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January 14, 2008

Via Email (delores@water.ca.gov) and U.S. Mail

Delores Brown, Chief
Office of Environmental Compliance
California Department of Water Resources
901 "P" Street
Sacramento, CA 95814

Re: Semitropic Water Storage District Comments on DEIR for Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus), by DWR, dated October, 2007. (SCH#: 2003011118)

Dear Ms. Brown:

These comments are submitted on behalf of the Semitropic Water Storage District, a California water storage district, and its improvement districts (collectively, "Semitropic"),[1] in regard to the Draft Environmental Impact Report entitled "Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus)" (hereinafter, "Monterey Plus DEIR" or simply "DEIR"), dated October, 2007, prepared by the Department of Water Resources ("DWR").

Semitropic is a public agency that contracts, through the Kern County Water Agency ("KCWA"), for water supplies from the State Water Project ("SWP"). Semitropic also operates a water banking and exchange program referred to herein as the "Semitropic Water Bank" or "Program." The Semitropic Water Bank was initially approved to operate as a one million acre-feet ("MAF") banking program pursuant to an EIR prepared by Semitropic as lead agency, along with Metropolitan Water District of Southern California ("MWDSC") as responsible agency, and certified under CEQA in 1994 ("1994 EIR").[2] The 1994 EIR contemplated MWDSC's participation as a banking

[1] Buttonwillow Improvement District, Pond-Poso Improvement District and Semitropic Improvement District.

[2] In or about 2000, Semitropic prepared and certified a Final Supplemental EIR and, in or about 2002, prepared an addendum, which addressed the Program with greater than 1 MAF of capacity with the addition of a Stored Water Recovery Unit.

Semitropic Improvement District
Buttonwillow Improvement District Pond-Poso Improvement District

partner in the Program up to 1 MAF and, in 1995 before the Monterey Amendment, MWDSC contracted to potentially utilize up to the full 1 MAF under certain conditions.

Semitropic believes that the DEIR includes an exhaustive analysis of the environmental effects of the Monterey Plus project -- the Monterey Amendment and Settlement Agreement. The Monterey Plus DEIR was drafted with the advisory collaboration of DWR, the State Water Contractors, Planning and Conservation League, Citizens Planning Association of Santa Barbara, and Plumas County Flood Control and Water Conservation District. The analysis in the DEIR concludes, among other things, that:

- There have been no significant environmental effects resulting from implementation of the Monterey Amendment from 1996 to present.

- In the future, the environmental impacts from the Monterey Amendment in almost all resource categories are at less-than-significant levels. Those few areas where potentially significant impacts were identified assume a worst-case scenario and are unlikely to ever occur.

Semitropic supported implementation of the Monterey Amendment in 1996, supported the Monterey Plus project, and supports their continued implementation into the future. Semitropic commends the Department for having prepared this thorough and significant document.

That said, please find the following specific comments on a matter in the DEIR related to the Semitropic Water Bank that Semitropic feels may not be accurate or is in need of clarification, further explanation and/or revision in connection with preparation of the final EIR. Semitropic also hereby incorporates herein and makes a part of these comments the Kern Water Bank Authority's comments and the State Water Contractors' comments on the DEIR.

A. THE 1 MAF SEMITROPIC WATER STORAGE DISTRICT WATER BANKING PROGRAM, APPROVED AS SUCH BEFORE THE MONTEREY AMENDMENT, SHOULD BE PART OF THE BASELINE AND/OR THE NO PROJECT ALTERNATIVES

The DEIR states that the Semitropic Water Storage District developed an in-lieu water banking program in Kern County with a capacity of one million AF in the early 1990s. (DEIR, pp. 6-10, 6-55.) In this regard, the DEIR should also state that Semitropic, as lead agency, prepared (along with MWDSC as responsible agency) and certified an EIR and took other actions required by CEQA, including adoption of "Findings and Mitigation Monitoring Plan" with respect to the Semitropic Water Bank, in 1994 <u>before</u> the Monterey Amendment.[3]

[3] See SID Resolution No. 94-7 (enclosed).

The DEIR also states that, because Metropolitan Water District of Southern California received DWR's approval to store water in the Semitropic Water Bank before the Monterey Amendment, the Semitropic Water Bank is included in the baseline. (DEIR, pp. 5-4 (Table 5-1), 6-55.) The DEIR states that the baseline conditions that existed in 1995 were adjusted to include events expected to occur over time unrelated to the Monterey Amendment or the Settlement Agreement (DEIR, p. 5-2). The DEIR should clarify whether the baseline includes the Semitropic Water Bank operating as a 1 MAF program. There are several reasons why that would be appropriate. First, the full 1 MAF Semitropic Water Bank program was approved based on the 1994 EIR that evaluated the entire program's potential environmental effects with MWDSC's participation up to the full 1 MAF, before the Monterey Amendment. Second, DWR gave permission to MWDSC to store SWP water in the Semitropic Water Bank, before the Monterey Amendment (DEIR, p. 6-55). Third, the pre-Monterey Amendment SWP contracts did not prohibit storage of SWP water outside contractor's service areas, and DWR approved such storage by MWDSC on a policy basis (pursuant to Article 15(a)[4]), before the Monterey Amendment (DEIR, p. 6-10; Appendix E, p. 48). Finally, the (enclosed) banking agreement between Semitropic and MWDSC, entered into on December 12, 1994, before the Monterey Amendment, and incorporated into the August 21, 1995, change in point of delivery agreement between DWR, KCWA and MWDSC, before the Monterey Amendment, provided for MWDSC's use of up to the full 1 MAF program capabilities under certain terms and conditions. Inclusion of the Semitropic Water Bank operating as a 1 MAF program as a part of the baseline is potentially significant because a lesser assumption could: serve to create an artificially low baseline; thereby potentially overstating (and thus identifying illusory) impacts attributable to the Monterey Amendment provision that provides contractual assurance for storage outside contractors' service areas (Article 56); and thereby requiring greater mitigation.[5] To our knowledge, CEQA does not require project mitigation for baseline impacts.

In addition and/or alternatively, the no project alternatives should assume and recognize that operation of the Semitropic Water Bank as a 1 MAF program if the project were not approved. CEQA requires that the "no-project" analysis include discussion of "what would be reasonably expected to occur in the foreseeable future if the project were not approved...."[6] DWR gave permission to MWDSC to store SWP water outside its service area in the Semitropic Water Bank based on pre-Monterey Amendment contracts

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[4] See enclosed Point of Delivery Agreement between DWR, MWDSC and KCWA, dated August 21, 1995, and Agreement between MWDSC and Semitropic WD and its Improvement Districts for a Metropolitan-Semitropic Water Banking and Exchange Program, dated December 12, 1994.

[5] Conditions at the time of the NOP normally constitute the baseline. (CEQA Guidelines, § 15125(a).) The NOP was issued in 2003, by which time MWDSC and various other banking partners had contracted to use the full 1 MAF capacity of the Semitropic Water Bank. In addition, as provided in Fairview Neighbors v. County of Ventura (1999) 70 Cal.App.4th 238 (where maximum level of operations authorized by prior permit, subjected to prior CEQA review, was treated as the appropriate baseline for evaluating expansion of project), the DEIR baseline could or should include Semitropic Water Bank operating at its full 1 MAF capacity.

[6] CEQA Guidelines § 15126.6(e)(2). See also, CEQA Guidelines § 15126.6(e)(3)(b) (requiring that no-project alternative address "predictable actions" by others and identify "practical result" if project not approved).

that did not prohibit outside service area storage but, rather, allowed for that to occur with DWR's permission pursuant to Article 15(a). Even though the practice of temporarily storing SWP water outside contractors' service areas may not have been common or approved on a case-by-case basis (DEIR § 6.2.5), there is nothing in the DEIR indicating DWR has ever refused any similar requests or that it would likely do so in the future especially after providing permission to MWDSC for the Monterey Amendment. Rather, the DEIR strongly suggests that due to a number of factors that practice was likely to continue in the foreseeable future after implementation of the Monterey Amendment, including increasing water demands, fewer opportunities to store SWP water within contractors' service areas and concerns about delivery reliability in dry years (e.g., DEIR § 6.2.5). We submit that the DEIR should assume that, after implementation the Monterey Amendment in 1996, DWR would have approved other urban contractors' requests to store SWP water in the Semitropic Water Bank, collectively up to 1 MAF, as it had done previously for MWDSC, if the project was not approved.

Once again, Semitropic supports the continued implementation of the Monterey Amendment and Monterey Plus project and appreciates DWR's efforts in preparation of the DEIR. Semitropic also appreciates the opportunity to comment and intends its comments to be constructive and helpful in preparing the final EIR for project. If you have any questions or comments, please do not hesitate to contact the undersigned.

Sincerely,

Wilmar Boschman
General Manager

Enclosures

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

POINT OF DELIVERY AGREEMENT AMONG DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND KERN COUNTY WATER AGENCY

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

POINT OF DELIVERY AGREEMENT AMONG DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND KERN COUNTY WATER AGENCY

THIS AGREEMENT is made this 21 day of August, 1995, pursuant to the provisions of the California Water Resources Development Bond Act, and other applicable laws of the State of California, among the Department of Water Resources, herein referred to as the "DEPARTMENT," the "Kern County Water Agency" herein referred to as the "AGENCY," a political subdivision of the State of California created by an Act of the California State Legislature (Statute 1961 Ch 1003 or as amended), and the "Metropolitan Water District of Southern California," herein referred to as "METROPOLITAN".

RECITALS

A. METROPOLITAN has entered into an agreement with the Semitropic Water Storage District, herein referred to as "Semitropic," a member unit of the AGENCY, entitled "Agreement Between the Metropolitan Water District of Southern California and Semitropic Water Storage District and its Improvement Districts for a Metropolitan-Semitropic Water Banking and

Exchange Program," dated December 12, 1994 and attached hereto as Exhibit A. Said agreement provides for terms and conditions between METROPOLITAN and Semitropic for storage and recovery of METROPOLITAN's water in the ground water basin within Semitropic, herein referred to as the "MWD/ST Banking Program Agreement."

B. The DEPARTMENT, AGENCY and Semitropic have entered into an agreement entitled "Agreement Among Department of Water Resources, State of California, Kern County Water Agency and Semitropic Water Storage District for Introduction of Local Water into the California Aqueduct" dated May 2, 1995 and Amendment No. 1 both attached hereto as Exhibit B. Said agreement, herein referred to as the "Semitropic Turn-in Agreement" provides for the terms and conditions between the DEPARTMENT, AGENCY and Semitropic for the introduction of Local Water into the California Aqueduct. Under certain circumstances, such Local Water may be used to return previously stored water to METROPOLITAN.

C. Pursuant to Article 15(a) of METROPOLITAN's water supply contract with the DEPARTMENT, the DEPARTMENT finds that the delivery and temporary storage of water outside METROPOLITAN's service area under the MWD/ST Banking Program Agreement and this Agreement will not materially impair METROPOLITAN's capacity to make payments to the DEPARTMENT as provided in its water supply contract with the DEPARTMENT.

AGREEMENT

A portion of METROPOLITAN's SWP entitlement and other water supplies may be delivered for storage and later recovery within Semitropic's ground water basin in accordance with the MWD/ST Banking Program Agreement, the Semitropic Turn-in Agreement, and under the following terms and conditions:

1. PURPOSE

The purpose of this Agreement is to set forth provisions governing the delivery of Metropolitan's water for storage in the ground water basin underlying Semitropic and for the return of such water from either Semitropic's turnout in Reach 10A and/or by exchange of METROPOLITAN's stored water for a like amount of Semitropic's SWP entitlement.

2. TERM

Provisions for delivery of METROPOLITAN's water into storage under this Agreement shall terminate on November 4, 2035. Provisions for the return of METROPOLITAN's stored water shall terminate on November 4, 2035 or on the date when all stored water is returned to METROPOLITAN whichever date occurs later. In the event that METROPOLITAN and the AGENCY do not execute by December 31, 1996, amendments to their long-term SWP water supply contracts addressing the issues covered by the "Monterey Agreement-Statement of Principles," the provisions of this Agreement allowing METROPOLITAN to store water in the AGENCY's service area shall be suspended until such time as such amendments are executed or the suspended provisions are re-negotiated. Notwithstanding the previous provisions of

this paragraph, this Agreement shall terminate at such time as the METROPOLITAN/Semitropic Banking Program is terminated.

3. PRIOR DELIVERIES TO STORAGE

a. 1993 Delivery: By agreement dated April 21, 1993 between the DEPARTMENT, the AGENCY, and METROPOLITAN, 45,377.2 acre-feet of METROPOLITAN's 1992 SWP carryover entitlement was placed in storage within Semitropic in anticipation of executing a long-term MWD/ST Banking Program Agreement and this long-term Point of Delivery Agreement. It is agreed that upon execution of this contract, the terms and conditions of this Agreement shall govern the water stored in 1993, and the April 21, 1993 agreement shall terminate.

b. 1995 Delivery: An amount of METROPOLITAN's 1995 SWP entitlement water, totaling 50,000 acre-feet, has been scheduled for delivery to Semitropic in 1995. It is agreed that the terms and conditions of this Agreement shall govern that 1995 scheduled delivery.

4. USE OF STORED WATER

Water delivered by the DEPARTMENT on behalf of METROPOLITAN under this Agreement will not be sold to Semitropic but will be temporarily stored for later delivery to METROPOLITAN's service area. The specific provisions for storage and recovery of METROPOLITAN's water within Semitropic is governed by the MWD/ST Banking Program Agreement. As provided in Article 4 of said agreement, 90 percent of METROPOLITAN's water delivered to Semitropic for storage will be returned to METROPOLITAN for use

in its service area in future years, unless it is determined that actual losses are different than the assumed 10 percent.

5. USE OF CALIFORNIA AQUEDUCT CAPACITY FOR STORED/RETURN WATER

The DEPARTMENT will deliver METROPOLITAN's SWP entitlement and other water supplies under this Agreement in accordance with a schedule which has been reviewed and approved by the DEPARTMENT at times consistent with the overall operations of the SWP. Although any available California Aqueduct capacity may be utilized, deliveries under this Agreement may be scheduled when the sum of deliveries under this Agreement plus approved SWP entitlement deliveries to METROPOLITAN do not exceed the quantities on which the proportionate use of facility factors and excess capacity paid for by METROPOLITAN are based pursuant to its Water Supply Contract with the DEPARTMENT. To the extent other available capacity is utilized, the DEPARTMENT shall not be obligated to convey such water for storage or return at times when such delivery would adversely impact SWP operations or facilities, other SWP contractors' water deliveries or costs, or delivery of SWP entitlement or other water supplies to the AGENCY. In the event there is a conflict between schedules for delivering SWP entitlement to other SWP Contractors or water supplies to the Agency's service area and delivering METROPOLITAN's SWP entitlement or other water supplies under this Agreement, SWP entitlement and water deliveries to other SWP contractors and water supplies to the AGENCY shall receive higher priority. METROPOLITAN shall be responsible for any adverse impacts that may result from deliveries under this

agreement as determined by the Department. To the extent METROPOLITAN's SWP demands increase as a result of this Agreement, which increased demands are permitted under the amendments that implement the Monterey Principles, such increased demands shall not be considered as an adverse impact.

6. DELIVERY SCHEDULES FOR STORED WATER

a. Department Approval of Delivery Schedules: In coordination with and with the approval of the AGENCY, METROPOLITAN shall be responsible for scheduling delivery of the water with the DEPARTMENT. All water delivery schedules and revisions shall be in accordance with Article 12 of METROPOLITAN's Water Supply Contract with the DEPARTMENT.

b. Agency Approval of Delivery Schedules: As part of coordinating delivery schedules with the AGENCY, METROPOLITAN shall submit a delivery schedule to the AGENCY and Semitropic for review and approval. The AGENCY and Semitropic shall review the proposed schedule with METROPOLITAN, and after consultation with Semitropic, the AGENCY agrees to inform METROPOLITAN of its decision to either approve, propose modifications, or withhold approval as promptly as possible. The AGENCY agrees that it shall not arbitrarily withhold approval or propose modifications. The AGENCY may withhold approval or propose modifications to the delivery schedule if the proposed deliveries would interfere with the AGENCY's water management activities including its finances, water supply, or operations. The AGENCY may deny approval of, or propose modification to

METROPOLITAN's deliveries under this Agreement if, on the basis of a with and without analysis, the AGENCY determines that such deliveries would adversely impact the AGENCY's water management activities, finances, water supply or operations, and METROPOLITAN or Semitropic do not agree to mitigate for such impacts. The base case (without analysis) shall be those conditions estimated to occur in the absence of the MWD/ST Banking Program. To the extent METROPOLITAN's SWP demands increase as a result of this Agreement, which increased demands are permitted under the amendments that implement the Monterey Principles, such increased demands shall not be considered as an adverse impact. Upon receipt of the AGENCY's approval, METROPOLITAN shall submit the delivery schedule to the DEPARTMENT.

c. Increased Capacity: Historically, Semitropic's annual capacity to deliver surface water has been approximately 220,000 acre-feet per year. Under the MWD/ST Banking Program Agreement, Semitropic proposes to increase the district's delivery capacity above the 220,000 acre-feet per year utilizing revenues provided by METROPOLITAN, herein referred to as "Increased Capacity." Notwithstanding provisions of paragraph 6(b), the AGENCY agrees that it shall not withhold approval of the delivery schedule or propose modifications for the sole purpose of gaining access to said Increased Capacity for local purposes.

7. ENTITLEMENT ALLOCATION

Water returned to METROPOLITAN under this agreement, shall not be considered by the DEPARTMENT in the determination of approved annual entitlement deliveries or allocation of other SWP water to METROPOLITAN under Article 18 of METROPOLITAN's contract with the State for water service.

8. DELIVERY SCHEDULES FOR RETURN WATER

METROPOLITAN and Semitropic shall, as soon as practicable, submit a schedule to the AGENCY specifying the quantity of METROPOLITAN's previously stored water to be returned by exchange of Semitropic's allocation of SWP entitlement and the quantity of such stored water that will be returned by direct pumpback into the California Aqueduct. Said schedule shall also specify the amount of and date when such return water was previously stored. The AGENCY may propose modifications to the proposed schedule for the return of METROPOLITAN's previously stored water if, on the basis of a with and without analysis, the AGENCY determines that such scheduled deliveries will adversely impact the AGENCY's finances, water supply or operations, and METROPOLITAN or Semitropic do not agree to mitigate for such impacts. The base case (without analysis) shall be those conditions estimated to occur in the absence of the MWD/ST Banking Program.

9. RETURN WATER DELIVERED INTO AQUEDUCT

Return water pumped from Semitropic's ground water basin and returned to METROPOLITAN shall meet the DEPARTMENT's water

quality standards in effect when water is returned and shall be in compliance with the Semitropic Turn-in Agreement.

10. STORED/RETURN WATER RECORDS

METROPOLITAN shall certify to the DEPARTMENT's SWP Analysis Office by January 31, of each year the following information for the previous calendar year:

a. The quantity of water delivered and stored under this Agreement.

b. The quantity of stored water that will be available for return to METROPOLITAN.

The DEPARTMENT will maintain records accounting for the delivery of METROPOLITAN's SWP and other water supplies for storage in Semitropic's ground water basin and return water delivered from Semitropic to METROPOLITAN.

11. CHARGES

a. Water delivered to storage: Charges to METROPOLITAN for power resources (including on-aqueduct, off-aqueduct and any other power), used for pumping water through Harvey O. Banks Delta Pumping Plant and Dos Amigos Pumping Plant for delivery into storage shall be calculated in the same manner as charges for power resources used for pumping entitlement water finally delivered to the Semitropic turnout in Reach 10A in the year such deliveries are made.

b. Water delivered from storage: The DEPARTMENT will deliver water returned from Semitropic to METROPOLITAN to a turnout in METROPOLITAN's service area. Charges to METROPOLITAN for power resources (including on-aqueduct, off-aqueduct and any

other power) used in the transportation of such water calculated from the Semitropic turnout at Reach 10A or from any other mutually agreed to point where water is returned to the Aqueduct for further delivery to a turnout designated by METROPOLITAN in METROPOLITAN's service area shall be calculated in the same manner as charges are calculated for entitlement water being moved through the same reaches. Charges shall be determined in accordance with the provisions of METROPOLITAN's Water Supply Contract with the DEPARTMENT for SWP entitlement deliveries applicable in the year the water is returned.

c. Additional Charges: In addition to the charges identified above, METROPOLITAN agrees to pay any additional identified increased non-power costs that the DEPARTMENT or other SWP contractors would otherwise incur as a result of the DEPARTMENT providing service under this Agreement and a one-time administrative fee of $2,000 to cover the DEPARTMENT's costs for the preparation and execution of this Agreement.

d. Monthly Fees: METROPOLITAN shall pay a monthly administration fee of $200 for any month water is scheduled for delivery to Semitropic's ground water basin or return water is scheduled for delivery to METROPOLITAN.

e. Payment: Upon execution of this agreement by METROPOLITAN, the DEPARTMENT will bill METROPOLITAN the administrative fee. Payment will be due 60 days after date of billing. Payment terms for all other charges due under this Agreement

shall be in accordance with METROPOLITAN's Water Supply Contract with the DEPARTMENT.

