, 2010, 2011, and 2017 and shall ramp up by five thousand (5,000) AFY each year in Calendar Years 2012, 2013, 2014, 2015, and 2016, and shall ramp up in Calendar Year 2018 by eight thousand (8,000) AFY, until fifty-three thousand (53,000) AFY is reached and remain at fifty-three thousand (53,000) AFY until Calendar Year 2048 when it will be reduced to fifty thousand (50,000) AFY (the "**First Fifty Thousand Acquisition**"). Thereafter, subject to the Occasional or Permanent Reduction provisions of Sections 3.5 and 3.7 below, the First Fifty Thousand Acquisition shall remain at fifty thousand (50,000) AFY.

3.2 Second Fifty Thousand Acquisition.

Commencing in Calendar Year 2018 and subject to Section 3.4 below, the quantity of Conserved Water acquired by CVWD shall be ten thousand (10,000) AF and shall ramp-up by five thousand (5,000) AFY each year thereafter until the additional acquisition of fifty thousand (50,000) AFY is reached (the "**Second Fifty Thousand Acquisition**"). Thereafter, subject to the Occasional or Permanent Reduction provisions of Sections 3.5 and 3.7 below, the aggregate First and Second Fifty Thousand Acquisitions shall total and remain at one hundred and three thousand (103,000) AFY until Calendar Year 2048. A schedule illustrating the First Fifty Thousand and Second Fifty Thousand Acquisitions, without applications of Sections 3.3, 3.4, 3.5 and 3.7 below is attached hereto as Exhibit A.

3.3 Postponement of First Fifty Thousand Acquisitions. CVWD may from time to time postpone the first year of the First Fifty Thousand Acquisition ramp-up to any Calendar Year between Calendar Year 2008 and Calendar Year 2016 by providing written notice to IID at least two (2) years prior to the January 1 of the year which would otherwise be the first year. More than one postponement is permissible, but no notice may be given after December 31, 2013. The notice shall identify the year other than 2008 that will be the new first year of the First Fifty Thousand Acquisition (the "**Postponement Notice**"). The Calendar Years specified in Sections 3.1 and 3.2 above shall be adjusted accordingly.

3.4 Adjustment to Ramp-Up of First and Second Fifty Thousand Acquisitions. After the First Fifty Thousand Acquisition has commenced, and provided that written notice is provided to IID at least one year prior to the January 1 for the Calendar Year to be adjusted, CVWD may reduce an annual ramp-up step from the amount scheduled to an amount either one-thousand (1,000) AFY or two thousand (2,000) AFY less than that amount. The notice shall specify the amount and number of years for the adjustment (the "**Adjustment Notice**"). CVWD

may provide an Adjustment Notice more than one time, but only one Adjustment Notice is permitted for any given year.

3.5 Occasional Reductions to First or Second Fifty Thousand Acquisitions.

CVWD shall have a limited right to occasionally reduce the amount of Conserved Water acquired in the First or Second Fifty Thousand Acquisitions from IID. This limited right is subject to the following terms and conditions.

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

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

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

(4) **Frequency.** CVWD may not exercise its limited right to an occasional reduction in more than (3) three years in any rolling ten (10)-year period nor more than three (3) years in succession.

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

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

The relief of payment provisions of this Section 3.6 take precedence over any provisions of Article 6 or 7.

3.7 Permanent Reduction of Acquired Water. CVWD may permanently waive its rights to acquire some of the First and Second Fifty Thousand Acquisitions and its corresponding obligation to pay by providing written notice to IID at least two years prior to the January 1 of the Calendar Year in which the unreduced volume would otherwise be obtained, but in no event later than December 31, 2023, specifying the permanent reduction volume (the "**Permanent Reduction Notice**"). The permanent reduction volume below the aggregate acquisition volume of one hundred thousand (103,000) AFY must be in a volume comprised of one or more increments of five thousand (5,000) AFY. The permanent reduction volume will reduce the Second Fifty Thousand Acquisition and thereafter the First Fifty Thousand Acquisition; and, after the Permanent Reduction Notice is provided, the First Fifty Thousand Acquisition and the Second Fifty Thousand Acquisition volumes are deemed appropriately adjusted for purposes of this Agreement.

ARTICLE 4

TERM

4.1 Term.

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

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

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

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

ARTICLE 5

PRICE

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

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

ARTICLE 6

PAYMENT

6.1 Schedule for Payments.

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

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

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

Imperial Irrigation District
01883-80154
Reference, if any

Bank of America
San Francisco
121000358

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

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

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

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

6.6 FINANCING TERMS TO BE DETERMINED

ARTICLE 7

ACQUISITION MECHANISM

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

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

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

ARTICLE 8

PRIORITY 3, 6 AND 7

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

ARTICLE 9

CONDITIONS TO CVWD'S AND IID'S OBLIGATIONS

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

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

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

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

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

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

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

ARTICLE 10

COMPLIANCE WITH ENVIRONMENTAL LAWS

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

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

10.3 Payment of Environmental Review Process and Environmental Mitigation Costs. The terms and conditions governing the Parties' respective responsibilities for the payment of Environmental Review Process and Environmental Mitigation Costs associated with

the activities and transactions contemplated by this Agreement are set forth in the Environmental Cost Sharing Agreement.