12. APPROVALS

The delivery of water under this Agreement shall be contingent on and subject to any necessary approvals and shall be governed by the terms and conditions of such approvals and any other applicable regulations. METROPOLITAN shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order. METROPOLITAN shall furnish to the DEPARTMENT copies of all approvals acquired for the delivery and storage of water under this Agreement.

13. LIABILITY

a. The DEPARTMENT shall provide water delivery service only and assumes no liability beyond the point of delivery from the California Aqueduct to storage in Semitropic's ground water basin, or when water is returned to METROPOLITAN from Semitropic's ground water basin to a turn-in facility on the California Aqueduct.

b. In the event of claim of liability against the DEPARTMENT or the AGENCY or their officers or their employees, individually or severally, arises as a result of this Agreement or other related agreements, METROPOLITAN shall defend, indemnify, and hold the AGENCY, the DEPARTMENT, and any of their officers or employees harmless from any such claim.

14. NO MODIFICATION OF WATER SUPPLY CONTRACTS

This Agreement shall not be interpreted to modify the terms or conditions of either the amended Water Supply Contracts between the DEPARTMENT and the AGENCY dated November 15, 1963, the DEPARTMENT and METROPOLITAN dated November 4, 1960, as both are amended up to and including the date of the amendments referred to in paragraph 3.

15. WORKER'S COMPENSATION

The AGENCY and METROPOLITAN affirm that they are aware of the provisions of Section 3700 of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and the AGENCY and METROPOLITAN affirm that they will comply with such provisions before commencing the performance of the work under this Agreement.

16. CLAIMS DISPUTE

In the event of dispute regarding interpretation or implementation of this Agreement, or if the Parties are unable to agree upon a matter as to which their agreement is provided for hereunder, the Director of the DEPARTMENT and General Managers of METROPOLITAN and the AGENCY shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, the parties shall use the service of a mutually acceptable consultant in an effort to resolve the dispute. The fees and expenses of the consultant shall be shared equally by the Parties. If a consultant cannot

be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may at its option be entitled to injunctive relief, if so determined by the Court.

17. NONDISCRIMINATION

During the performance of this Agreement, the AGENCY and METROPOLITAN shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sexual orientation, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, sexual orientation, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. The AGENCY and METROPOLITAN shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The AGENCY and METROPOLITAN shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereafter (California Administrative Code, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135 - 11139.5), and the regulations of standards adopted by the DEPARTMENT to implement such article. The AGENCY and METROPOLITAN shall permit access by representatives of the DEPARTMENT of Fair

Employment and Housing and the DEPARTMENT upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as the DEPARTMENT of Fair Housing or the DEPARTMENT shall require to ascertain compliance with this clause. The AGENCY and METROPOLITAN shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The AGENCY and METROPOLITAN shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

18. ASSIGNMENT OF AGREEMENT

Without the written consent of the DEPARTMENT, AGENCY and METROPOLITAN, this Agreement is not assignable by the AGENCY or METROPOLITAN in whole or in part.

19. PARAGRAPH HEADINGS

The paragraph headings of this Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

20. TERMS TO BE REASONABLE

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

21. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the party for whom they sign. Certified copies of resolutions authorizing the AGENCY and METROPOLITAN to enter into this Agreement shall be delivered to the DEPARTMENT before water may be introduced into the California Aqueduct under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to legal form
and Sufficiency

Susan N. Weber
Chief Counsel
DEPARTMENT OF WATER RESOURCES

8/16/95
Date

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Director

8-21-95
Date

KERN COUNTY WATER AGENCY

Name

General Manager
Title

August 8, 1995
Date

METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Name

Deputy General Manager
Title

August 4 , 1995
Date

APPROVED AS TO FORM
N. [illegible]
[illegible]

BY JAMES L. ROBERTS
James Roberts

EXHIBIT A

AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SEMITROPIC WATER STORAGE DISTRICT AND ITS IMPROVEMENT DISTRICTS FOR A METROPOLITAN-SEMITROPIC WATER BANKING AND EXCHANGE PROGRAM

TABLE OF CONTENTS

Page

RECITALS 1

DECLARATION OF TRUST 10

ARTICLE 1. DEFINITIONS 11
1.1 "Agreement" 11
1.2 "Banking Partner" 11
1.3 "In-Lieu Service Area" 11
1.4 "Interim Storage Allocation" 12
1.5 "Lower Priority Banking Partner" 12
1.6 "Metropolitan's Share of Total Program Capital Cost" 12
1.7 "Permanent Storage Allocation" 16
1.8 "Program" 18
1.9 "Program Delivery Capability" 18
1.10 "Program Entitlement Exchange Rights" 18
1.11 "Program Pumpback Capacity" 19
1.12 "SWP Entitlement Water" 20
1.13 "Storage Account Balance" 20
1.14 "Stored Water" 20
1.15 "Total Program Capital Cost" 21
1.16 "Unused Semitropic Delivery Capability" 21

ARTICLE 2. ALLOCATION AMONG BANKING PARTNERS 22

ARTICLE 3. DELIVERY OF WATER BY BANKING PARTNERS TO SEMITROPIC 24

ARTICLE 4. LOSSES AND STORED WATER 26

ARTICLE 5. RETURN OF WATER BY SEMITROPIC TO METROPOLITAN . . . 27

ARTICLE 6. COMPENSATION 34

ARTICLE 7. DIVISION OF RISK RESPONSIBILITIES 44

ARTICLE 8. REQUIRED FOR IMPLEMENTATION 49

ARTICLE 9. DISPUTE RESOLUTION 50

ARTICLE 10. TERM OF AGREEMENT 52

ARTICLE 11. REMEDIES 53
11.1 Remedies in Event of Semitropic's Voluntary Failure to Perform. 53
11.2 Remedies in the Event of Metropolitan's Voluntary Failure to Perform. 55
11.3 Remedies in Event of Failure of Certain Other Remedies. 56

ARTICLE 12. EARLY TERMINATION 57
12.1 Resignation of Semitropic. 57
12.2 Voluntary Termination. 57
12.3 Involuntary Termination. 58

ARTICLE 13. MISCELLANEOUS PROVISIONS 60
13.1 Successors and Assigns. 60
13.2 Allocation Among Semitropic Improvement Districts. 60
13.3 No Modification of Existing Contracts. 60
13.4 Waiver/Cure of Defaults. 61
13.5 Construction of Agreement. 61
13.6 Entire Agreement. 62
13.7 Severability. 62
13.8 Force Majeure. 63
13.9 Notices. 63
13.10 Further Assurances. 64
13.11 Counterparts. 64
13.12 Recording of Memorandum 65

EXHIBIT A-BUILDUP SCHEDULE A-1
EXHIBIT B-METROPOLITAN'S PAYMENTS B-1
EXHIBIT C-PROGRAM DELIVERY CAPABILITY C-1
EXHIBIT D-CALCULATION OF POWER PAYMENTS D-1
EXHIBIT E-DEPRECIATION ASSUMPTIONS E-1
EXHIBIT F-MEMORANDUM OF AGREEMENT F-1

AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SEMITROPIC WATER STORAGE DISTRICT AND ITS IMPROVEMENT DISTRICTS FOR A METROPOLITAN-SEMITROPIC WATER BANKING AND EXCHANGE PROGRAM

THIS AGREEMENT (this "**Agreement**"), dated as of December 12, 1994, is entered into by and between **THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA** ("**Metropolitan**"), and the **SEMITROPIC WATER STORAGE DISTRICT** and **SEMITROPIC IMPROVEMENT DISTRICT, BUTTONWILLOW IMPROVEMENT DISTRICT** and **POND-POSO IMPROVEMENT DISTRICT of the SEMITROPIC WATER STORAGE DISTRICT** (collectively called "**Semitropic**"). Metropolitan and Semitropic may be referred to individually as Party or collectively as Parties.

RECITALS

A. Metropolitan obtains water from the State Water Project ("**SWP**") through its contract with the California Department of Water Resources ("**DWR**"), executed on November 4. 1960, and presently providing for a total contract entitlement of 2,011,500 acre-feet per year. From time-to-time, Metropolitan will have water available that it desires to deliver to Semitropic for storage and eventual return or other disposition pursuant to this Agreement.

B. Semitropic obtains water from the SWP through its contracts with the Kern County Water Agency ("**Agency**") under the Agency's master contract with DWR, executed on November 15, 1963, and presently providing for a total contract entitlement of 1,153,400 acre-feet per year. Semitropic's contracts with the Agency were originally executed December 9, 1976 (Buttonwillow Improvement District), December 9, 1976 (Pond-Poso Improvement District), and January 9, 1969 (Semitropic Water Storage District) and provide for a combined contract entitlement of 158,000 acre-feet per year. Semitropic Improvement District was formed in 1991, its boundaries are coterminous with the boundaries of Buttonwillow Improvement District and Pond Poso Improvement District and, among other things, it serves as agent for Buttonwillow Improvement District and Pond-Poso Improvement District. A total of approximately 136,370 acres of land within Semitropic is irrigated with a total annual demand of approximately 477,000 acre-feet based on current cropping patterns and irrigation practices. Semitropic has entered into contracts with individual landowners comprising 42,328 acres of land which is designated as the Surface Water Service Area ("**SWSA**"). Semitropic has commitments to deliver 145,240 acre-feet per year to the SWSA. Additional lands outside the SWSA, in the amount of approximately 24,500 acres, have also been connected to Semitropic's distribution system so such lands may receive surface water when available. These additional lands are designated as the Temporary Water Service Area ("**TWSA**"), and may sometimes be referred to as the Non-Contract Service Area. Total landowner demand within the SWSA and TWSA for surface water supplies is greater than water available under Semitropic's entitlement for Agency SWP water and other surface water supplies. The construction of additional distribution facilities by Semitropic, as contemplated by this Agreement, will allow Semitropic to take delivery of additional imported water delivered to Semitropic by Metropolitan pursuant to this Agreement.

C. Semitropic has constructed a seventy-eight inch (78") pumpback pipeline that is capable of conveying water withdrawn from the groundwater basin underlying the area within Semitropic's boundaries (the "**Semitropic Basin**") directly to the California Aqueduct at a maximum rate of 300 cubic feet per second ("**CFS**") upon installation of additional pumps by Semitropic, as contemplated by this Agreement. Pumpback operations to return stored water will take place primarily during the "off-peak" irrigation season, when groundwater pumping and conveyance capacity are available. Semitropic has also constructed an energy project, including, but not limited to, a hydroelectric generator, gas generators, and a 12 kilovolt transmission system, to provide a portion of the electric power required for Semitropic's pumping operations.

D. Metropolitan and Semitropic find that it will be mutually advantageous to enter into a groundwater banking and exchange program whereby Semitropic will hold in trust for Metropolitan the water deposited by Metropolitan hereunder (or its equivalent), together with (i) an easement and right to withdraw from lands owned or controlled by Semitropic an amount of water equal to Metropolitan's Stored Water on deposit with Semitropic, and (ii) an easement and right to transport such water from the Semitropic Basin to the California Aqueduct for delivery to Metropolitan, all in accordance with the terms of this Agreement. This Agreement will provide additional groundwater storage for Metropolitan, resulting in better utilization of its SWP supplies, and will provide improved reliability of supplies and overall higher groundwater levels for Semitropic.

E. This Agreement is consistent with the goal of making optimum use of water and facilities and is consistent with conservation objectives of Metropolitan, Semitropic, Agency and DWR.

F. Consistent with the California Environmental Quality Act ("**CEQA**"), Semitropic, acting as lead agency, and Metropolitan, acting as a responsible agency, have jointly completed an environmental impact report concerning the proposed water banking and exchange program (the "**EIR**"). Semitropic's Board of Directors, on July 13, 1994, certified the EIR as being in compliance with CEQA, and Metropolitan's Board of Directors on August 19, 1994, reviewed and considered the EIR. Semitropic will also be responsible for implementing and monitoring the mitigation measures defined in "Findings and Mitigation Monitoring Plan" dated July 1994, adopted as part of the Final EIR.

G. Semitropic has also entered into a Memorandum of Understanding ("**MOU**") with neighboring districts, dated September 14, 1994, to implement in part said monitoring and mitigation measures, which this Agreement is subject to. The MOU is on file with both Metropolitan and Semitropic.

H. The Semitropic Water Banking and Exchange Program authorized in the above-referenced EIR (the "**Program**") has a defined total storage capacity of 1,000,000 acre-feet. The estimated absorptive capacity, based on the approximately 23,000 acres of In-Lieu Service Area (as defined in Article 1 below) and the current cropping patterns and irrigation efficiencies, is 80,500 acre-feet per year. An estimated additional 10,000 acre-feet per year of absorptive capacity

is anticipated as a result of Semitropic improving the delivery capability of the distribution system to the existing SWSA and TWSA, as contemplated by the Program. The estimated withdrawal capacity is 90,000 acre-feet per year, at a maximum flow rate of 300 CFS, through the pumpback facility. In addition, Stored Water (as defined in Article 1) may be returned from any Semitropic SWP Entitlement Water allocation in excess of 25,000 acre-feet, as described in Exhibit A hereto. Facilities necessary to accomplish the foregoing will increase the absorptive and withdrawal capabilities of Semitropic over and above the pre-Program conditions. Metropolitan's participation may not fully utilize these capacities. Therefore, Semitropic has developed and will be offering other potential Banking Partners (as defined in Article 1) the opportunity to participate in the Program on substantially the same terms and conditions as Metropolitan. Metropolitan has reviewed the terms and conditions of that certain document entitled "Semitropic Groundwater Banking Program Payment and Banking Capacity Rights Options" dated August 1, 1994, setting forth the terms on which other parties may participate in the Program as Banking Partners (the "**Program Options**"). A copy of that document is on file with both Semitropic and Metropolitan. Metropolitan has agreed that anyone who is a party to an agreement with Semitropic which includes one or more of options 1 through 4 of the Program Options and which does not violate any of the requirements of this Agreement will be a Banking Partner.

I. As a part of this Agreement, Semitropic, as trustee, will hold in trust for Metropolitan, in accordance with the terms of this Agreement, the water deposited by Metropolitan (or its equivalent), together with the right to withdraw it and to deliver it to the California Aqueduct. The parties create this trust relationship for the purpose of protecting Metropolitan's ability to recover Stored Water, and Semitropic's fiduciary duty is limited to Semitropic's

1 responsibilities as set forth in this Agreement. In addition, Semitropic, in a non-fiduciary capacity,
2 will provide such water resource management services as are necessary to implement and operate
3 the Program. Semitropic's non-fiduciary obligations include taking such actions, including the
4 construction of facilities, securing agreements and entering into operational arrangements, as are
5 necessary to receive from Metropolitan water delivered by Metropolitan for storage hereunder and
6 to return equivalent water to Metropolitan in accordance with the terms of the Agreement. The
7 Program, as implemented with respect to Metropolitan by this Agreement, when combined with
8 other necessary actions undertaken by Metropolitan, will thus allow the delivery of Stored Water
9 to Metropolitan during Metropolitan's peak demand periods. When such services are provided by
10 Semitropic, Metropolitan will make payments to Semitropic, as provided for in this Agreement,
11 to compensate Semitropic for its services and expenses. These include: payments when water is
12 stored, as provided in Section 6.2; payments under certain conditions when water is left in storage
13 for more than five years, as provided in Section 6.4; payments when water is returned from
14 storage, as provided in Section 6.3; payments with respect to energy used to recover water from
15 the groundwater basin and to deliver that water to the California Aqueduct, as provided in Section
16 6.3; and payments for operation and maintenance expenses under certain circumstances, as
17 provided in Section 6.7.
18
19 Although Metropolitan does not guarantee its level of participation in the Program,
20 it is anticipated that Metropolitan will acquire at least 35 percent of the Program's capabilities,
21 rights and capacities described in Recital H and elsewhere in this Agreement. Until that has
22 occurred (that is, until such time as Metropolitan's Permanent Storage Allocation is Fully Vested
23 (as those terms are defined in Section 1.7)), Metropolitan will pay $90 per acre-foot to store water,

and such payments shall continue to the extent that Metropolitan has elected to acquire additional Permanent Storage Allocation as provided in Section 6.6. After Metropolitan's Permanent Storage Allocation is Fully Vested, Metropolitan will pay $50 per acre-foot to store water. Until Metropolitan has recovered all of the water it stored at $90 per acre-foot, Metropolitan will pay $40 per acre-foot for water recovered. After all such water has been recovered, Metropolitan will pay $50 per acre-foot for water recovered. In addition, until Metropolitan's Permanent Storage Allocation is Fully Vested, Metropolitan will pay $20 per acre-foot for water left in storage for more than five years, and such payments shall continue to the extent that Metropolitan has elected to acquire additional Permanent Storage Allocation as provided in Section 6.6. Thereafter, Metropolitan will no longer pay this cost for water left in storage. If, after the first 10 years of this Agreement, Metropolitan's Permanent Storage Allocation has not become Fully Vested, and Semitropic elects to no longer provide interim Program capabilities, capacities and rights as described below, Metropolitan will pay $50 per acre-foot for any additional water stored by Metropolitan and thereafter Metropolitan will not pay the $20.00 fee provided for in Section 6.4.

Metropolitan will acquire a proportionate share of total Program capabilities, capacities and rights for the term of this Agreement as Metropolitan's Permanent Storage Allocation "vests," as provided in Section 1.7 (the amounts credited for purposes of determining Metropolitan's Permanent Storage Allocation including: (i) all payments for the storage of water made pursuant to Section 6.2.1 (the "**$90 Per Acre-Foot Storage Payments**"), (ii) all payments made pursuant to Section 6.4 with respect to certain water stored for more than five years (the "**$20 Per Acre-Foot Long-Term Storage Payments**"), and (iii) an amount (the "**Withdrawal Credit**") equal to the amount that has been paid and will be due pursuant to Section 6.3.1 when

Stored Water for which $90 Per Acre-Foot Storage Payments was made is returned. After Metropolitan's Permanent Storage Allocation is Fully Vested, as provided in Section 1.7, Metropolitan may increase its vested Permanent Storage Allocation by continuing to pay for the storage and return of water at the rates set forth in the immediately preceding sentence, as provided for in Section 6.6.

For the first ten years of the Agreement, Semitropic will allocate interim Program capabilities, capacities and rights to Metropolitan sufficient to make available to Metropolitan at least: (i) 35 percent of Semitropic's then existing capability to store water using then existing facilities, (ii) 35 percent of Semitropic's then existing ability to return water through State Water Project entitlement exchange available, and (iii) a minimum capacity of 31,500 acre-feet per year to return water pumped from the Semitropic Basin directly to the California Aqueduct through Semitropic's facilities.

Under the terms of this Agreement, those amounts which result in the acquisition by Metropolitan of Permanent Storage Allocation (that is, the $90 Per Acre-Foot Storage Payments, the $20 Per Acre-Foot Long-Term Storage Payments and the Withdrawal Credits for amounts payable pursuant to Section 6.3.1 upon the return of Stored Water) are to be adjusted using the Engineering News Record Index, and all other amounts which are to be adjusted will be adjusted using the Consumer Price Index, as hereinafter provided.

J. The trust relationship between Metropolitan, as settlor and beneficiary, and Semitropic, as trustee, created by this Agreement and described in these Recitals, is entered into

by the Parties solely for the purpose of protecting Metropolitan's interest in water delivered by Metropolitan to Semitropic hereunder for storage, and the right of Metropolitan, also held in trust by Semitropic for Metropolitan to recover from the Semitropic Basin, water in a quantity sufficient to return to Metropolitan, a quantity equal to Metropolitan's Storage Account Balance, such right to be exercised by Semitropic, as trustee, through the lands, facilities, rights and interests of Semitropic, or by its successor in interest in and to the trust property, all in accordance with the terms of this Agreement. Semitropic acknowledges and agrees that all water delivered to it by Metropolitan hereunder will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Semitropic in its capacity as trustee for Metropolitan with respect to such water and the easements and rights relating thereto provided for herein. Metropolitan has herein authorized Semitropic, as trustee, to commingle, exchange or otherwise dispose of the water delivered by Metropolitan hereunder. In exchange for those rights and for water delivered hereunder, Semitropic has granted, and does hereby grant, to Metropolitan the right to an equal quantity of water from the lands, facilities, rights and interests of Semitropic (subject, however, to the loss provisions of Article 4), together with such easements and other rights as are necessary to transport the recovered water to the California Aqueduct for delivery to Metropolitan therein, all upon, and subject to the provisions of, this Agreement (all which rights and easements may be referred to herein, collectively, as the "**Trust Property**"). Metropolitan has granted, and does hereby grant, to Semitropic said Trust Property, in trust, for the use and benefit of Metropolitan. The trust relationship created by this Agreement is not otherwise intended to apply to or effect the obligations of Semitropic or Metropolitan hereunder, or the remedies in the event of default; it being expressly understood and agreed that Semitropic's obligations hereunder to, among other things, construct facilities and enter into agreements with others in furtherance of the Program shall

not be fiduciary in nature. Notwithstanding creation of a trust under this Agreement, Semitropic may benefit from the Program set forth in this Agreement.

K. Metropolitan has previously delivered 45,377.2 acre-feet of water to Semitropic pursuant to the February 1, 1993, "Temporary Agreement for a Metropolitan-Semitropic Water Banking and Exchange Program." Metropolitan and Semitropic desire that such water hereafter be held and disposed of by Semitropic for the benefit of Metropolitan under this Agreement, as hereinafter provided.

DECLARATION OF TRUST

Metropolitan hereby appoints Semitropic to hold, and Semitropic hereby accepts such appointment and agrees to hold, in trust, for the use and benefit of Metropolitan, as beneficiary, Metropolitan's Stored Water (as hereinafter defined), together with all of the other Trust Property (as defined in Recitals J and K above), upon the terms set forth in this Agreement. The trust created under this paragraph exists only for the purposes described in Recitals I, J and K above, relating to protection of Metropolitan's ability to recover its Stored Water if Semitropic fails or refuses to do so when required to do so by this Agreement, and only with respect to the Stored Water and the other Trust Property. The creation of a trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Semitropic performs its obligations as provided in this Agreement, Semitropic will not be deemed or construed to have breached any fiduciary duty to Metropolitan arising out of the trust provided for in this Agreement.

ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used. Further, each provision in this Article or in the Recitals which is stated in declarative form (for example, "will be adjusted") or is otherwise stated as an agreement between the Parties, rather than as a statement of their intent or purpose, shall be construed to be an operative part of this Agreement and shall be enforceable.

1.1 **"Agreement"** means, as of any particular time, this Agreement for a Metropolitan-Semitropic Water Banking and Exchange Program, as amended or supplemented by the Parties through that time.

1.2 **"Banking Partner"** means, as of any particular time, Metropolitan and any other entity which is then a party to a water banking and exchange agreement with Semitropic which includes one or more of options 1 through 4 of the Program Options and which does not violate to the requirements of this Agreement. The term "Banking Partner" does not include a Lower Priority Banking Partner.

1.3 **"In-Lieu Service Area"** means lands which have at least a five year history of cultivation using groundwater, the owners of which have executed surface water service contracts with Semitropic acknowledging and agreeing to cooperate with Semitropic in fulfilling its obligation to carry out the Program, that provide for the reasonable and beneficial use of water made available to Semitropic for banking and other purposes on that land in lieu of pumping

groundwater, and whose on-farm systems have been connected to Semitropic's surface water distribution system to receive water delivered to Semitropic for storage purposes. It is estimated that, upon completion of all Program facilities, the In-Lieu Service Area will be 23,000 acres.

1.4 **"Interim Storage Allocation"** means, as of any particular time, and with respect to any particular Banking Partner, that portion of the total 1,000,000 acre-foot Program storage capacity then allocated to that Banking Partner which has not yet become Permanent Storage Allocation of a Banking Partner. As Permanent Storage Allocation is acquired by a Banking Partner, as provided in Section 1.7, the Interim Storage Allocation of that Banking Partner is reduced by an identical amount.

1.5 **"Lower Priority Banking Partner"** means an entity which is not a Banking Partner and which enters into an agreement with Semitropic to utilize all or part of Program Delivery Capability, Unused Semitropic Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights during such time period when not required to be available for use by Semitropic or Banking Partners.

1.6 **"Metropolitan's Share of Total Program Capital Cost"** means, until December 31, 1995, $46,900,000.00 (which is thirty-five percent (35%) of the Total Program Capital Cost as of the date of this Agreement). As of January 1, 1996, and annually thereafter, until the time when the sum of all payments made by Metropolitan under Sections 6.2.1, 6.3.1 and 6.4 and any payments creditable for this purpose under Section 5.10 (collectively, the **"Prior Payments"**) equals Metropolitan's Share of Total Program Capital Costs (as redetermined pursuant to this

Section through that time), Metropolitan's Share of Total Program Capital Cost shall be redetermined for, respectively, calendar year 1996, and for each such subsequent calendar year, by adding the Unpaid Portion (defined and adjusted as provided below) of Metropolitan's Share of Total Program Capital Costs as of the beginning of that calendar year to the sum of Metropolitan's Prior Payments with respect to the period from the date of this Agreement through the end of the prior calendar year, using the following formula (such redetermination to be made in each calendar year when Metropolitan has paid all amounts due under Sections 5.10, 6.2.1, 6.3.1 and 6.4 through the end of the prior calendar year):

$$\mathbf{MS}_{cy} = \left\{ \sum_{n=94}^{cy-1} \mathbf{P}_n \right\} + \mathbf{UP}_{cy}$$

where:

"$_{cy}$" refers to the calendar year with respect to which the redetermination is being made;

"$_{cy-1}$" refers to the calendar year prior to the calendar year with respect to which the redetermination is being made (that is, 1995 with respect to the redetermination for use in 1996; 1996 for 1997; and so on);

"$\mathbf{MS}_{cy}$" means Metropolitan's Share of Total Program Capital Cost for the calendar year with respect to which the redetermination is being made (the first such calendar year being 1996; the second 1997; and so on), such redetermination being made by using the formula set forth above;

$\sum_{n=94}^{cy-1} \mathbf{P}_n$ means the sum of all annual payments (P as defined below) from the calendar year 1994 through the calendar year immediately preceding the calendar year with respect to which the redetermination is being made.

"$\mathbf{P}_n$" (or Payments by Metropolitan to Semitropic with respect to a particular year) means the sum of the following amounts paid by Metropolitan with respect to that year, whether paid during or after that year:

(a) All amounts paid with respect to that calendar year pursuant to Section 6.2.1 for Stored Water delivered by Metropolitan to Semitropic; plus

(b) All amounts paid with respect to that calendar year pursuant to Section 6.3.1 for Stored Water theretofore delivered to Metropolitan; plus

(c) All amounts paid with respect to that calendar year pursuant to Section 6.4; plus

(d) All amounts paid with respect to that calendar year pursuant to Section 5.10 that are creditable against Metropolitan's Share of Total Program Capital Cost under Section 5.10.

"UP_{cy} (or Metropolitan's Adjusted Unpaid Share of Total Program Capital Cost as of the beginning of the calendar year with respect to which the redetermination is being made) means: (i) with respect to the redetermination of Metropolitan's Share of Total Program Capital Cost for calendar year 1996, $46,900,000 minus the sum of P_n (as defined above) determined for 1994 ("P_{94}") plus P_n determined for 1995 ("P_{95}"); and (ii) for each subsequent year, the amount determined for such year using the following formula:

$$UP_{cy} = AI_{cy} \times \{ UP_{cy-1} - P_{cy-1} \}$$

where in addition to the above definition:

"$\mathbf{AI_{cy}}$" (the "**Adjustment Index**" for the calendar year with respect to which the redetermination is being made) means a fraction, the numerator of which is the Construction Costs Index for Los Angeles published by the Engineering News Record (the "**Construction Costs Index**") for December of the calendar year immediately preceding the calendar year with respect to which the determination is being made (that is, for December 1995 with respect to the determination of Metropolitan's Share of Total Program Capital Cost for 1996; December 1996 for 1997; and so on), and the denominator of which is the Construction Costs Index for December of the calendar year which is two years prior to the calendar year with respect to which the determination is being made (provided, however, that for the determination of Metropolitan's Share of Total Program Capital Cost for 1996, the denominator shall be the Construction Costs Index for June 1994, which the parties agree is 6,550.36 based on a 1913 value of 100) (that is, the denominator shall be the Construction Costs Index for December 1995 with respect to the determination of Metropolitan's Share of Total Project Capital Cost for 1997; December 1996 for 1998; and so on). If Construction Costs Index ceases to be published or if the base year for the Construction Costs Index or the methodology by which the Construction Costs Index is determined is modified, then the Construction Costs Index to be used in the calculations required by this Section 1.6 shall be modified as provided for in Section 6.2.3.

"$\mathbf{UP_{cy-1}}$" means $\mathbf{UP_{cy}}$ as determined for the immediately preceding calendar year (that is, in determining $\mathbf{UP_{cy}}$ for 1996 ("$\mathbf{UP_{96}}$"), $\mathbf{UP_{cy-1}}$ for that redetermination means the $\mathbf{UP_{cy}}$ determined for 1995 ("$\mathbf{UP_{95}}$"); in determining $\mathbf{UP_{cy}}$ for 1997 ("$\mathbf{UP_{97}}$"), $\mathbf{UP_{cy-1}}$ for that redetermination means the $\mathbf{UP_{cy}}$ determined for 1996 ("$\mathbf{UP_{96}}$"); and so on);

" P_{cy-1}" means P_n (as previously defined) with respect to the calendar year immediately preceding the calendar year with respect to which the redetermination is being made (that is, in determining UP_{96}, P_{cy-1} for that redetermination means the P_n determined for 1995 ("P_{95}")) in determining UP_{97}, P_{cy-1} for that redetermination means the P_n determined for 1996 ("P_{96}"); and so on); and

If, pursuant to Section 2.5, Metropolitan's Interim Storage Allocation is eliminated, Metropolitan's Share of Total Program Capital Cost thereafter shall mean an amount equal to the sum of payments made pursuant to Sections 6.2.1 and 6.4 and payments made and payments which, upon the return of water, would be due pursuant to Section 6.3.1.

1.7 **"Permanent Storage Allocation"** means, with respect to any particular Banking Partner and as of any particular time ("$_t$"), the portion of the total 1,000,000 acre-foot Program storage capacity which is allocated to that Banking Partner as of that time. Until the earlier of the time when Metropolitan's Permanent Storage Allocation equals 350,000 acre-feet or any remaining portion of Metropolitan's Interim Storage Allocation is eliminated by Semitropic pursuant to Section 2.5, Metropolitan's Permanent Storage Allocation as of any particular time shall be determined using the following formula:

$$MPSA_t = \left\{ \frac{P_p + P_t}{TPCC_{cy}} + \sum_{n=94}^{cy-1} \frac{P_n}{TPCC_n} \right\} \times 1{,}000{,}000 \text{ acre-feet}$$

where:

"$MPSA_t$" means Metropolitan's Permanent Storage Allocation as of the particular time with respect to which it is being determined, measured in acre feet;

"$\mathbf{P_p}$" means all amounts that would be due to Semitropic pursuant to Section 6.3.1 if all of the water in Metropolitan's Storage Account at that time was delivered to Metropolitan at that time;

"$\mathbf{P_t}$" means all amounts paid, and all amounts then payable unless delinquent, by Metropolitan under Sections 6.2.1, 6.3.1 and 6.4 with respect to the period from the beginning of the calendar year during which that particular time ($_t$) occurs and that particular time, plus any payments creditable and all amounts which, when paid, will be creditable under Section 5.10 for purposes of determining Metropolitan's Permanent Storage Allocation for the period from the beginning of the calendar year during which that particular time ($_t$) occurs and that particular time;

"$\mathbf{TPCC_{cy}}$" means Total Program Capital Cost, as defined in Section 1.15, for the calendar year during which that particular time occurs (that is, if **MPSA** is being determined as of April 1, 1999, $\mathbf{TPCC_{cy}}$ means $\mathbf{TPCC_{99}}$);

"$\mathbf{P_n}$" has the meaning given to that term in Section 1.6;

$\sum_{n=94}^{cy-1} \frac{\mathbf{P_n}}{\mathbf{TPCC_n}}$ means the sum of the percentages which result from dividing the payments $\mathbf{P_n}$ for a given year by the TPCC for that same year, from calendar year 1994 through the calendar immediately preceding the calendar year in which **MPSA**, is being determined; and

"$\mathbf{TPCC_n}$" means Total Program Capital Cost, as defined in Section 1.15, for the same calendar year as $\mathbf{P_n}$ (that is, when $\mathbf{P_n}$ is P_{99}, $\mathbf{TPCC_n}$ means $\mathbf{TPCC_{99}}$).

At the earlier of the time (which time may be referred to herein as the "**Time of Full Vesting**") when: (i) MPSA equals 350,000 acre-feet, or (ii) any remaining portion of Metropolitan's Interim Storage Allocation is eliminated by Semitropic pursuant to Section 2.5, Metropolitan's Permanent Storage Allocation shall be deemed to be "**Fully Vested**" and, thereafter, Metropolitan's Permanent

Storage Allocation shall be equal to Metropolitan's Permanent Storage Allocation at the Time of Full Vesting, subject, however to the provisions of Sections 2.6, 6.5 and 6.6 (which permit Metropolitan to acquire additional Permanent Storage Allocation as therein provided). An example showing the acquisition of Permanent Storage Allocation by Metropolitan is attached as Exhibit B.

1.8 **"Program"** means those facilities, agreements and operational activities, described in Recital H and elsewhere, necessary for Semitropic to provide the water storage, management, pumpback and exchange services specified in this Agreement and in other water banking and storage agreements contemplated by this Agreement.

1.9 **"Program Delivery Capability"** means the capability to deliver water for storage made available as a result of the construction of Program facilities, agreements and operational activities. The absorptive capability of the proposed 23,000 acre In-Lieu Service Area plus improvements in the delivery capability to the existing SWSA and TWSA are currently estimated to be 90,500 acre-feet per year, based on current cropping patterns and irrigation efficiencies. The estimated total annual and monthly quantities of Metropolitan's Program Delivery Capability upon completion of all Program facilities is shown at Exhibit C hereto.

1.10 **"Program Entitlement Exchange Rights"** means the rights of Banking Partners to exchange an amount of Stored Water through entitlement exchange for an equal amount of Semitropic's allocation of Agency's SWP Entitlement Water from the California Aqueduct pursuant to this Agreement (or other similar agreements) between Semitropic and other Banking Partners. Upon completion of such an exchange by Metropolitan, Metropolitan's beneficial interest in the

Stored Water that was the subject of the exchange shall vest in Semitropic and the quantity so exchanged shall be deducted from Metropolitan's Storage Account Balance. Upon completion of necessary Program facilities, the total amount of Program Entitlement Exchange Rights available to Banking Partners will be equal to Semitropic's SWP Entitlement allocation less the first 25,000 acre-feet. If the nature or description of Semitropic's allocation of the Agency's SWP Entitlement Water is modified, such alternative supply from the SWP shall to such extent be substituted for Semitropic's allocation of Agency's SWP Entitlement Water. Alternative supplies shall include water purchases by the SWP or from sources generally available to State water contractors, as well as water from facilities participation in which is generally made available to State water contractors. Nothing in the preceding sentence shall obligate Semitropic to participate in such programs. When all necessary Program facilities are constructed, the maximum Program Entitlement Exchange Rights of the Banking Partners at any time will be 158,000 acre-feet minus 25,000 acre-feet (133,000 acre-feet) times the sum of all Banking Partners Interim and Permanent Storage Allocation divided by 1,000,000 acre-feet. Assuming Metropolitan's Permanent Storage Allocation is 350,000 acre-feet, Metropolitan's maximum share of Program Entitlement Exchange Rights thus would be 46,550 acre-feet. Exhibit A specifies the maximum Program Entitlement Exchange Rights as Banking Partners' Permanent Storage Allocation is accumulated.

1.11 **"Program Pumpback Capacity"** means the capacity, measured in acre-feet per year and CFS, to return Stored Water to the California Aqueduct. Upon completion of all necessary Program facilities, the minimum annual Program Pumpback Capacity shall be 90,000 acre-feet per year at a maximum instantaneous flow rate of 300 CFS. Exhibit C establishes the

minimum Program Pumpback Capacity available as the Banking Partners' accumulate Permanent Storage Allocation.

1.12 **"SWP Entitlement Water"** means entitlement water as provided for in the state water contracts, as well as the alternative supplies provided for in the definition of Program Entitlement Exchange Rights.

1.13 **"Storage Account Balance"** means, with respect to a particular Banking Partner, that Banking Partner's accumulated total Stored Water less the accumulated withdrawals of Stored Water by that Banking Partner. Records of these accounts shall be maintained by Semitropic and they shall be subject to audit, review and approval by the Banking Partners, at the expense of the auditing or reviewing Banking Partner, on an annual basis.

1.14 **"Stored Water"** means, with respect to any particular Banking Partner, water delivered for storage by that Banking Partner as measured at Semitropic's turnout in Reach 10A of the California Aqueduct, less losses deducted in accordance with Article 4, which losses shall be accounted for concurrently with the delivery of water to Semitropic for storage. Semitropic acknowledges that the 45,377.2 acre-feet of water described in Recital K above will be included in Metropolitan's Stored Water as provided in Section 5.10. Metropolitan acknowledges that Metropolitan's Stored Water may be commingled with other water. At all times during the term of this Agreement, an amount of water available to Semitropic in the Semitropic Basin equal to the amount of the Metropolitan Storage Account Balance shall be deemed to be Metropolitan's Stored Water. So long as water in the amount of Metropolitan's Storage Account Balance remains

in the Semitropic Basin, Semitropic, as trustee, shall be deemed to remove Metropolitan's Stored Water from storage only as and when requested by Metropolitan pursuant to the terms of this Agreement and any other removal of water by Semitropic from the Semitropic Basin shall be deemed to be the removal of water that is not Metropolitan's Stored Water. If at any time the amount of water in the Semitropic Basin is less than the sum of the Storage Account Balances of the Banking Partners (an event which the parties believe is extremely unlikely), any additional water subsequently available to Semitropic from the Semitropic Basin without interfering with the rights of landowners or other public agencies, shall be shared by the Banking Partners in proportion to their respective Storage Account Balances, until such time as the amount of water so available to Semitropic from the Semitropic Basin equals or exceeds the total of the Storage Account Balances of the Banking Partners.

1.15 **"Total Program Capital Cost"** means $134,000,000.00 in 1994 dollars, which amount shall be adjusted annually, as of the first day of each calendar year for such calendar year, beginning January 1, 1996, said $134,000,000.00 shall be adjusted on the same basis as in Section 6.2.1.

1.16 **"Unused Semitropic Delivery Capability"** means that portion of Semitropic's pre-Program Delivery Capability (i.e., approximately 220,000 acre-feet per year plus approximately 10,000 acre-feet per year of direct percolation capability) which is not used for delivery of Semitropic's SWP Entitlement Water, Agency Pool Water, Shafter-Wasco Irrigation District deliveries pursuant to Section 5.9 or other water available to be used by Semitropic for non-banking purposes.

ARTICLE 2.
ALLOCATION AMONG BANKING PARTNERS

2.1 Banking Partners shall have the first priority to utilize their shares of Program Delivery Capability, Program Pumpback Capacity and Program Entitlement Exchange Rights as described in this Agreement. Banking Partners in all cases shall have the first priority to use any Program Delivery Capability, Unused Semitropic Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights during such time periods when not required for use by other Banking Partners. Semitropic shall notify each Banking Partner not using its respective share of said Program capability, capacity or right, when other entities including Banking Partners desire to utilize it and of any use made of it.

2.2 Semitropic shall not enter into any other water banking programs or other agreements which would interfere with the Program benefits and rights of the Banking Partners.