ARTICLE 11

ALLOCATION OF PRIORITY 3 SHORTFALL

11.1 Terms of Allocation. If, for any reason, there is less than three million eight hundred fifty thousand (3,850,000) AF available in any given year to Priorities 1, 2 and 3, CVWD's obligation to acquire and pay for Conserved Water and IID's obligation to make Conserved Water available for acquisition shall continue. Notwithstanding the above, if less than three million four hundred thirty thousand (3,430,000) AFY in the aggregate is available under Priority 3 to IID and CVWD, then any Shortfall ("**Shortfall**"), defined as the difference between three million four hundred thirty thousand (3,430,000) AFY and the aggregate AFY available to IID and CVWD under Priority 3, shall be allocated and shared as set forth in subsections (1)-(5) below; provided that under no circumstances shall the Consumptive Use available to IID remaining under Priority 3 be reduced to a volume less than the volume of IID's present-perfected right.

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

(2) **Allocation of Shortfall by Consent.** IID and CVWD shall meet as soon as reasonably practicable, but not later than ten (10) days after each is informed that a Shortfall will or reasonably might occur in order to negotiate a consensual sharing of the Shortfall. If no such consensual resolution is obtained within fifteen (15) days of such meeting, then either Party may commence litigation to resolve the allocation of the Shortfall.

(3) **Allocation of Shortfall by Litigation.** Either IID or CVWD may commence a lawsuit before any appropriate court to resolve the allocation of the Shortfall. Litigation shall not occur in any forum other than a court. The matter shall be tried to a judge, not a jury. In such litigation, both IID and CVWD may assert any right, claim, power or defense related to water rights including priority, purpose or method of use; provided, however, that (i) no judgment shall reduce the Consumptive Use right of IID under Priority 3 to less than the volume associated with IID's present perfected right; (ii) any judgment will be limited only to the allocation of the Shortfall; and (iii) this Agreement, the Implementation Agreement, the Quantification Settlement Agreement (except Section 4.14 thereof), the IID/MWD Acquisition Agreement, the CVWD/MWD Acquisition Agreement, the 1998 IID/SDCWA Transfer Agreement, and the SWRCB and BOR Approvals of any of these agreements shall be inadmissible as evidence and shall not be considered by the court in ruling on the allocation of the Shortfall.

(4) **Provisional Allocation of Shortfall During the Litigation.** During the pendency of any litigation and until a final, nonappealable judgment is entered, IID and CVWD

agree to allocate any Shortfall on the basis of seventy-five percent (75%) to IID and twenty-five percent (25%) to CVWD.

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

ARTICLE 12

FORCE MAJEURE

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

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

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

ARTICLE 13

EMINENT DOMAIN/TAKINGS

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

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

(1) CVWD shall be entitled to:

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

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

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

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

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

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

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

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

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

ARTICLE 14

MISCELLANEOUS

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

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

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

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

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

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

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

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

ARTICLE 15

DEFAULT AND DISPUTES

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

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

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

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

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

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

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

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

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

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

ARTICLE 16

REMEDIES

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

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

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

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

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

ARTICLE 17

RESOLUTION OF DISPUTES

Arbitration Disputes between the Parties described in Section 15.3 shall be resolved pursuant to the provisions of Sections 17.1 and 17.2 of this Article. All other disputes, including Events of Default, shall be resolved pursuant to the provisions of Section 17.1 and 17.3 of this Article.

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

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

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

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

17.3 Trial of Certain Disputes. Any dispute to be resolved pursuant to the provisions of this Section 17.3 shall be determined following trial by a Judge Pro Tempore from a Neutral County appointed by the Presiding Judge of the County in which a complaint is filed pursuant to the venue rules in the California Code of Civil Procedure. The proceeding shall be initiated when one Party sends a copy of the complaint intended to be filed with the Superior Court in the appropriate County. The General Managers and attorneys for the Parties shall meet within ten (10) Business Days of mailing, faxing or e-mail transmission of the proposed complaint to determine whether agreement can be reached on a particular retired Superior Court Judge to

preside over the trial. The complaining Party shall thereafter file the complaint in the appropriate County. The Parties agree that at the appropriate time they will stipulate to the appointment by the Presiding Judge of the Superior Court for that County of the retired judge agreed upon as the Judge Pro Tempore to preside over the case for all purposes. If the Parties cannot agree upon a retired judge, the venue, filing and the normal trial procedures for Superior Court cases shall apply; provided, however, that any judge assigned to the case shall be from a Neutral County. The Parties agree that the issues in the case shall be tried and determined by the Court as nonjury issues.

ARTICLE 18

REPRESENTATIONS AND WARRANTIES

18.1 IID's Representations and Warranties.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 19

GENERAL PROVISIONS

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

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

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

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

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

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

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

Addresses for purpose of giving notice are as follows:

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

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

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

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

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

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

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

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

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

AGREEMENT FOR ACQUISITION OF CONSERVED WATER

by and between

IMPERIAL IRRIGATION DISTRICT,

a California irrigation district ("IID"),

and

COACHELLA VALLEY WATER DISTRICT,

a California county water district

("CVWD")

Dated: _____, 2002