2.3 Then existing Banking Partners will be given an opportunity to review the terms and conditions of proposed agreements with potential Banking Partners and Lower Priority Banking Partners and to review Semitropic's records regarding administration of the Program. Such Lower Priority Banking Partners' agreements and activities shall not adversely impact Banking Partners' ability to utilize any benefits under this Agreement. If Semitropic or one or more then existing Banking Partners believe that other potential Banking Partners' proposed agreements or potential Lower Priority Banking Partners' proposed agreements violate any of the provisions of this Agreement or other such Agreement, any Party may seek dispute resolution pursuant to Article 9

concerning such matter. In this event, Semitropic shall only enter into agreements in conformity with the result of the dispute resolution.

2.4 At no time under this Program shall the sum of all Banking Partners' Interim and Permanent Storage Allocations exceed 1,000,000 acre-feet.

2.5 For a period of ten (10) years, commencing with the date of execution of this Agreement, Metropolitan's maximum Interim Storage Allocation shall be 350,000 acre-feet, subject to the provisions of Sections 2.6, 6.5 and 6.6. In order to convert all of such Interim Storage Allocation to an equivalent Permanent Storage Allocation, the total of Payments, Actual and Prospective (as defined in Section 1.7), by Metropolitan to Semitropic within said 10 years must equal or exceed Metropolitan's Share of Total Program Capital Costs. Effective on or after the termination of this ten-year period, Semitropic may eliminate any remaining Interim Storage Allocation which has not been converted to Permanent Storage Allocation by Metropolitan as provided in Section 1.7.

2.6 With the exception of agreements which Semitropic enters into with agencies or districts within Kern County, Semitropic shall offer Metropolitan a right of first refusal for any agreement which Semitropic proposes to enter into with a Lower Priority Banking Partner. Further, after five years from the date of execution of this Agreement, if Semitropic negotiates an agreement with another potential Banking Partner, Semitropic shall offer Metropolitan a right of first refusal for the Interim and Permanent Storage Allocation provided for in such agreement and on the same terms and conditions, irrespective of the maximum amount specified in Section 2.5.

Metropolitan must notify Semitropic in writing of its intent to exercise such options within forty-five (45) days of receiving written notice from Semitropic transmitting the proposed agreement.

ARTICLE 3.
DELIVERY OF WATER BY BANKING PARTNERS TO SEMITROPIC

3.1 Each Banking Partner, at its sole cost and expense, may deliver a portion of its SWP Entitlement Water, or water from any other available sources mutually agreed upon by the respective Banking Partner with Semitropic, to the Semitropic turnout in Reach 10A of the California Aqueduct. Each Banking Partner shall notify Semitropic of its intent as early in the year as possible, preferably no later than April 15. Such water will be scheduled and delivered to Semitropic at times and rates of delivery acceptable to Semitropic, the Agency and the Banking Partner and shall not exceed the Program Delivery Capability and Unused Semitropic Delivery Capability nor shall it exceed the available capacity of Semitropic's distribution system.

3.2 Semitropic will take control and possession at the Semitropic turnout in Reach 10A of the California Aqueduct of water delivered to Semitropic by any Banking Partner for storage, and will credit the Storage Account Balance of that Banking Partner with Stored Water in an amount equal to the water so delivered less the deduction for losses provided for in Article 4 with respect to such water (the "Stored Water"). At the time Semitropic takes control and possession of water delivered by Metropolitan, legal title to Metropolitan's water, together with the right to withdraw from the Semitropic Basin an amount sufficient to return to Metropolitan the Stored Water, shall vest in Semitropic, as trustee for Metropolitan. Upon taking control and possession

of water delivered hereunder for storage by Metropolitan, Semitropic, at its sole cost and expense, will do either of the following: (i) transport and store such water by direct percolation; or (ii) exchange that water for an interest in and right to withdraw from the Semitropic Basin an amount of water sufficient to return to Metropolitan the Stored Water (which interest and right shall thereafter be Trust Property). In either case, Semitropic shall thereafter hold and return or otherwise dispose of the Trust Property as provided for in this Agreement. Upon crediting Metropolitan's Storage Account Balance for the amount of any water exchanged as described in clause (ii) above, Semitropic may deliver the exchanged water to water users for surface water service in lieu of pumping groundwater. Semitropic shall retain the right to use its facilities to deliver water supplies made available to it by Banking Partners and acquired by Semitropic by exchange pursuant to clause (ii) above as it deems appropriate.

3.3 Program Delivery Capability shall be allocated among Banking Partners in accordance with the ratio of the Banking Partner's portion of Permanent Storage Allocation to the sum of all Banking Partners' Permanent Storage Allocations.

3.4 If, due to hydrologic conditions, changes in cropping patterns or other reasons, Program Delivery Capability is reduced, the Banking Partners may request, and Semitropic shall provide, information accounting for such reduction. If such reduction is not due to temporary conditions, Semitropic shall take all actions necessary to comply with Exhibit C.

3.5 Unused Semitropic Delivery Capability shall be allocated among the Banking Partners requesting the use of such Unused Semitropic Delivery Capability according to the ratio

of the sum of such Banking Partner's Interim and Permanent Storage Allocation, to the sum of all such Banking Partners' Interim and Permanent Storage Allocations.

3.6 If, after reasonable efforts by Semitropic to accommodate the Banking Partners' storage scheduling requests, such requests nevertheless exceed the instantaneously available Program Delivery Capability and Unused Semitropic Delivery Capability, Semitropic shall allocate available capacities in proportion to the total of each Banking Partners' Interim and Permanent Storage Allocations.

ARTICLE 4. LOSSES AND STORED WATER

Semitropic's distribution system, evaporative and aquifer losses, for purposes of this Agreement and similar agreements between Semitropic and other Banking Partners, are collectively assumed to be ten percent (10%) of the amount of water furnished by Banking Partners for storage as measured at Semitropic's turnout in Reach 10A of the California Aqueduct. This amount and the Storage Account Balance shall be modified in the future, if the results of studies to be conducted jointly by Metropolitan, other Banking Partners and Semitropic establish the actual loss to be different than the assumed ten percent (10%) losses. The Storage Account Balance shall be adjusted accordingly and resulting adjustments in compensation payments shall be in accordance with Section 6.11.

ARTICLE 5.

RETURN OF WATER BY SEMITROPIC TO METROPOLITAN

5.1 In any year, upon request by Metropolitan, Semitropic shall return Stored Water to Metropolitan by the method set forth in Section 5.1.1 or the method set forth in Section 5.1.2 or both.

5.1.1 Semitropic may exchange an amount of Metropolitan's Stored Water for an equal amount of Semitropic's SWP Entitlement Water. Metropolitan hereby consents to such an exchange and Semitropic will be deemed to have effected such an exchange by delivering a portion of its SWP Entitlement Water to Metropolitan at the Semitropic turnout. Upon completion of such an exchange, Metropolitan's beneficial interest in the Stored Water that was the subject of the exchange and the right to withdraw such water shall be vested in Semitropic in its individual capacity, and Semitropic may thereafter deliver such water to its water users who would otherwise have received the portion of Semitropic's SWP Entitlement Water that was delivered to Metropolitan as a result of the exchange.

5.1.2 Semitropic may return Metropolitan's Stored Water to Metropolitan by pumping water from the groundwater basin back to the Aqueduct for delivery to Metropolitan.

5.2 The return of Stored Water by Semitropic to Metropolitan shall be subject to the following terms and conditions:

5.2.1 Subject to the provisions of this Agreement, for each acre-foot of Stored Water held by Semitropic for Metropolitan, Semitropic shall ultimately return one acre-foot of water to Metropolitan.

5.2.2 Subject to the provisions of this Agreement, when Metropolitan requests the return of Stored Water, Semitropic shall return at a minimum the quantities of water calculated in accordance with the following, using its reasonable efforts to accommodate Metropolitan's delivery schedule:

5.2.2.1 Program Pumpback Capacity shall be allocated among Banking Partners according to the ratio of each Banking Partner's combined Interim and Permanent Storage Allocations divided by 1,000,000 acre-feet. For the first ten (10) years, however, Metropolitan shall receive a minimum guarantee of 31,500 acre-feet of Program Pumpback Capacity. Each Banking Partner shall have a right to any then existing Program Pumpback Capacity not used by other Banking Partners, subject to mitigation of impacts to other Banking Partners pursuant to Section 5.6. If requests by Banking Partners for unused Program Pumpback Capacity exceed such capacity, then the unused Program Pumpback Capacity shall be allocated to each Banking Partner according to the ratio of its combined Interim and Permanent Storage Allocations, divided by the sum of the combined Interim and Permanent Storage Allocations of all Banking Partners wishing to use the unused capacity times the amount of unused Program Pumpback Capacity.

5.2.2.2 Program Entitlement Exchange Rights shall be allocated to each Banking Partner according to the ratio of its combined Interim and Permanent Storage

Allocations divided by 1,000,000 acre-feet times the Program Entitlement Exchange Rights to be allocated. Each Banking Partner shall have a right to any Program Entitlement Exchange Rights not required for use by other Banking Partners, subject to mitigation of impacts to other Banking Partners pursuant to Section 5.6. If requests by Banking Partners for unused Program Entitlement Exchange Rights exceed such rights, then the unused Program Entitlement Exchange Rights shall be allocated to each Banking Partner according to the ratio of its combined Interim and Permanent Storage Allocations, divided by the sum of the combined Interim and Permanent Storage Allocations of all Banking Partners wishing to use the unused Program Entitlement Exchange Rights times unused Program Entitlement Exchange Rights.

5.2.3 In the event it is determined in the future that the minimum annual Program Pumpback Capacity is less than 90,000 acre-feet per year but greater than 31,500 acre-feet per year and/or the maximum Program Entitlement Exchange Rights are less than 133,000 acre-feet per year but greater than 46,550 acre-feet per year on a permanent basis, and Metropolitan's Permanent Storage Allocation is Fully Vested (as defined in Section 1.7), and, during the first ten (10) years of this Agreement, whether or not Metropolitan's Permanent Storage Allocation is fully vested, Metropolitan's minimum guarantee of 31,500 acre-feet per year of Program Pumpback Capacity and its maximum of 46,550 acre-feet per year (133,000 acre-feet per year times 35 percent) of Program Entitlement Exchange Rights shall not be reduced. In the event said capacity and rights are less than Metropolitan's minimum guarantee of 31,500 acre-feet per year and less than 46,550 acre-feet per year of Program Entitlement Exchange Rights, and if Metropolitan's Permanent Storage Allocation is Fully Vested, and, during the first ten (10) years of this Agreement, whether or not Metropolitan's Permanent Storage Allocation is fully vested, Metropolitan shall be allocated

all of said capacity and rights. If, however, pursuant to Section 2.5, Metropolitan's Permanent Storage Allocation is reduced, such Program Pumpback Capacity and Program Entitlement Exchange Right shall be reduced to its vested rights. Temporary reductions in said capacity and rights are subject to Section 5.5.

5.3 Metropolitan shall notify Semitropic of its intent to take delivery of Stored Water as early in the year as possible, but no later than May 1 of the same year. If such notification is provided after May 1, Semitropic, at its sole discretion, may make reasonable efforts to comply with Metropolitan's request. In the event of an emergency need for water by Metropolitan, Semitropic shall endeavor to return Stored Water to Metropolitan to the maximum extent feasible.

5.4 Semitropic shall be responsible for obtaining approval from DWR to deliver Stored Water by pumpback to the California Aqueduct. In addition it shall be Semitropic's responsibility to notify the Agency, each Banking Partner, and DWR, as to the amount of Program Entitlement Exchange Rights and Program Pumpback Capacity for that year. When Stored Water is returned by pumpback, it shall be returned during Semitropic's off-peak irrigation season and other periods which Semitropic determines to be operationally feasible, on a schedule acceptable to the respective Banking Partner, Agency and DWR and at varying rates of delivery. Banking Partner shall be responsible for all necessary approvals and costs once the Stored Water is returned to the California Aqueduct at the Semitropic turnout by either Program Pumpback or Program Entitlement Exchange.

5.5 Notwithstanding any other provision of this Agreement, Semitropic will temporarily reduce or terminate groundwater pumping for the purpose of returning Stored Water to Banking Partners to the extent required pursuant to the MOU referenced above in Recital G. However, to the extent possible, Semitropic shall change the timing and location of pumping to avoid reduction or termination in the return of Stored Water pursuant to the MOU. Semitropic shall construct adequate facilities and/or secure agreements and/or operational arrangements to obtain the long term levels of service provided for in Exhibit A. Such long term levels of service may only be reduced to the extent required by the MOU referenced above in Recital G.

5.6 If the use by other Banking Partners, Lower Priority Banking Partners or Semitropic of unused Program Pumpback Capacity or unused Program Entitlement Exchange Rights referenced in Sections 5.2.2.1 and 5.2.2.2 interferes with the recovery of Metropolitan's or any other Banking Partner's Stored Water by causing a reduction or termination of pumping pursuant to the MOU, the Party or Parties responsible for the action(s) which impacts Metropolitan or any other Banking Partner shall reduce its withdrawal of Stored Water to make up Metropolitan's or other Banking Partner's loss and, to the extent reductions in the withdrawal of Stored Water are insufficient, shall provide, at the election of the impacted Banking Partner, an equivalent water supply in that year or cash in the amount of the replacement cost of such water, such water or cash to be for the benefit of and to be immediately distributed to the impacted Banking Partners. Semitropic shall adjust the Banking Partners' accounts to reflect any such water exchange.

5.7 Wells within Semitropic can currently produce water that will meet DWR's water quality standards to return water to the California Aqueduct. Semitropic shall take no direct action

which would knowingly cause the quality of recovered groundwater to not meet such water quality standards in effect. The preceding sentence shall not apply to delivery of water under non-banking programs or otherwise operating under this Program. In the event that future water quality standards change, or the quality of groundwater from Semitropic wells is such that Semitropic cannot meet acceptable DWR water quality requirements for pumping into the California Aqueduct, Stored Water shall be returned to Banking Partners by Program Entitlement Exchange or alternative methods satisfactory to the affected Banking Partners. Such alternative methods may include, but are not necessarily limited to: purchases, exchanges with others, and/or by improving Stored Water quality to acceptable standards for direct pumpback, with the additional costs of any such methods being paid by Banking Partners accepting such alternative methods. Semitropic's operations and financial situation shall not be adversely impacted as a result of these alternative methods.

5.8 This Agreement shall be subject to the "Agreement Between the Department of Water Resources of the State of California, Kern County Water Agency and Semitropic Water Storage District for 1990 Demonstration Semitropic Local Element," dated May 1, 1990, which provides for Semitropic to return all banked water to DWR solely by entitlement exchange. Said agreement expires when all banked water is withdrawn, or on December 31, 2010, whichever first occurs. Until such expiration, DWR has priority over Banking Partners in any year water is to be returned by entitlement exchange. The amount owed to DWR is 50,164 acre-feet as of January 1, 1994. After December 31, 1994, DWR can withdraw a maximum of 10,033 acre-feet per year. Any amendment to such agreement shall be subject to this Agreement and the review of the Banking Partners.

5.9 Metropolitan also recognizes that Semitropic has entered into an "Agreement Between Shafter-Wasco Irrigation District and Semitropic Improvement District of Semitropic Water Storage District Providing for Construction and Operation of an Intertie Pipeline," dated December 6, 1993, which implements a water banking and exchange program. Semitropic has committed to return water to Shafter-Wasco by delivery of either surface water in excess of its needs from any available source or by pumping groundwater. The agreement with Shafter-Wasco is based on the use of existing Semitropic facilities for the delivery of water to storage and for the withdrawal or return of water. Shafter-Wasco, therefore, has priority over Banking Partners in the use of existing facilities. Semitropic's obligation under said agreement does not require commitment of SWP entitlement nor the use of pumpback facilities required for the return of Banking Partners' Stored Water.

5.10 When the conditions set forth in clause (a) through (d) of Article 8 (the "**Article 8 Conditions**") have been satisfied and provided that this Agreement has not previously been terminated: (i) the 45,377.2 acre-feet of water currently in the Metropolitan storage account under the February 1, 1993, "Temporary Agreement for a Metropolitan-Semitropic Water Banking and Exchange Program" (the "**Temporary Agreement**") or so much thereof as has not been withdrawn, shall be transferred to Metropolitan's Storage Account under this Agreement, and (ii) the provisions of this Agreement shall supersede said Temporary Agreement and the 45,377.2 acre-feet shall be considered Stored Water under this Agreement, except that no additional payment pursuant to Section 6.2.1 is required. Such water will be subject to charges pursuant to Sections 6.3.1, 6.3.3, 6.4 and 6.7, as applicable. Payments made pursuant to Sections 6.3.1 and 6.4 shall be credited to Metropolitan's Share of Total Program Capital Costs. If, prior to satisfaction of the Article 8

Conditions, Metropolitan has withdrawn water stored under the Temporary Agreement and has paid (or has been or will be billed for) the return of such water at the rates provided in the Temporary Agreement, then Metropolitan may pay to Semitropic the difference between the sum of all payments made by Metropolitan with respect to withdrawal of such water under Article 4.2 of the Temporary Agreement other than the power component and the amount which would have been due pursuant to Section 6.3.1 if the water had been withdrawn under this Agreement, and the total amount paid with respect to withdrawal of such water under both the Temporary Agreement and this Agreement shall be credited pursuant to Section 1.6 and 1.7, as applicable, in determining Metropolitan's Share of Total Capital Costs and Metropolitan's Permanent Storage Allocation.

ARTICLE 6. COMPENSATION

Metropolitan shall make the payments set forth below to compensate Semitropic for (i) its services as trustee under this Agreement, (ii) costs and expenses incurred by Semitropic in connection with its obligations under this Agreement.

6.1 Semitropic commits to utilize Metropolitan's payments and other Semitropic funds, and to maintain such adequate financial flexibility, as it reasonably determines to be necessary to construct facilities needed to provide Metropolitan with Program Pumpback Capacity and Program Entitlement Exchange Rights in a timely manner as described in Exhibit A hereto and, as payments of Metropolitan's Share of Total Program Capital Cost are made, provide increases in Program Delivery Capability to Metropolitan's share of Program Delivery Capability as described in Exhibit C, all in accordance with this Agreement.

Metropolitan shall pay the following for services provided by Semitropic for storage and withdrawal of water. Semitropic shall pay all other costs not specified herein, and Semitropic shall not create and impose any other charges or fees upon Metropolitan.

6.2 Storage Payments.

6.2.1 Until Metropolitan has actually paid Metropolitan's Share of Total Program Capital Cost, Metropolitan shall pay to Semitropic Ninety Dollars ($90.00) per acre-foot for all Stored Water credited to Metropolitan's Storage Account Balance for calendar years 1994 and 1995. Subsequent to calendar year 1995, the Ninety Dollars ($90.00) per acre-foot shall be adjusted at the beginning of each year as provided in this Section 6.2.1, and the adjusted amount shall apply to all Stored Water credited to Metropolitan's Storage Account Balance for that year. The adjusted amount for any particular calendar year after 1995 shall be the amount equal to Ninety Dollars ($90.00) multiplied by a fraction, the numerator of which is the Construction Costs Index (as defined in Section 1.6) for December of the calendar year immediately preceding the calendar year with respect to which the adjusted amount is being determined (that is, for December 1995 with respect to the adjusted amount for 1996; December 1996 for 1997; and so on), and the denominator of which shall be the Construction Costs Index for June 1994.

6.2.2 From and after the time when Metropolitan has paid Metropolitan's Share of Total Program Capital Cost, Metropolitan shall pay Fifty Dollars ($50.00) per acre-foot for any additional Stored Water credited to Metropolitan's Storage Account Balance, adjusted at the beginning of each year as provided in this Section 6.2.2, and the adjusted amount shall apply to

all Stored Water credited to Metropolitan's Storage Account Balance for that year and to which this Section 6.2.2 is applicable. The adjusted amount under this Section 6.2.2 for any particular calendar year shall be the amount equal to Fifty Dollars ($50.00) multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "**CPI**") for December of the calendar year immediately preceding the calendar year with respect to which the adjusted amount is being determined (that is, for December 2000 with respect to the adjusted amount for 2001; December 2001 for 2002; and so on), and the denominator of which shall be the CPI for June 1994 (which, the Parties agree, is 148.6 (based on 1982-84 index).

6.2.3 If publication of either of the indexes referred to in Section 6.2.1 or 6.2.2 ceases or if the basis for such indexes is substantially modified, the Parties shall negotiate and mutually agree on an alternative but equivalent index or, in the absence of agreement, the matter shall be resolved pursuant to Article 9.

6.3 Withdrawal Payments.

6.3.1 Metropolitan shall pay to Semitropic Forty Dollars ($40.00) per acre-foot, for each acre-foot of water with respect to which storage payments have been made pursuant to Section 6.2.1, when such water is returned to Metropolitan. Said charge shall be adjusted on the same basis as in Section 6.2.1.

6.3.2 Metropolitan shall pay Fifty Dollars ($50.00) per acre-foot, for each acre-foot of water with respect to which storage payments have been made pursuant to Section 6.2.2, when such water is returned to Metropolitan. Said charge shall be adjusted on the same basis as in Section 6.2.2. No water shall be deemed or construed to be subject to the charge provided in this Section 6.3.2 until all water which is subject to the charge provided in Section 6.3.1 has been returned.

6.3.3 In addition to payment under Sections 6.3.1 and 6.3.2, when water is returned, Metropolitan shall pay the average unit power costs then actually incurred by Semitropic to pump such water from the groundwater basin for either direct delivery to the California Aqueduct or for entitlement exchange. In the case of direct delivery to the California Aqueduct, Metropolitan also shall pay the average unit power cost then actually incurred by Semitropic to convey the returned water through the distribution system and to pump such water into the California Aqueduct at the Semitropic turnout in Reach 10A. Said power costs shall be computed based on the amount of energy consumed to withdraw and when applicable to convey to the California Aqueduct Metropolitan's Stored Water in a given month times Semitropic's average actual unit power cost for the same pumping period. For ease in billing, Semitropic shall establish an estimated power rate for each calendar year with respect to which Metropolitan requests such information and shall provide Metropolitan with such estimate, including back-up documentation to justify the rate, within fourteen (14) days of the request. Such estimated rate shall be used for billing purposes for the following year and then the billing will be adjusted to actual by March 1 of the year following the estimated rate year, or as soon as possible thereafter. Once the variance amount has been agreed to by the Parties, any amount due by either Party shall be billed

immediately and paid in accordance with Section 6.8. Semitropic has its own power production and distribution facilities and the unit cost of power shall be based upon the cost of Semitropic's energy project including, but not limited to, debt service for the energy project, fuel, operation and maintenance for the energy project, replacements, reserve deposit for the energy project, utility billings, and the cost of production and distribution of such power. The Parties agree that the initial calculation shall be consistent with the calculation in Exhibit D. For all Stored Water returned by Semitropic's exercise of Program Entitlement Exchange Rights, Semitropic shall pay all applicable SWP costs to the Semitropic turnout in Reach 10A.

6.3.4 Exhibit D may be revised from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. The intent of Exhibit D is to provide Semitropic with sufficient revenue to recover the power costs incurred by Semitropic for Metropolitan's withdrawal of Stored Water and to allow Semitropic flexibility to change the calculation based on experience and the changing electric utility industry.

6.4 During the period in which Metropolitan has Interim Storage Allocation, if Metropolitan has not paid Metropolitan's Share of Total Program Capital Cost, Metropolitan shall pay Semitropic $20.00 per acre-foot for any water remaining in Metropolitan's Storage Account Balance for more than five years (determined with respect to water stored under the Temporary Agreement beginning on the date of this Agreement), which payment shall be due each year. Withdrawal of water under the Agreement shall be accounted for on a first-in-first-out basis. The above fee shall be adjusted based on the index referenced in Section 6.2.1 above.

6.5 If Metropolitan has not stored and withdrawn 350,000 acre-feet and if payments made pursuant to Sections 6.2.1, 6.3.1 and 6.4 result in Metropolitan paying to Semitropic an amount in excess of Metropolitan's Share of Total Program Capital Cost, then the amount of such excess shall increase Metropolitan's Permanent Storage Allocation and related rights under the Program. The amount of such increase shall be determined monthly, once Metropolitan has paid an excess amount, by dividing the sum theretofore paid in excess of Metropolitan's Share of Total Program Capital Cost as of the last day of the prior calendar month by Total Program Capital Cost as of that same date and multiplying that quotient by 1,000,000 acre-feet.

6.6 When Metropolitan's Permanent Storage Allocation is Fully Vested, at Metropolitan's election and Semitropic's concurrence, Metropolitan may continue to deliver water for storage and make payments under Sections 6.2.1, 6.3.1 and 6.4, and such election and payments will result in an increase in Metropolitan's Permanent Storage Allocation to the extent the sum of all Banking Partners' Permanent and Interim Storage Allocation does not exceed 1,000,000 acre-feet. The amount of such increase shall be determined pursuant to Section 1.7.

6.7 Except as otherwise provided at Sections 6.7.1 or 6.7.2, Metropolitan shall be allocated an annual operations and maintenance fee (the "**O&M Fee**") of $3.98 (the "**Base Amount**") per acre-foot of Permanent Storage Allocation held by Metropolitan. The Base Amount shall be adjusted in the same manner described and using the same index referenced in Section 6.2.2. The annual O&M Fee shall start in January 1, 1995, for water stored in 1993 and 1994.

6.7.1 In any year, Metropolitan shall pay in total, an amount equal to the greater of the sum of payments required under Sections 6.2.2 and 6.3.2 or the annual O&M Fee otherwise required under Section 6.7. The annual O&M Fee shall be billed on January 1 of each year. Any amounts due during that year under Section 6.2.2 and Section 6.3.2 shall be compared with the O&M fee. No payments due under Sections 6.2.2 and 6.3.2 shall be payable until the amount owed under Sections 6.2.2 and 6.3.2 is greater than the O&M fee. Thereafter, only the amount payable under Sections 6.2.2 and 6.2.3 that is greater than the O&M fee paid that year is then due and payable to Semitropic.

6.7.2 If Semitropic or other Banking Partners use Program Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights allocated to Metropolitan, such entity using said capacity shall pay the share of Metropolitan's O&M Fee under this Section 6.7 that is represented by its use. The payment made for the use of Metropolitan's unused capacity rights shall be deducted from the next payment due from Metropolitan under this Agreement.

6.7.3 If Metropolitan uses another Banking Partner's unused Program Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights, Metropolitan shall pay the share of the other Banking Partner's O&M Fee under this Section 6.7 that is represented by its use.

6.8 Semitropic may bill Metropolitan no more than monthly for payments under Sections 6.2.1 or 6.2.2, 6.3.1 or 6.3.2, 6.3.3, 6.7.1 and 6.7.3 hereof and annually for payments under Section 6.4, which payments shall be due Semitropic and shall become delinquent forty-five (45) days after

Metropolitan receives the invoice under the terms of this Agreement. In addition to other remedies available, delinquent payments shall bear interest at the rate of one percent (1%) per month. Data supporting the amounts invoiced shall be provided upon the reasonable request of Metropolitan. Semitropic shall correct any erroneous billing promptly upon discovery of the error. If Metropolitan has been underbilled, payment of the underbilled amount shall be due and become delinquent forty-five (45) days after Metropolitan receives the corrective invoice and data justifying the change. Overpayments by Metropolitan shall be refunded to Metropolitan within forty-five days of discovery, together with interest thereon at the average investment yield of Metropolitan's investments as reported monthly by Metropolitan's Treasurer.

6.9 Semitropic shall require in other Banking Partners agreements that Semitropic shall collect from such other Banking Partners sufficient funds to reimburse Metropolitan for a portion of its expenses in developing the Program. Metropolitan's reimbursement shall be equal to the proportion of other Banking Partners Interim and Permanent Storage Allocation to 1,000,000 acre-feet times Metropolitan's cost of $300,000, adjusted in the same manner as in Section 6.2.2. Semitropic shall pay Metropolitan such reimbursement within twelve (12) months of execution of the Banking Partner's Agreement.

6.10 In order to design essential facilities for the benefit of Metropolitan and which will need to be constructed during Semitropic's 1994-95 off-peak period, Metropolitan will make an advance payment of $1,350,000 within thirty (30) days of execution of this Agreement. This amount, plus $225,000.00 which is Semitropic's share of preparing the EIR, will be deducted from amounts due from Metropolitan to Semitropic pursuant to Section 6.2.1, beginning with the first

payment due during the second calendar year in which Metropolitan delivers water into storage, and continuing each year until the total advance payment has been repaid to Metropolitan by such offsets. Before invoicing Metropolitan for water delivered into storage, the amount due from Semitropic shall be deducted. If this Agreement is terminated by either Party by reason of a failure to obtain satisfaction of all of the Article 8 conditions (either Party having the right to terminate this Agreement at any time prior to the time all of the Article 8 Conditions are satisfied by giving written notice of such termination to the other), or if this Agreement is involuntarily terminated pursuant to Section 12.3, for reasons beyond the control of Semitropic and Metropolitan, said amount of $1,350,000 will be repaid to Metropolitan within thirty (30) days of exercise of a right of first refusal pursuant to Section 8(d), otherwise within ten (10) years of execution of this Agreement, without interest.

6.11 In the event there is an adjustment in Metropolitan's Storage Account Balance as provided at Section 4, applying the first-in-first-out method of accounting for water in the Storage Account Balance, previous payments shall be adjusted based on the payment charged in the year the quantity of water to be adjusted was delivered with no further adjustments using the applicable indexes cited in Section 6.2.1 or Section 6.2.2. In addition no interest shall be payable on the amount of money required for said adjustment. Financial obligations shall occur as follows:

6.11.1 To the extent the Storage Account Balance is reduced (i.e., losses are determined to exceed ten percent (10%)), Semitropic shall reimburse Metropolitan for the charges paid under Sections 6.2.1, 6.2.2 and 6.4 within one year of such determination.

6.11.2 To the extent the Storage Account Balance is increased (i.e., losses are determined to be less than ten percent (10%)), Metropolitan shall pay Semitropic for charges that would have been paid under Sections 6.2.1, 6.2.2 and 6.4 for such additional water determined to be in the Metropolitan Storage Account Balance within one year of such determination.

6.12 It is recognized that changes in Semitropic's actual costs of operating the Program may occur on or after the date this Agreement is executed as a result of enactments, amendments, changes in implementation or interpretation, or repeal of any federal or state law, rule, regulation or ordinance (each, a "**Regulatory Change**"). If either Party determines that a Regulatory Change has occurred that would result in a material change (upward or downward) in Semitropic's costs for storing, recovering or transporting water pursuant to the terms of this Agreement, which change in Semitropic's costs is not reflected in the adjustments in the payments due from Metropolitan to Semitropic pursuant to Article 6 or other provision of this Agreement (including, but not limited to, this Section 6.12), such Party shall promptly inform the other Party of the nature and extent of such alleged Regulatory Change and of the reason why that party believes an adjustment pursuant to this Section 6.12 is warranted in the payments due from Metropolitan to Semitropic. Promptly thereafter, Semitropic shall provide Metropolitan with its calculation of the costs or cost savings associated with such Regulatory Change and the facts and assumptions underlying that calculation. Upon agreement by the parties hereto (i) that a charge or credit affecting any payment due from Metropolitan to Semitropic should be made as a result of a Regulatory Change, (ii) of the amount of such charge or credit, (iii) as to whether such charge or credit is to affect the basic payment amount or is to be separately accounted for (and, if so, in what manner), and (iv) as to the period during which such charge or credit is to apply, such charge or credit shall be incorporated into an

amendment to this Agreement setting forth the foregoing and other particulars necessary to implement that adjustment. If such agreement cannot be reached within forty-five (45) days after Semitropic has provided the required notice and information to Metropolitan, the matter shall be resolved pursuant to Article 9, the qualified third party or arbitration panel being charged with determining (x) whether a Regulatory Change has occurred (if that is in dispute), (y) the amount of change, if any, in Semitropic's costs resulting from the Regulatory Change, and (z) the manner in which the payments due from Metropolitan to Semitropic are to be adjusted to fairly and equitably reflect that change in Semitropic's costs (it being the intent of the parties that no windfall or unwarranted compensation or benefit should result to any party as a result of any adjustment made pursuant to this Section 6.12). Any adjustment to the payments due from Metropolitan to Semitropic made pursuant to this Section 6.12 shall be effective as of the first day such Regulatory Change affects Semitropic's operations hereunder unless the parties otherwise agree and may be reconsidered thereafter at any time, at the request of any party, if the adjustment is unjustly undercompensating or overcompensating any party.

ARTICLE 7. DIVISION OF RISK RESPONSIBILITIES

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

7.1 Semitropic shall defend, indemnify and hold harmless Metropolitan and the other Banking Partners, and their respective directors, officers, agents and employees against any and all losses, claims, demands and causes of action (herein collectively referred to as "**claims**") and shall assume responsibility for payment of any settlements, judgements, costs and attorneys' fees arising from claims concerning the following:

(a) Control, carriage, handling, use, disposal, or distribution of water in Semitropic's facilities;

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

(c) Construction, repair, modification, or replacement of any Semitropic facilities;

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

(e) Any other activities under Semitropic's exclusive control.

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

7.2 Each Banking Partner (including Metropolitan) shall defend, indemnify and hold harmless Semitropic and the other Banking Partners, and their respective directors, officers, agents and employees, against any and all claims and shall assume responsibility for payment of any settlements, judgements, costs or attorneys' fees arising from claims concerning the following:

(a) Control, carriage, handling, use, disposal or distribution of Stored Water in facilities of that Banking Partner or in SWP facilities, to the extent that the claim relates to use of SWP facilities to implement this Agreement with respect to that Banking Partner;

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

(c) Construction, repair, modification or replacement of any of the facilities of that Banking Partner;

(d) Operation of the facilities of or the actions of the officers, employees or agents (other than Semitropic) of that Banking Partner; and

(e) Any other activities under the exclusive control of that Banking Partner.

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

7.3 As for any claims by a third party with respect to the Program which are not otherwise provided for at Sections 7.1 or 7.2, including any claims challenging the underlying authority for or the validity or enforceability of the Program under this Agreement, each Banking Partner shall be responsible for payment of its allocable share of any settlements or judgments to which it is a party with respect to such claims. If Semitropic is named in any action with respect to such a claim, it may submit its defense to the Banking Partners which are parties to that action with respect to that claim and those Banking Partners shall bear the full cost of defense, except to the extent Semitropic utilizes its own counsel for such defense.

7.4 At the request of Metropolitan and/or other Banking Partners, Semitropic shall join in the defense of any claim which is not adverse to Semitropic's water supply or financial interests

in which case the requesting Party shall reimburse Semitropic for all of its costs of defense. However, with respect to claims in which one or more of the plaintiffs resides or does business in Kern County challenging the recovery of groundwater under this Agreement, and with respect to any third party claim challenging this Agreement or the right of Metropolitan to the return of its Stored Water in accordance with the terms of this Agreement, Metropolitan may demand that Semitropic join in the defense of claims. In such case, Semitropic must comply with any such demand, the Parties shall jointly manage the litigation, and Metropolitan and other Banking Partners who are parties to such litigation shall pay one-half of Semitropic's defense costs, if one or more of the plaintiff resides or does business in Kern County; and in other such cases, shall reimburse Semitropic for all of its costs of defense.

7.5 In all other water banking and exchange agreements involving Semitropic and any Banking Partner, the division of risk and indemnification responsibilities between and among Semitropic and the Banking Partner(s) shall be identical to the responsibilities provided in Sections 7.1, 7.2, 7.3, 7.4 and 7.6. In particular:

7.5.1 Each Banking Partner shall be required to assume the duty to defend, indemnify and hold harmless Semitropic and the other Banking Partners from claims arising from or otherwise concerning the activities described in Section 7.2 of that Banking Partner.

7.5.2 Each Banking Partner shall be required to assume the duty to pay its allocable share of any claims of the type described in Section 7.3. Unless otherwise provided in the settlement or judgment, each Banking Partner's share of such settlements, judgments, or

attorney fees as provided at Section 7.3 shall be determined according to the ratio of that Banking Partner's combined Interim and Permanent Storage Allocation divided by the sum of all involved Banking Partners' combined Interim and Permanent Storage Allocations.

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

ARTICLE 8. REQUIRED FOR IMPLEMENTATION

Implementation of this Agreement is contingent upon the following:

(a) An agreement among DWR, Agency and Metropolitan for a Metropolitan point of delivery at the Semitropic turnout in Reach 10A of the California Aqueduct.

(b) An agreement between DWR, Agency and Semitropic for a turn-in to the California Aqueduct in Reach 10A.

(c) An agreement between DWR and Metropolitan to convey Stored Water from Semitropic's turnout to Metropolitan.

(d) No entity within Kern County exercising its right of first refusal under the same terms and conditions provided to Metropolitan in this Agreement within forty-five (45) days after execution of this Agreement.

Semitropic will promptly notify Metropolitan when condition (d) has been met and the Parties will keep each other informed concerning the satisfaction of the other Article 8 Conditions.

ARTICLE 9. DISPUTE RESOLUTION

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

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

(a) One member shall be selected by Metropolitan (or if the dispute is between various Banking Partners and Semitropic, by the Banking Partners involved, collectively; provided, however that if they are unable to agree on a member, any one Banking Partner may petition the court to appoint a member pursuant to Code of Civil Procedures Section 1281.6);

(b) One member shall be selected by Semitropic; and

(c) The third member shall be selected by the other two (2) members.

If the two (2) members selected by the Banking Partner(s) and Semitropic are unable to agree on the selection of a third member, either Party may petition a court to appoint the third member pursuant to Code of Civil Procedure Section 1281.6. Each Party shall be responsible for any fees and expenses of the member of the panel appointed by that Party, and the fees and expenses of the third member of the panel shall be shared fifty percent (50%) by Semitropic with the remainder to be equally among the other Parties participating in the dispute resolution process.

If a Party asserts that another Party has breached obligations under this Agreement, it may request that the arbitration panel order the other Party to comply with this Agreement. Upon the panel finding that a Party has in fact breached this Agreement, the panel shall order compliance. The panel may order any other equitable relief permitted by California law, including declaratory or injunctive relief, applicable to the matter before the panel for resolution. If termination is sought by a party pursuant to the terms hereof, the panel may determine the issues of whether a

default has occurred or other condition precedent to the termination alleged has been satisfied and, if so, may issue orders implementing that termination. The orders of the panel shall be judicially enforceable. The panel may order that the effective date of its order be the date of the breach, if appropriate. If Metropolitan has suspended payments under Section 11.1.2, it shall reimburse Semitropic for any monies withheld and then due to Semitropic as soon as Semitropic again fully complies with this Agreement. The panel may not order any damages (including consequential or punitive damages) beyond those provided for or permitted under this Agreement.

ARTICLE 10. TERM OF AGREEMENT

Unless this Agreement is earlier terminated pursuant to this Article 10 or pursuant to Sections 11.1.3, 11.2, 11.3, 12.2 or 12.3, this Agreement shall terminate on November 4, 2035, the date of termination of the Agency's Long-Term Water Supply Contract; *provided, however,* that, if Metropolitan has timely requested return of Stored Water pursuant to Article 5 at such a time and in such a manner that Metropolitan's Stored Water could have been returned prior to November 4, 2035 but, because of conditions beyond the control of Metropolitan, all of Metropolitan's Stored Water has not been returned by that date, the provisions of Articles 1, 5, 6, 7, 9, 11, 12 and 13 of this Agreement shall continue in full force and effect for such additional period of time as is necessary for Metropolitan to receive its Stored Water as requested; and *provided, further,* that if a claim arising under or with respect to the terms of this Agreement has not been resolved when this Agreement terminates, or if such a claim is brought after this Agreement has terminated but within the period of time for bringing such a claim under California law (such a claim being referred to herein as a "**Late Arising Claim**"), the provisions of Articles 1, 7, 9 and 13 of this

Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claim and to satisfy the rights and obligations of the Parties hereto with respect to it pursuant to such Articles. This Agreement may be renewed by mutual agreement of the parties, which renewal shall unless otherwise agreed effect a continuation of Semitropic's duties under this Agreement. Metropolitan may elect to terminate this Agreement at any time by giving written notice to Semitropic of Metropolitan's intent to terminate not less than one year in advance of the termination date selected by Metropolitan and specified in the notice and by conveying its beneficial interest in the amount of Metropolitan's Stored Water in Metropolitan's Storage Account Balance on that termination date to Semitropic. Upon Metropolitan's conveyance of such beneficial interest, this Agreement shall be fully terminated except as provided in this Article 10 with respect to Late Arising Claims.

ARTICLE 11. REMEDIES

11.1 Remedies in Event of Semitropic's Voluntary Failure to Perform.

11.1.1 If Metropolitan alleges that Semitropic has not substantially performed according to the terms of this Agreement (including, but not limited to, by failing to construct adequate Program facilities and/or securing agreements or operational arrangements, all as necessary to provide those levels of capabilities, capacities and rights described in Exhibits A and C, or by causing (or, if within Semitropic's jurisdiction, permitting) other entities or persons to interfere with Program operation, or by attempting to resign its obligations as trustee under this Agreement or by failing to accept or return water as and when required by this Agreement), or if

Semitropic has otherwise breached its obligations under this Agreement, which failure to perform or breach is not subject to Section 12.3, and notice has been provided to Semitropic pursuant to Section 13.4 and Semitropic has failed to cure the alleged breach within the time provided in Section 13.4, Metropolitan may, at any time thereafter while the default is continuing, advise Semitropic of the remedy or remedies provided in Article 9 (Dispute Resolution), and Sections 11.1.2 and 11.1.3 below which Metropolitan intends to pursue with respect to such default. Semitropic may challenge at any time, through Article 9, whether in fact there has been a breach of or default under this Agreement by Semitropic.

11.1.2 In the event of an alleged breach as to which Metropolitan has given notice to Semitropic pursuant to Section 11.1.1, Metropolitan may elect to suspend any payment obligations it may have under Article 6 of this Agreement until Semitropic complies with the terms of this Agreement and cures such breach or default or is determined, pursuant to Article 9, not to have violated the Agreement. Notwithstanding such suspension of Metropolitan's payment obligations, this Agreement shall remain in effect unless and until Metropolitan elects to terminate the Agreement under Section 11.1.3 or Article 10, in which case termination shall occur in accordance with and as provided in such provision. Notwithstanding an election by Metropolitan under this Section 11.1.2 to suspend payment obligations, Metropolitan or Semitropic may thereafter also seek relief under Article 9.

11.1.3 If, pursuant to Section 11.1.1, Metropolitan elects to terminate this Agreement, Semitropic will purchase the amount of Metropolitan's Stored Water in its Storage Account Balance for an amount equal to Metropolitan's previous payments with respect to such

Stored Water plus any unrefunded portion of monies described in Section 6.9, all adjusted based on the index referenced at Section 6.2.2, plus twenty percent (20%) of said payments, all payable within one (1) year of said election by Metropolitan to terminate. Once such payment has been fully made, this Agreement shall be fully terminated except for Articles 1 (Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); and Article 13 (Miscellaneous Provisions). Upon payment in full by Semitropic as provided above, Metropolitan's beneficial interest in the amount of Metropolitan's Stored Water in Metropolitan's Storage Account Balance shall vest in Semitropic and Semitropic shall be entitled to produce and use such water for its own account.

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

If Metropolitan has not substantially performed according to the terms of this Agreement, and notice has been provided to Metropolitan pursuant to Section 13.4 and Metropolitan has failed to cure the alleged breach within the time provided in Section 13.4, Semitropic may at its election, at any time thereafter while the default is continuing, either (1) suspend further performance (except that Semitropic shall continue to hold the trust property in trust) and thereafter seek relief under Article 9, and shall recommence performance once Metropolitan complies with the Agreement, or (2) terminate this Agreement, except that Articles 1, 7, 9 and 13 shall remain in effect. If Semitropic elects to terminate this Agreement, Semitropic will either purchase the amount of Metropolitan's Stored Water in Metropolitan's Storage Account Balance in the manner and for the price provided in Section 12.3 or will deliver to Metropolitan that amount of water in the manner provided in Section 12.2. Metropolitan may challenge at any time, through Article 9, whether in fact there has been a breach of this Agreement by Metropolitan.

11.3 **Remedies in Event of Failure of Certain Other Remedies.**

If: (i) Semitropic has breached or defaulted in the performance of its obligations under this Agreement, and (ii) Metropolitan has given notice of the breach or default pursuant to Section 11.1.1, and (iii) Semitropic has failed to cure that breach or default within thirty (30) days as required by Section 13.4, and (iv) Metropolitan has elected a remedy for that breach or default pursuant to Section 11.1.1, and (v) Semitropic has agreed to such remedy or, if Semitropic has not so agreed, Metropolitan has obtained a judgment or court order against Semitropic (whether based on an order of an arbitration panel under Article 9 or otherwise) which judgment or court order Semitropic has failed or refused to perform, *then* Metropolitan may notify Semitropic that Metropolitan is entitled to and intends to exercise its right to appointment of a successor trustee in place of Semitropic and, thereafter, Metropolitan may apply to a court of competent jurisdiction for such appointment of a successor trustee who shall be charged with performing the duties of the trustee pursuant to the terms of this Agreement. The successor trustee, when appointed, shall be entitled to exercise only and all rights theretofore held by Semitropic as trustee for Metropolitan, including, without limitation, those under or relating to the Trust Property (excepting, however, the right to receive additional water for storage hereunder), until such time as the successor trustee has collected and recovered water from the property of Semitropic in an amount sufficient to return water in an amount equal to the amount of Metropolitan's Stored Water in Metropolitan's Storage Account Balance and has transported that water to the California Aqueduct at Reach 10A. Upon the receipt by Metropolitan at Reach 10A of the California Aqueduct of water in an amount equal to Metropolitan's Storage Account Balance pursuant to the exercise by such successor trustee of its rights in the Trust Property, this Agreement shall be fully terminated except for Articles 1

(Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); and 13 (Miscellaneous Provisions), all in accordance with the terms of this Agreement.

ARTICLE 12. EARLY TERMINATION

12.1 **Resignation of Semitropic.** Because Semitropic is uniquely situated for performing its duties as trustee, Semitropic may not resign its duties and obligations under this Agreement for the term of this Agreement except as permitted by Sections 11.2, 12.2 and 12.3, and any other attempt by Semitropic to resign shall be deemed to be a breach of its obligations hereunder.

12.2 **Voluntary Termination.** If after ten (10) years from the execution of the Agreement Metropolitan's Program activities have ceased to provide benefits to Semitropic because Metropolitan has not made payments under Section 6.4 or either has not requested to store or withdraw significant quantities of water for a period of five (5) years and has a Storage Account Balance of less than 100,000 acre-feet, Semitropic may elect to terminate Articles 3, 5 and 6 of this Agreement. Upon such election, Semitropic must either (i) purchase the amount of Metropolitan's Stored Water in Metropolitan's Storage Account Balance for an amount equal to Metropolitan's previous payments for any water remaining in the Metropolitan Storage Account plus twenty percent (20%) of said payments, all payable within one year of such termination, or (ii) exchange Metropolitan's Stored Water for an amount of water equal to the remaining water in Metropolitan's Storage Account Balance, such water to be delivered to Metropolitan, at the Semitropic Turnout in the California Aqueduct or another location acceptable to the Parties, within five (5) years of such termination upon a schedule mutually acceptable to the Parties (or, if the

Parties fail to agree upon such schedule, the matter shall be resolved pursuant to Article 9). If payment is made or exchange water is provided by Semitropic as provided above, Metropolitan's beneficial interest in Metropolitan's Stored Water shall vest in Semitropic as and to the extent such payment or delivery is made. Once either the payment referred to above has been fully made or the water in Metropolitan's Storage Account Balance has been returned to Metropolitan in full, this Agreement shall be fully terminated except for Articles 1 (Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); this Section 12.1 and Article 13 (Miscellaneous Provisions). Upon the termination of this Agreement pursuant to this Section 12.2, Semitropic shall retain the right to offer the benefits of this Program to other entities without interference from Metropolitan.

12.3 **Involuntary Termination.** Notwithstanding Article 11, in the event that Semitropic is unable to perform its obligations under this Agreement for reasons beyond its control, and that inability to perform includes the inability of Semitropic to return Stored Water which remains in the Metropolitan Storage Account Balance, Semitropic will purchase the Stored Water which Semitropic is unable to return for an amount equal to the costs which Semitropic would have incurred to purchase such water as entitlement water under its Member Unit contracts with the Agency referenced at Recital B (including all fixed and variable costs for delivery of such entitlement water to the Semitropic Turnout in Reach 10A) in the year Metropolitan delivered such Stored Water to Semitropic. "Reasons beyond its control" as used in the aforesaid sentence shall not include any reasons caused by Semitropic's breach of its obligations under this Agreement or other failure to comply with any of its legal obligations. Such payment by Semitropic to Metropolitan upon involuntary termination under this Section 12.3 shall be financed over time upon

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

In addition to such payment, if, subsequent to such involuntarily termination, Semitropic is able to negotiate another arrangement or program with another entity which utilizes Program Delivery Capacity which was developed as a result of payments by Metropolitan pursuant to this Agreement, and which capacity would have been available to Metropolitan absent such involuntary termination, the Parties shall negotiate a payment schedule to reimburse Metropolitan for the undepreciated balance of capital costs which Metropolitan has paid, deducting payments made or to be made by Semitropic as provided above, and which does not render such new program infeasible. Attached as Exhibit E are the assumptions to be used in such calculation. If Metropolitan and Semitropic are unable to agree on the terms of a payment schedule in a reasonable period of time, they shall resolve their disagreement pursuant to Article 9.

ARTICLE 13. MISCELLANEOUS PROVISIONS

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

13.2 **Allocation Among Semitropic Improvement Districts.** Semitropic shall allocate the rights and obligations under this Agreement between the water users and landowners of Semitropic Water Storage District, Semitropic Improvement District, Buttonwillow Improvement District and Pond-Poso Improvement District as it deems appropriate, so long as Metropolitan's and the other Banking Partners right to obtain the return of Stored Water is not adversely impacted. Regardless of such allocations, Semitropic shall remain the trustee under this Agreement.

13.3 **No Modification of Existing Contracts.** This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between the DWR and the Agency or Metropolitan or the water supply agreements between the Agency and Semitropic.

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

13.5 **Construction of Agreement.** The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and shall not be used in construing it. The preamble, recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "**herein**," "**hereof**" and "**hereunder**" and similar words shall refer to the Agreement generally and not merely to the provision in which such term is used; the word "**person**" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "**Metropolitan**" and "**Semitropic**" shall include the respective representatives, successors and permitted assigns, if any, of such person; the

words "**including**," "**include**" or "**includes**" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "**month**" shall mean calendar month; and the term "**business day**" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

13.6 **Entire Agreement.** This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral pertaining between the Parties relating to the matters provided for herein (it being expressly understood and agreed, however, that the Temporary Agreement shall continue in full force and effect until the earliest of the following to occur: (i) satisfaction of the Article 8 Conditions, or (ii) withdrawal by Metropolitan of all of the water stored pursuant to the Temporary Agreement, or (iii) January 1, 2010).

13.7 **Severability**. In the event that a court of competent jurisdiction or a arbitration panel as provided at Article 9 determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual

agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement which were not found to be legally invalid or unenforceable in the final decision shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section 12.3.

13.8 **Force Majeure.** All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 13.8. In event of such an occurrence of duration in excess of one year, Section 12.3 shall control, unless the Parties otherwise agree.

13.9 **Notices.** All notices, requests and demands hereunder ("**Notices**") shall be in writing and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice

of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Semitropic shall be sent to the General Manager of Semitropic at Post Office Box Z, Wasco, California 93280, if mailed, and otherwise to the General Manager at 1017 Central Avenue, Wasco, California 93280. Notices for Metropolitan shall be sent to the General Manager of Metropolitan at Post Office Box 54153, Los Angeles, CA 90054-0153 if mailed, and otherwise to the General Manager at the offices of Metropolitan at 350 S. Grand Avenue, Los Angeles, California 90071. Each Party hereto (a "**Recipient**") who receives from another Party hereto (a "**Sender**") by electronic facsimile transmission (telecopier) any writing which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile transmission agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

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

13.11 **Counterparts.** This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement

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

13.12 **Recording of Memorandum.** A memorandum of this Agreement in the form attached hereto as Exhibit F shall be recorded in the Office of the County Recorder, County of Kern.

Executed the day and year first hereinabove written.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By:_____
John R. Wodraska
General Manager

APPROVED AS TO FORM:

N. Gregory Taylor
General Counsel

By:_____
Jarlath Oley
Senior Deputy General Counsel

SEMITROPIC WATER STORAGE DISTRICT

By:_____
Vido G. Fabbri, President

By:_____
Wilmar L. Boschman, Assistant Secretary

SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER STORAGE DISTRICT

By:_____
Vido G. Fabbri, President

By:_____
Wilmar L. Boschman, Assistant Secretary

BUTTONWILLOW IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT

By: _____
Vido G. Fabbri, President

By: _____
Wilmar L. Boschman, Assistant Secretary

POND-POSO IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT

By: _____
Vido G. Fabbri, President

By: _____
Wilmar L. Boschman, Assistant Secretary

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BUILDUP SCHEDULE
FOR
PROGRAM ENTITLEMENT EXCHANGE RIGHTS
AND
PROGRAM PUMPBACK CAPACITY

Sum of All Banking Partners' Deliveries or Funds Paid to Establish "Program Pumpback" Permanent Storage Allocations (acre-feet)	[1]Maximum "Program Entitlement Exchange Rights" at Full Entitlement Allocation (acre-feet per year)	[1]Minimum Capacity (acre-feet per year)
100,000	40,000	31,500
150,000	45,000	90,000[2]
200,000	50,000	90,000
300,000	60,000	90,000
400,000	70,000	90,000
500,000	80,000	90,000
600,000	90,000	90,000
700,000	100,000	90,000
800,000	110,000	90,000
900,000	120,000	90,000
1,000,000	133,000	90,000

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1 Applies in the year after the Permanent Storage Allocation reaches the indicated amount, subject to the provisions of this Agreement.

2 Maximum instantaneous flowrate at this level is 300 cfs.

EXHIBIT A

METROPOLITAN'S PAYMENTS TO SEMITROPIC FOR STORED AND RETURNED WATER

HYPOTHETICAL DELIVERY SCHEDULE				PAYMENTS WHICH CONTRIBUTE TO METROPOLITAN ACQUIRING A SHARE OF PROGRAM										NON-CONTRIBUTING PAYMENTS					
				Payments for Storing Water ($90 Payment Under Section 6.2.1)			Payments for Return of Water ($40 Payment Under Section 6.3.1)			Payments for Water Stored More than Five Years ($20 Payment Under Section 6.4)			Total Annual Payments Contributing to Metropolitan Acquiring Program Share	Payments for Storing Water ($50 Payment Under Section 6.2.			Payments for Return of Water ($50 Payment Under Section 6.3.2)		
Year	Quantity Stored in Year	Quantity Returned in Year	Storage Account Balance	Water Stored	$90/AF Adjusted per ENR Index	Payments for Storing Water	Returned Water	$40/AF Adjusted per ENR Index	Payments for Return of Water	Water Stored < 5 yrs	$20/AF Adjusted per ENR Index	Payment for Water in Storage More than 5 yrs.		Water Stored	$50/AF Adjusted per CPI Index	Payments for Storing Water	Returned Water	$50/AF Adjusted per CPI Index	Payments for Return of Water
	AF	AF	AF	AF	$/AF		AF	$/AF		AF	$/AF			AF	$/AF		AF	$/AF	
1993	45,377.20		45,377.20	45,377.20															
1994	0.00		45,377.20	0.00	90.00	$0	0.00	40.00		NA	20.00	$0	$0	0.00	50.00	$0	0.00	50.00	$0
1995	0.00	45,377.20	0.00	0.00	90.00	$0	45,377.20	40.00	$1,815,088	NA	20.00	$0	$1,815,088	0.00	50.00	$0	0.00	50.00	$0
1996	100,000.00		100,000.00	100,000.00	97.34	$9,734,400	0.00	43.26	$0	NA	21.63	$0	$9,734,400	0.00	53.05	$0	0.00	53.05	$0
1997	100,000.00		200,000.00	100,000.00	101.24	$10,123,776	0.00	44.99	$0	NA	22.50	$0	$10,123,776	0.00	54.64	$0	0.00	54.64	$0
1998	100,000.00		300,000.00	100,000.00	105.29	$10,528,727	0.00	46.79	$0	0.00	23.40	$0	$10,528,727	0.00	56.28	$0	0.00	56.28	$0
1999	0.00		300,000.00	0.00	109.50	$0	0.00	48.67	$0	0.00	24.33	$0	$0	0.00	57.96	$0	0.00	57.96	$0
2000	0.00		300,000.00	0.00	113.88	$0	0.00	50.61	$0	0.00	25.31	$0	$0	0.00	59.70	$0	0.00	59.70	$0
2001	0.00		300,000.00	0.00	118.43	$0	0.00	52.64	$0	100,000.00	26.32	$2,631,864	$2,631,864	0.00	61.49	$0	0.00	61.49	$0
2002	0.00		300,000.00	0.00	123.17	$0	0.00	54.74	$0	200,000.00	27.37	$5,474,276	$5,474,276	0.00	63.34	$0	0.00	63.34	$0
2003	0.00		300,000.00	0.00	128.10	$0	0.00	56.93	$0	300,000.00	28.47	$8,539,871	$8,539,871	0.00	65.24	$0	0.00	65.24	$0
2004	0.00	50,000.00	250,000.00	0.00	133.22	$0	50,000.00	59.21	$2,960,489	250,000.00	29.60	$6,046,668	$9,007,156	0.00	67.20	$0	0.00	67.20	$0
2005	0.00	50,000.00	200,000.00	0.00	138.55	$0	50,000.00	61.58	$3,078,908	0.00	30.79	$0	$3,078,908	0.00	69.21	$0	0.00	69.21	$0
2006	0.00	50,000.00	150,000.00	0.00	144.09	$0	50,000.00	64.04	$3,202,064	0.00	32.02	$0	$3,202,064	0.00	71.29	$0	0.00	71.29	$0
2007	0.00	0.00	150,000.00	0.00	149.86	$0	0.00	66.60	$0	0.00	33.30	$0	$0	0.00	73.43	$0	0.00	73.43	$0
2008	50,000.00	0.00	200,000.00	0.00	155.85	$0	0.00	69.27	$0	0.00	34.63	$0	$0	50,000.00	75.63	$3,781,474	0.00	75.63	$0
2009	50,000.00		250,000.00	0.00	162.08	$0	0.00	72.04	$0	0.00	36.02	$0	$0	50,000.00	77.90	$3,894,919	0.00	77.90	$0
2010	0.00	100,000.00	150,000.00	0.00	168.57	$0	100,000.00	74.92	$7,491,925	0.00	37.46	$0	$7,491,925	0.00	80.24	$0	0.00	80.24	$0
2011	0.00	50,000.00	100,000.00	0.00	175.31	$0	50,000.00	77.92	$3,895,801	0.00	38.96	$0	$3,895,801	0.00	82.64	$0	0.00	82.64	$0
2012		50,000.00	50,000.00	0.00	182.32	$0	0.00	81.03	$0	0.00	40.52	$0	$0	0.00	85.12	$0	50,000.00	85.12	$4,256,083
2013		50,000.00	0.00	0.00	189.62	$0	0.00	84.27	$0	0.00	42.14	$0	$0	0.00	87.68	$0	50,000.00	87.68	$4,383,765
2014			0.00	0.00	197.20	$0	0.00	87.64	$0	0.00	43.82	$0	$0	0.00	90.31	$0	0.00	90.31	$0
2015			0.00	0.00	205.09	$0	0.00	91.15	$0	0.00	45.58	$0	$0	0.00	93.01	$0	0.00	93.01	$0
2016			0.00	0.00	213.29	$0	0.00	94.80	$0	0.00	47.40	$0	$0	0.00	95.81	$0	0.00	95.81	$0
2017			0.00	0.00	221.82	$0	0.00	98.59	$0	0.00	49.29	$0	$0	0.00	98.68	$0	0.00	98.68	$0
2018			0.00	0.00	230.70	$0	0.00	102.53	$0	0.00	51.27	$0	$0	0.00	101.64	$0	0.00	101.64	$0
2019			0.00	0.00	239.93	$0	0.00	106.63	$0	0.00	53.32	$0	$0	0.00	104.69	$0	0.00	104.69	$0
2020			0.00	0.00	249.52	$0	0.00	110.90	$0	0.00	55.45	$0	$0	0.00	107.83	$0	0.00	107.83	$0
2021			0.00	0.00	259.50	$0	0.00	115.33	$0	0.00	57.67	$0	$0	0.00	111.06	$0	0.00	111.06	$0
2022			0.00	0.00	269.88	$0	0.00	119.95	$0	0.00	59.97	$0	$0	0.00	114.40	$0	0.00	114.40	$0

Notes:
Exhibit does not show energy payments required to return water under Article 6.3.3 or operation and maintenance fee under Article 6.7.
Assumes Engineering News Record (ENR) Index increases four percent annually.
Assumes Consumer Price Index increases three percent annually.
Share means Metropolitan's share of Total Project Capital Costs. (as defined in Article 1.6)
Adjustments are not applied retroactively to water previously delivered, returned and or remaining in storage more than five years.

EXHIBIT B

METROPOLITAN'S PROGRAM STORAGE ALLOCATIONS

	METROPOLITAN'S SHARE OF TOTAL PROGRAM CAPITAL COST								METROPOLITAN'S STORAGE ALLOCATION							
		METS UNPAID SHARE OF TOTAL PROGRAM CAPITAL COSTS														
Year	Met's Payments During Calendar Year	Previous Year's Unpaid Portion	Previous Years Payments	Difference Between Previous Unpaid Portion and Previous Yrs. Payment	Adjustment Factor for Calendar Year	Beg. of Calendar Year Unpaid Share	Cumulative Payments from Previous Years	Beg. of Year Share Total Project Capital Cost	Total Program Capital Cost (Adjusted)	Annual Payments Divided Total Program Capital Cost	Cumulative % Paid by Met	Prospective Payments Pursuant under Section 6.3.1	Total % Paid (Actual and Prospec-tive)	Permanent Storage Allocation AF	Interim Storage Allocation (Initially 350,000 AF) AF	Total Permanent and Interim Storage Allocation AF
1993	$0															
1994	$0	$46,900,000	$0	$46,900,000	1.00	$46,900,000	$0	$46,900,000	$134,000,000	0.00%	0.00%	1.35%	1.35%	13,545	336,455	350,000
1995	$1,815,088	$46,900,000	$0	$46,900,000	1.00	$46,900,000	$0	$46,900,000	$134,000,000	1.35%	1.35%	0.00%	1.35%	13,545	336,455	350,000
1996	$9,734,400	$46,900,000	$1,815,088	$45,084,912	1.08	$48,763,841	$1,815,088	$50,578,929	$144,934,400	6.72%	8.07%	2.99%	11.06%	110,560	239,440	350,000
1997	$10,123,776	$48,763,841	$9,734,400	$39,029,441	1.04	$40,590,618	$11,549,488	$52,140,106	$150,731,776	6.72%	14.79%	5.97%	20.76%	207,575	142,425	350,000
1998	$10,528,727	$40,590,618	$10,123,776	$30,466,842	1.04	$31,685,516	$21,673,264	$53,358,780	$156,761,047	6.72%	21.50%	8.96%	30.46%	304,590	45,410	350,000
1999	$0	$31,685,516	$10,528,727	$21,156,789	1.04	$22,003,061	$32,201,991	$54,205,052	$163,031,489	0.00%	21.50%	8.96%	30.46%	304,590	45,410	350,000
2000	$0	$22,003,061	$0	$22,003,061	1.04	$22,883,183	$32,201,991	$55,085,174	$169,552,748	0.00%	21.50%	8.96%	30.46%	304,590	45,410	350,000
2001	$2,631,864	$22,883,183	$0	$22,883,183	1.04	$23,798,510	$32,201,991	$56,000,501	$176,334,858	1.49%	23.00%	8.96%	31.95%	319,516	30,484	350,000
2002	$5,474,276	$23,798,510	$2,631,864	$21,166,647	1.04	$22,013,313	$34,833,855	$56,847,167	$183,388,253	2.99%	25.98%	8.96%	34.94%	349,366	634	350,000
2003	$8,539,871	$22,013,313	$5,474,276	$16,539,037	1.04	$17,200,598	$40,308,131	$57,508,729	$190,723,783	4.48%	30.46%	8.96%	39.41%	350,000	0	350,000
2004	$9,007,156	$17,200,598	$8,539,871	$8,660,727	1.04	$9,007,156	$48,848,002	$57,855,158	$198,352,734	4.54%	35.00%	7.46%	42.46%	350,000	0	350,000
2005	$3,078,908	$9,007,156	$9,007,156	$0	1.04	$0	$57,855,158	$57,855,158	$206,286,844	1.49%	36.49%	5.97%	42.46%	364,925	0	364,925
2006	$3,202,064	$0	$3,078,908	$0	1.04	$0	$57,855,158	$57,855,158	$214,538,317	1.49%	37.99%	4.48%	42.46%	379,851	0	379,851
2007	$0	$0	$3,202,064	$0	1.04	$0	$57,855,158	$57,855,158	$223,119,850	0.00%	37.99%	4.48%	42.46%	379,851	0	379,851
2008	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$232,044,644	0.00%	37.99%	4.48%	42.46%	379,851	0	379,851
2009	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$241,326,430	0.00%	37.99%	4.48%	42.46%	379,851	0	379,851
2010	$7,491,925	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$250,979,487	2.99%	40.97%	1.49%	42.46%	409,701	0	409,701
2011	$3,895,801	$0	$7,491,925	$0	1.04	$0	$57,855,158	$57,855,158	$261,018,666	1.49%	42.46%	0.00%	42.46%	424,627	0	424,627
2012	$0	$0	$3,895,801	$0	1.04	$0	$57,855,158	$57,855,158	$271,459,413	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2013	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$282,317,790	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2014	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$293,610,501	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2015	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$305,354,921	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2016	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$317,569,118	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2017	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$330,271,883	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2018	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$343,482,758	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2019	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$357,222,068	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2020	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$371,510,951	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2021	$0	$0	$0	$0	1.04	$0	$57,855,158	$57,855,158	$386,371,389	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627
2022	$0	$0	$0	$0	1.04		$57,855,158	$57,855,158	$401,826,245	0.00%	42.46%	0.00%	42.46%	424,627	0	424,627

EXHIBIT B

PROGRAM DELIVERY CAPABILITY

INTRODUCTION:

The In-Lieu Service Area authorized in the EIR consists of 23,000 acres of actively farmed land. Semitropic's commitment to the Banking Partners is that at full development there will be 23,000 acres of In-Lieu Service Area. In the event cropping patterns or irrigation practices change the assumed average annual quantity of water each acre of land requires for irrigation, Semitropic shall not be obligated to increase its commitment to develop 23,000 acres of in-lieu land at full program development.

I. Maximum Annual Estimated Program Delivery Capability:

1.	In-Lieu Service Area: 23,000 acres x 3.5 AF/acre	=	80,500 AF/Yr
2.	Reduce existing delivery system constraints to lands already served by Semitropic's distribution system:		10,000 AF/Yr
	Total		90,500 AF/Yr

II. Metropolitan's share of Maximum Estimated Program Delivery Capability:

1.	By Establishing an In-Lieu Service Area 23,000 acres x 0.35 = 8,050 acres 8,050 acres x 3.5 AF/acre	=	28,175 AF/Yr
2.	By Increasing System Capacity 10,000 AFY x 0.35	=	3,500 AF/Yr
	Total Metropolitan Share of Maximum Estimated Program Delivery Capability		31,675 AF/Yr

Semitropic shall not be obligated to change its commitment to have developed 8,050 acres of in-lieu land by the time Metropolitan has paid Metropolitan's share of Total Project Capital Cost.

EXHIBIT C

Expected Monthly Distribution of Metropolitan's Share of Maximum Estimated Program Delivery Capability:

	Historical Deliveries on 66,800 Acres+ Average of '84, '89 and '93		
	Acre-Feet	Percent	Estimated Monthly Distribution of MWD's share of "Program Delivery Capability " Acre-Feet Per Month
JANUARY	* 2,444	1.0	317
FEBRUARY	* 22,185	9.8	3,104
MARCH	21,185	9.6	3,041
APRIL	17,984	7.9	2,502
MAY	24,373	10.6	3,358
JUNE	36,138	15.9	5,036
JULY	41,123	18.1	5,733
AUGUST	34,084	15.1	4,783
SEPTEMBER	12,310	5.4	1,710
OCTOBER	6,373	2.8	887
NOVEMBER	4,015	1.9	602
DECEMBER	4,206	1.9	602
TOTAL	226,420 AF	100.0	31,675 AF

* Average of 1984 and 1989 only

EXHIBIT C

SEMITROPIC WATER STORAGE DISTRICT

CALCULATION OF POWER PAYMENTS UNDER SECTION 6.3.3
AGREEMENT FOR A METROPOLITAN-SEMITROPIC WATER BANKING AND EXCHANGE PROGRAM

BASIC FORMULA

(ENERGY CONSUMED to WITHDRAW WATER from STORAGE) x (TOTAL SEMITROPIC ENERGY COSTS) = (WITHDRAWAL PAYMENTS)
(TOTAL ENERGY CONSUMED BY SEMITROPIC)

Summary of components

ENERGY CONSUMED to WITHDRAW WATER from STORAGE (Water Banking activity to return stored water)

1. Energy used to extract ground water for Banking Partners, including:
   a) Actual electric meter readings from Semitropic operated wells
   b) Actual PG&E meter readings from bills submitted for payment under pumping agreements for operation of Semitropic landowner wells
   c) Energy use under pumping agreements with Semitropic landowners for operation of wells where the actual KWH is unavailable (as in engine driven wells) use the formula:
      KWH = 1.707 x (PUMPING LIFT in feet) x (ACRE-FEET EXTRACTED)
      Where 1.707 is the conversion factor assuming 60% wire to water efficiency
      Where the PUMPING LIFT is determined from the previous year's "Lines of Equal Pumping Lifts" by Bookman-Edmonston Engineering, Inc.
      Where the ACRE-FEET EXTRACTED is from actual Semitropic water meter readings
   d) Estimated use for released Contract Water (on-farm ground water pumping) use the same formula as above

2. Energy used to reverse the flow of Semitropic canals
   a) From the actual electric meter readings at reverse flow pumping structures
      The use shall be proportional to the water pumped for WITHDRAWAL for Banking Partners to the total water pumped by Semitropic

3. Energy used at the Semitropic's Pump-Back Pumping Plant to return water to the California Aqueduct
   a) From the actual electric meter readings at the Pump-Back Pumping Plant
      The use shall be proportional to the water pumped for WITHDRAWAL for Banking Partners to the total water pumped by Semitropic

4. Estimated energy use for other facilities as may be required by Semitropic

EXHITBIT D

TAL ENERGY COSTS (Costs to secure energy required for all Semitropic activities)

5. Costs to feed energy into the Semitropic Grid
   a) PG&E billing at Semitropic Substation (single point of service with Semitropic power grid)
   b) All costs for other electrical feeds into Semitropic Grid (i.e. external cogeneration facilities)
   c) All costs for power generated by Semitropic's Energy Project including:
      (currently 4 MW of natural gas engine generation and 850 KW of hydroelectric generation)
      Fuel
      Operation & Maintenance
      Replacement Reserve deposits
      Debt Service

6. Costs for energy not fed into Semitropic Grid
   a) All PG&E billings for Semitropic facilities not on Semitropic Grid
   b) Engine/generator rental and diesel to operate temporary Semitropic facilities
   c) All payments to Semitropic landowners under ground water pumping agreements for operation of Semitropic landowner wells
   d) All payments to Contract Water Users for release of Contract Water (on-farm ground water pumping) for energy use identified in 1.d) above
   e) Costs of other facilities as may be required by Semitropic

TOTAL ENERGY CONSUMED (Energy required for all Semitropic activities)

Energy fed into the Semitropic Grid
   a) PG&E meter readings at Semitropic Substation (single point of service with Semitropic power grid)
   b) Any other electrical service metered into Semitropic Grid (i.e. external cogeneration facilities)
   c) Energy metered at each Semitropic operated natural gas engine-generator
   d) Energy metered at each Semitropic operated hydroelectric generator

8. Energy not fed into the Semitropic Grid
   a) All PG&E meter readings for Semitropic facilities not on Semitropic Grid
   b) Actual PG&E meter readings from bills submitted for payment under pumping agreements for operation of Semitropic landowner wells
   c) Energy use under pumping agreements with Semitropic landowners for operation of wells where the actual KWH is unavailable
      (as in engine driven wells) use the formula:
      KWH = 1.707 x (PUMPING LIFT in feet) x (ACRE-FEET EXTRACTED)
      Where 1.707 is the conversion factor assuming 60% wire to water efficiency
      Where the PUMPING LIFT is determined from the previous year's "Lines of Equal Pumping Lifts" by Bookman-Edmonston Engineering, Inc.
      Where the ACRE-FEET EXTRACTED is from actual Semitropic water meter readings
   d) Estimated use for released Contract Water (on-farm ground water pumping) use the same formula as above

   e) Estimated energy use for other facilities as may be required by Semitropic

DEPRECIATION ASSUMPTIONS TO BE USED FOR SECTION 12.2 OF THIS AGREEMENT

I. Depreciation is to be calculated on a straight line basis.

II. The average useful lives of facilities are as follows:

Facility	Average Useful Life (years)
Canals	50
Structures	50
Pipelines and Appurtenances	50
Pumps and Motors	25
Wells	25

EXHIBIT E

RECORDED BY
GALE S. BIGIAD
KERN COUNTY RECORDER

Recording Requested By
And When Recorded Return to:

179717

96 DEC 23 PM 4:32

Semitropic Water Storage District
P.O. Box Z
Wasco, CA 93280

MEMORANDUM OF AGREEMENT
FOR A METROPOLITAN-SEMITROPIC
WATER BANKING AND EXCHANGE PROGRAM

THIS MEMORANDUM OF AGREEMENT (this "**Memorandum of Agreement**"), dated as of December 12, 1994, is entered into by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("**Metropolitan**"), and the SEMITROPIC WATER STORAGE DISTRICT and SEMITROPIC IMPROVEMENT DISTRICT, BUTTONWILLOW IMPROVEMENT DISTRICT and POND-POSO IMPROVEMENT DISTRICT of the SEMITROPIC WATER STORAGE DISTRICT (collectively called "**Semitropic**"), with respect to that certain Agreement for a Metropolitan-Semitropic Water Banking and Exchange Program, dated of even date herewith, by and among Metropolitan and Semitropic (which Agreement, as of any particular time, as amended through that time, may be referred to herein as the "**Agreement**"). Metropolitan and Semitropic may be referred to individually as "**Party**" or, collectively, as "**Parties.**"

RECITALS

A. Metropolitan obtains water from the State Water Project ("**SWP**") through its contract with the California Department of Water Resources ("**DWR**"). From time-to-time, Metropolitan will have water available that it desires to deliver to Semitropic for storage and eventual return or other disposition pursuant to the Agreement.

B. Semitropic obtains water from the SWP through its contracts with the Kern County Water Agency ("**Agency**") under the Agency's master contract with DWR. A total of approximately 136,370 acres of land within Semitropic is irrigated. Semitropic has entered into contracts with individual landowners covering 42,328 acres of land which is designated as the Surface Water Service Area ("**SWSA**"). Additional lands outside the SWSA, in the amount of approximately 24,500 acres, have also been connected to Semitropic's distribution system so such lands may receive surface water when available. These additional lands are designated as the Temporary Water Service Area ("**TWSA**"), and may sometimes be referred to as the "**Non-Contract Service Area.**" Total landowner demand within the SWSA and TWSA for surface water supplies is greater than water available under Semitropic's entitlement for Agency SWP water and other surface water supplies. The construction of additional distribution facilities by Semitropic, as contemplated by the Agreement, will allow Semitropic to absorb additional imported water delivered to Semitropic by Metropolitan for storage pursuant to the Agreement.

C. Semitropic has constructed a seventy-eight inch (78") pumpback pipeline that is capable of conveying water withdrawn from the groundwater basin underlying the area within Semitropic's boundaries (the "**Semitropic Basin**") directly to the California Aqueduct. Semitropic's boundaries, various wellsites owned and controlled by Semitropic, said pumpback pipeline and certain other facilities of Semitropic which are to be used in connection with the Program (as hereinafter defined) are shown on Exhibit 1 to this Memorandum of Agreement (which Exhibit is incorporated herein by this reference). In addition Semitropic will construct other facilities in the area showing on Exhibit 1 as provided in the Agreement. Semitropic's pumpback operations to return stored water to Metropolitan at the California Aqueduct, as provided for in the Agreement, will take place primarily during the "off-peak" irrigation season, when groundwater pumping and conveyance capacity are available.

D. Metropolitan and Semitropic find that it will be mutually advantageous to enter into a groundwater banking and exchange program whereby Semitropic will hold in trust for Metropolitan the water deposited by Metropolitan hereunder (or its equivalent), together with (i) an easement and right to withdraw from lands owned or controlled by Semitropic an amount of water equal to Metropolitan's Stored Water on deposit with Semitropic, and (ii) an easement and right to transport such water from the Semitropic Basin to the California Aqueduct for delivery there to Metropolitan, all in accordance with the terms of the Agreement. The Agreement will provide additional groundwater storage for Metropolitan, resulting in better utilization of its SWP supplies, and will provide improved reliability of supplies and overall higher groundwater levels for Semitropic.

E. The Agreement is consistent with the goal of making optimum use of water and facilities and is consistent with conservation objectives of Metropolitan, Semitropic, Agency and DWR.

F. Consistent with the California Environmental Quality Act ("**CEQA**"), Semitropic, acting as lead agency, and Metropolitan, acting as a responsible agency, have jointly completed an environmental impact report concerning the proposed water banking and exchange program (the "**EIR**"). Semitropic's Board of Directors, on July 13, 1994, certified the EIR as being in compliance with CEQA, and Metropolitan's Board of Directors on August 19, 1994, reviewed and considered the EIR. Semitropic will also be responsible for implementing and monitoring the mitigation measures defined in "Findings and Mitigation Monitoring Plan" dated July 1994, adopted as part of the Final EIR.

G. Semitropic has also entered into a Memorandum of Understanding ("**MOU**") with neighboring districts, dated September 14, 1994, to implement in part said monitoring and mitigation measures, which the Agreement is subject to. The MOU is on file with both Metropolitan and Semitropic.

H. The Semitropic Water Banking and Exchange Program authorized in the above-referenced EIR (the "**Program**") has a defined total storage capacity of 1,000,000 acre-feet. The estimated absorptive capacity, based on the approximately 23,000 acres of In-Lieu Service Area (as defined in Article 1 of the Agreement) and the current cropping patterns and irrigation efficiencies, is 80,500 acre-feet per year. An estimated additional 10,000 acre-feet per year of absorptive capacity is anticipated as a result of Semitropic improving the delivery capability of the distribution system

to the existing SWSA and TWSA, as contemplated by the Program. The estimated withdrawal capacity is 90,000 acre-feet per year, at a maximum flow rate of 300 CFS, through the pumpback facility. In addition, Stored Water (as defined in said Article 1) may be returned from any Semitropic SWP Entitlement Water (as defined in said Article 1) allocation in excess of 25,000 acre-feet, as described in Exhibit B to the Agreement. Facilities necessary to accomplish the foregoing will increase the absorptive and withdrawal capabilities of Semitropic over and above the pre-Program conditions. Metropolitan's participation may not fully utilize these capacities. Therefore, Semitropic has developed and will be offering other potential Banking Partners (as defined in said Article 1) the opportunity to participate in the Program on substantially the same terms and conditions as Metropolitan. Metropolitan has reviewed the terms and conditions of that certain document entitled "Semitropic Groundwater Banking Program Payment and Banking Capacity Rights Options" dated August 1, 1994, setting forth the terms on which third parties may participate in the Program as Banking Partners (the "**Program Options**"). A copy of that document is on file with both Semitropic and Metropolitan. Metropolitan has agreed that anyone who is a party to an agreement with Semitropic which includes one or more of options 1 through 4 of the Program Options and which does not violate any of the requirements of the Agreement will be a Banking Partner.

I. As a part of the Agreement, Semitropic, as trustee, will hold in trust for Metropolitan, in accordance with the terms of the Agreement, the water deposited by Metropolitan (or its equivalent), together with the right to withdraw it and to deliver it to the California Aqueduct. The parties create this trust relationship for the purpose of protecting Metropolitan's ability to recover Stored Water, and Semitropic's fiduciary duty is limited to Semitropic's responsibilities as set forth in the Agreement. In addition, Semitropic, in a non-fiduciary capacity, will provide such water resource management services as are necessary to implement and operate the Program. Semitropic's non-fiduciary obligations include taking such actions, including the construction of facilities, securing agreements and entering into operational arrangements, as are necessary to receive from Metropolitan water delivered by Metropolitan for storage hereunder and to return equivalent water to Metropolitan in accordance with the terms of the Agreement. The Program, as implemented with respect to Metropolitan by the Agreement, when combined with other necessary actions undertaken by Metropolitan, will thus allow the delivery of Stored Water to Metropolitan during Metropolitan's peak demand periods. When such services are provided by Semitropic, Metropolitan will make payments to Semitropic, as provided for in the Agreement, to compensate Semitropic for its services and expenses. Although Metropolitan does not guarantee its level of participation in the Program, it is anticipated that Metropolitan will acquire at least 35 percent of the Program's capabilities, rights and capacities described in Recital H and elsewhere in the Agreement.

Metropolitan will acquire a proportionate share of total Program capabilities, capacities and rights for the term of this Agreement as Metropolitan's Permanent Storage Allocation (as defined in Section 1.7 of the Agreement) "vests," as provided in said Section 1.7. After Metropolitan's Permanent Storage Allocation is Fully Vested, as provided in said Section 1.7, Metropolitan may increase its vested Permanent Storage Allocation as provided for in Sections 6.5 and 6.6 of the Agreement.

For the first ten years of the Agreement, Semitropic will allocate interim Program capabilities, capacities and rights to Metropolitan sufficient to make available to Metropolitan at least: (i) 35 percent of Semitropic's then existing capability to store water using then existing facilities, (ii) 35 percent of Semitropic's then existing ability to return water through State Water Project entitlement exchange available, and (iii) a minimum capacity of 31,500 acre-feet per year to return withdrawn water directly to the California Aqueduct from the Semitropic's facilities.

J. The trust relationship between Metropolitan, as settlor and beneficiary, and Semitropic, as trustee, created by the Agreement and described in these Recitals, is entered into by the Parties solely for the purpose of protecting Metropolitan's interest in water delivered by Metropolitan to Semitropic hereunder for storage, and the right of Metropolitan, also held in trust by Semitropic for Metropolitan, to recovery from the Semitropic Basin of water in a quantity sufficient to return to Metropolitan, a quantity equal to Metropolitan's Storage Account Balance (as defined in Article 1 of the Agreement), such right to be exercised by Semitropic, as trustee, through the lands, facilities, rights and interests of Semitropic, or by its successor in interest in and to the trust property, all in accordance with the terms of the Agreement. Semitropic acknowledges and agrees that all water delivered to it by Metropolitan under the Agreement will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Semitropic in its capacity as trustee for Metropolitan with respect to such water and the easements and rights relating thereto provided for herein and in the Agreement. Metropolitan has authorized Semitropic, as trustee, to commingle, exchange or otherwise dispose of the water delivered by Metropolitan under the Agreement. In exchange for those rights and for water delivered under the Agreement, Semitropic has granted, and does hereby grant, to Metropolitan the right to an equal quantity of water from the lands, facilities, rights and interests of Semitropic (subject, however, to the loss provisions of Article 4 of the Agreement), together with such easements and other rights as are necessary to transport the recovered water to the California Aqueduct for delivery to Metropolitan therein, all upon, and subject to the provisions of, the Agreement (all which rights and easements may be referred to herein and in the Agreement, collectively, as the "**Trust Property**"). Metropolitan has granted, and does hereby grant, to Semitropic said Trust Property, in trust, for the use and benefit of Metropolitan. The trust relationship created by the Agreement is not otherwise intended to apply to or effect the obligations of Semitropic or Metropolitan under the Agreement, or the remedies in the event of default; it being expressly understood and agreed that Semitropic's obligations under the Agreement to, among other things, construct facilities and enter into agreements with others in furtherance of the Program shall not be fiduciary in nature. Notwithstanding creation of a trust under the Agreement, Semitropic may benefit from the Agreement.

K. Metropolitan has previously delivered 45,377.2 acre-feet of water to Semitropic pursuant to the February 1, 1993, "Temporary Agreement for a Metropolitan-Semitropic Water Banking and Exchange Program." Metropolitan and Semitropic desire that such water hereafter be held and disposed of by Semitropic for the benefit of Metropolitan under the Agreement as provided therein.

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

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

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

3. Neither the Agreement nor this Memorandum of Agreement shall be interpreted to modify the terms or conditions of either the water supply contracts between the DWR and the Agency or Metropolitan or the water supply agreements between the Agency and Semitropic.

4. Unless the Agreement is earlier terminated pursuant to Section 10 thereof or pursuant to Sections 11.1.3, 11.2, 11.3, 12.2 or 12.3 thereof, the Agreement and this Memorandum of Agreement shall terminate on November 4, 2035, the date of termination of the Agency's Long-Term Water Supply Contract; *provided, however,* that, if Metropolitan has timely requested return of Stored Water pursuant to Article 5 of the Agreement at such a time and in such a manner that Metropolitan's Stored Water could have been returned prior to November 4, 2035 but, because of conditions beyond the control of Metropolitan, all of Metropolitan's Stored Water has not been returned by that date, the provisions of Articles 1, 5, 6, 7, 9, 11, 12 and 13 of the Agreement shall continue in full force and effect for such additional period of time as is necessary for Metropolitan to receive its Stored Water as requested; and *provided, further,* that if a claim arising under or with respect to the terms of the Agreement has not been resolved when the Agreement terminates, or if such a claim is brought after the Agreement has terminated but within the period of time for bringing such a claim under California law (such a claim being referred to herein as a "**Late Arising Claim**"), the provisions of Articles 1,7, 9 and 13 of the Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claim and to satisfy the rights and obligations of the Parties hereto with respect to it pursuant to such Articles. The Agreement may be renewed by mutual agreement of the parties, which renewal shall unless otherwise agreed effect a continuation of Semitropic's duties under the Agreement and an amendment of this Memorandum of Agreement, whether or not such amendment is recorded. Metropolitan may elect to terminate the Agreement at any time by giving written notice to Semitropic of Metropolitan's intent to terminate not less than one year in advance of the termination date selected by Metropolitan and specified in the notice and by conveying its beneficial interest in the amount of Metropolitan's Stored Water in Metropolitan's Storage Account Balance on that termination date to Semitropic. Upon Metropolitan's conveyance of such beneficial interest, the Agreement shall be fully terminated except as provided in Article 10 of the Agreement with respect to Late Arising Claims.

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

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By:_____
John R. Wodraska
General Manager

APPROVED AS TO FORM:

N. Gregory Taylor
General Counsel

By:_____
Jarlath Oley
Senior Deputy General Counsel

SEMITROPIC WATER STORAGE DISTRICT

By:_____
Vido G. Fabbri, President

By:_____
Wilmar L. Boschman, Secretary

SEMITROPIC IMPROVEMENT DISTRICT OF SEMITROPIC WATER STORAGE DISTRICT

By:_____
Vido G. Fabbri, President

By:_____
Wilmar L. Boschman, Secretary

BUTTONWILLOW IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT

By:_____
Vido G. Fabbri, President

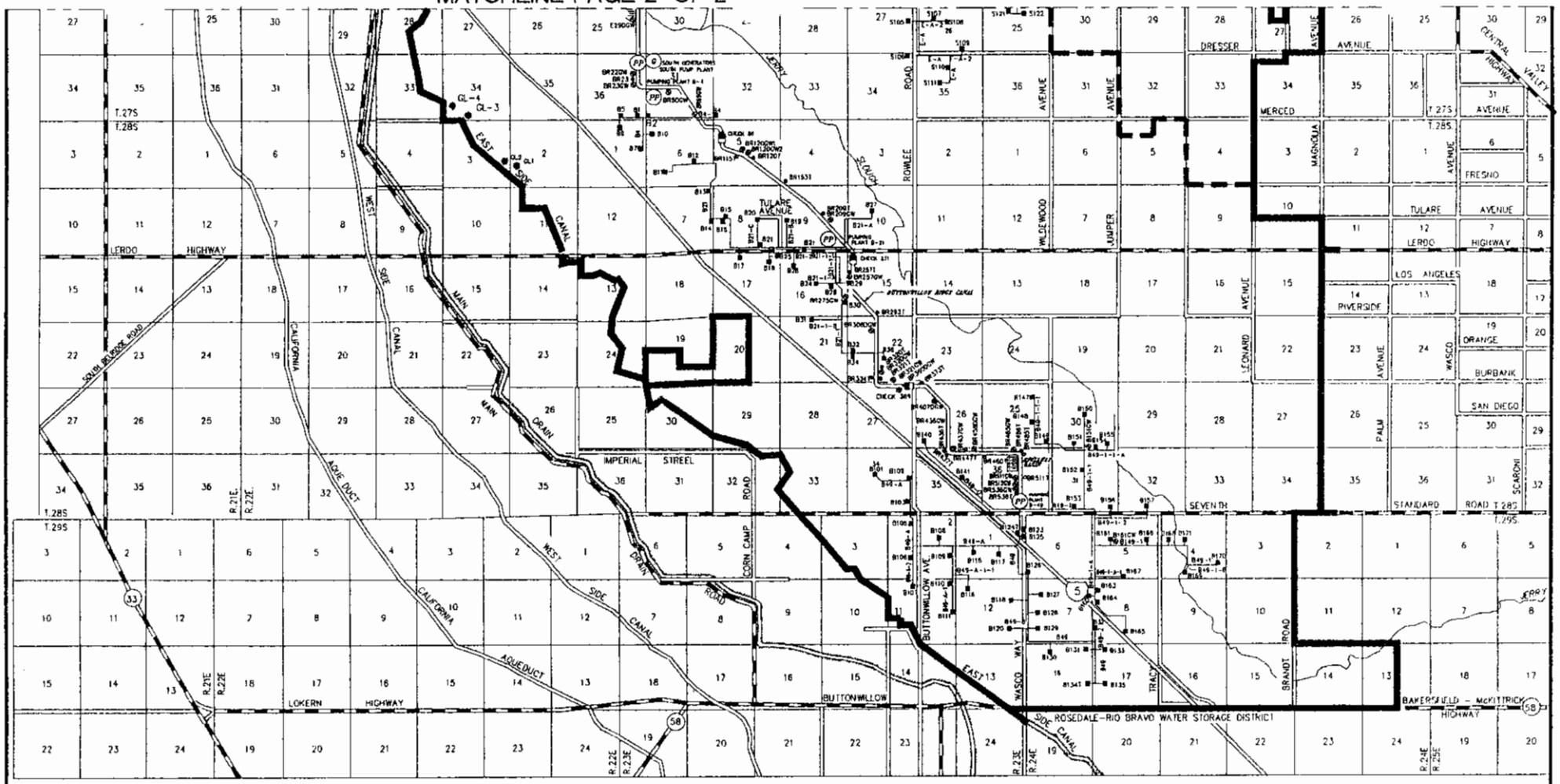
By:_____
Wilmar L. Boschman, Secretary

POND-POSO IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT

By:_____
Vido G. Fabbri, President

By:_____
Wilmar L. Boschman, Secretary

MATCHLINE PAGE 2 OF 2



LEGEND

- SEMITROPIC WATER STORAGE DISTRICT BOUNDARY.
- IMPROVEMENT DISTRICT BOUNDARY.
- CANAL SYSTEM.
- PIPELINE LATERAL DISTRIBUTION SYSTEM.
- FARM TURNOUT.
- GROUND WATER METER.
- REVERSE FLOW PUMP STATION
- PUMPING PLANT
- DIVERSION STRUCTURE
- ELECTRICAL SUB-STATION
- CHECK GATE
- PUMP BACK HYDRO TURBINE
- WELL LOCATION
- BOOSTER PUMP SITE.

SEMITROPIC WATER STORAGE DISTRICT

SEMITROPIC GROUNDWATER BANKING PROJECT

DECEMBER 1994

SCALE OF MILES

1 0 1 2 3

EXHIBIT 1
2 OF 2

CADFILE:EXHBIT2.DWG 12/16/94 (DRAWN BY RALPH R. SANCHEZ)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles }

On December 12, 1994, before me, Alma Herrera personally
DATE NAME, TITLE OF OFFICER-E.G., "JANE DOE, NOTARY PUBLIC"

appeared Vido G. Fabbri (President) and Wilmar L. Boschman (Secretary)
NAME(S) OF SIGNER(S)

☐ personally known to me - **OR** - ☒ proved to me on the basis of satisfactory evidence to be the persons whose names ~~is/~~are subscribed to the within instrument and acknowledged to me that ~~he/she/~~they executed the same in ~~his/her/~~their authorized capacities, and that by ~~his/her/~~their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

ALMA HERRERA
COMM. # 1016523
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires FEB 10, 1998

Witness my hand and official seal.

Alma Herrera
SIGNATURE OF NOTARY

OPTIONAL

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER(S)

_____
TITLE(S)

☐ PARTNER(S)
  ☐ LIMITED
  ☐ GENERAL

☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☒ OTHER: PRESIDENT and SECRETARY

DESCRIPTION OF ATTACHED DOCUMENT

MEMORANDUM OF AGREEMENT . . .
TITLE OR TYPE OF DOCUMENT

SEVEN (7)
NUMBER OF PAGES

DECEMBER 12, 1994
DATE OF DOCUMENT

SIGNERS ARE REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

SEMITROPIC WATER STORAGE DISTRICT

TWO (2)
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles }

On December 12, 1994, before me, Alma Herrera personally
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NNA1 ALMA HERRERA COMM. # 1016523 Notary Public — California LOS ANGELES COUNTY My Comm. Expires FEB 10, 1998 NNA1

Witness my hand and official seal.

Alma Herrera
SIGNATURE OF NOTARY

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SEMITROPIC IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT

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SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles }

On December 12, 1994, before me, Alma Herrera personally
DATE — NAME, TITLE OF OFFICER-E.G., "JANE DOE, NOTARY PUBLIC"

appeared Vido G. Fabbri (President) and Wilmar L. Boschman (Secretary)
NAME(S) OF SIGNER(S)

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ALMA HERRERA
COMM. # 1016523
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires FEB 10, 1998

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Alma Herrera
SIGNATURE OF NOTARY

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BUTTONWILLOW IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT

TWO (2)
SIGNER(S) OTHER THAN NAMED ABOVE

6

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles }

On December 12, 1994, before me, Alma Herrera personally
DATE — NAME, TITLE OF OFFICER-E.G., "JANE DOE, NOTARY PUBLIC"

appeared Vido G. Fabbri (President) and Wilmar L. Boschman (Secretary)
NAME(S) OF SIGNER(S)

☐ personally known to me - **OR** - ☒ proved to me on the basis of satisfactory evidence to be the persons whose names ~~is/~~are subscribed to the within instrument and acknowledged to me that ~~he/she/~~they executed the same in ~~his/her/~~their authorized capacities, and that by ~~his/her/~~their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

ALMA HERRERA
COMM. # 1016523
Notary Public — California
LOS ANGELES COUNTY
My Comm. Expires FEB 10, 1998

Witness my hand and official seal.

Alma Herrera
SIGNATURE OF NOTARY

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SIGNERS ARE REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

POND-POSO IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT

TWO (2)
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles }

On Dec 12, 1994 (DATE) before me, Alma Herrera (NAME, TITLE OF OFFICER-E.G., "JANE DOE, NOTARY PUBLIC") personally appeared JOHN R. WORRASTA (NAME(S) OF SIGNER(S))

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

ALMA HERRERA
COMM. # 1016523
Notary Public -- California
LOS ANGELES COUNTY
My Comm. Expires FEB 10, 1998

Witness my hand and official seal.

Alma Herrera
SIGNATURE OF NOTARY

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  - ☐ LIMITED
  - ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER: _____

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TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

_____
_____
_____

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT B

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

AGREEMENT AMONG DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA, KERN COUNTY WATER AGENCY AND SEMITROPIC WATER STORAGE DISTRICT FOR INTRODUCTION OF LOCAL WATER INTO THE CALIFORNIA AQUEDUCT

THIS AGREEMENT is made this 2 day of May, 1995, pursuant to the provisions of the California Water Resources Development Bond Act, and other applicable laws of the State of California, among the DEPARTMENT OF WATER RESOURCES, herein referred to as the "DEPARTMENT," the "Kern County Water Agency" herein referred to as the "AGENCY", a political subdivision of the State of California created by an Act of the California State Legislature (statute 1961 ch 1003 or as amended), and the "SEMITROPIC WATER STORAGE DISTRICT," acting on behalf of itself, Semitropic Improvement District (SID), Pond-Poso Improvement District (PPID), and Buttonwillow Improvement District (BID), herein collectively referred to as the "DISTRICT." The DISTRICT is a public agency, duly organized, existing and acting pursuant to the laws of the State of California.

RECITAL

A. In 1993, the District constructed a 300 cubic-foot-per-second turnout and turn-in/pumpback facility, also known as "Semitropic No. 2 Turnout," at Mile Post 209.80 of the California Aqueduct, constructed pursuant to provisions of an AGREEMENT FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE SEMITROPIC NO. 2 TURNOUT, dated October 8, 1992, between the DEPARTMENT and the

DISTRICT. This Agreement also provides for necessary right of entry for the DISTRICT to enter DEPARTMENT property.

B. The DISTRICT intends to use the facility to deliver water to the DISTRICT from the California Aqueduct and to pump Local Water into the Aqueduct under provisions of this Agreement and separate ground water banking and/or wheeling agreements currently existing or which may be agreed to in the future. These separate agreements will address appropriate legal, institutional and other pertinent aspects of making Local Water available. They will also set forth conditions under which the turn-in facility will be operated to convey Local Water to the Aqueduct, and where appropriate, how such water is to be later returned to the DISTRICT.

C. Recognizing that the DEPARTMENT has a Contract for Water Service with the AGENCY, and that the turn-in facility is located within the AGENCY'S service area, the AGENCY shall either approve and/or be party to all future agreements referenced in Recital B.

AGREEMENT

The DEPARTMENT agrees to accept Local Water from the DISTRICT into the California Aqueduct subject to the following terms and conditions:

1. DEFINITIONS

When used in this Agreement, the following definitions shall apply:

A. "LOCAL WATER" shall mean all extracted ground water from various wells throughout the DISTRICT and possibly imported surface water commingled before it reaches the turn-in facilities at the Aqueduct. Except for incidental Project

Water remaining in the DISTRICT'S distribution system at the time when the turn-in facility is activated, no Project Water shall be used for commingling purposes.

B. "PROJECT WATER" shall mean water made available for delivery to State Water Contractors by project conservation facilities and the transportation facilities included in the State Water Resources Development System as defined in Section 12931 of the Water Code.

C. "STATE WATER CONTRACTORS" shall mean any entity contracting with the State of California for a dependable supply of water made available by the State Water Resources Development System.

D. "STATE WATER PROJECT" shall mean all facilities included in the State Water Resources Development System.

2. PURPOSE

The purpose of this Agreement is to set forth provisions for the DISTRICT to introduce Local Water into the California Aqueduct using Semitropic No. 2 Turnout. All Local Water introduced into the California Aqueduct under this Agreement shall be limited to water made available under separate existing or future ground water banking and/or wheeling agreements referenced in Recital B of this Agreement.

3. AQUEDUCT INFLOW

All Local Water delivered into the California Aqueduct pursuant to this Agreement shall be scheduled and approved by the AGENCY and the DEPARTMENT. The DISTRICT shall submit a proposed schedule of Local Water showing flow rates, volumes, dates, and times to the

AGENCY for its review and approval. Upon AGENCY approval, the AGENCY shall submit the proposed schedule to the DEPARTMENT which will review the DISTRICT'S proposed schedule and send the DISTRICT a letter either approving, disapproving, or modifying the schedule. The DEPARTMENT or the AGENCY may, at any time, modify the DISTRICT'S schedule. The DEPARTMENT shall measure the amount of the DISTRICT'S Local Water placed into the California Aqueduct. The instantaneous flow rate from the DISTRICT facility discharging Local Water into the California Aqueduct under this Agreement shall not exceed the approved capacity of the turn-in facility, estimated to be approximately three hundred (300) cfs, and the quantity of Local Water introduced into the California Aqueduct shall not interfere with the operations of the State Water Project as determined by the DEPARTMENT.

4. PERMITS

The DISTRICT, at its sole expense, shall be responsible for obtaining all permits, licenses, and agreements and for performing all environmental surveys necessary for the extraction, acquisition, transportation, introduction and use of Local Water introduced into the California Aqueduct. The DISTRICT shall provide a copy of all documentation, generated in its compliance under this paragraph, to the DEPARTMENT at the State Water Project Analysis Office. The DEPARTMENT, at its option, may obtain a permit, license, or agreement or perform an environmental survey on behalf of the DISTRICT. The DISTRICT agrees to pay the DEPARTMENT any reasonable costs incurred by the DEPARTMENT in

obtaining such a permit, license, or agreement or in performing an environmental survey.

5. WATER QUALITY CRITERIA FOR LOCAL WATER

(a) Unless otherwise agreed to in writing by the DEPARTMENT, all Local Water supplies made available for inflow into the California Aqueduct shall be in conformance with the DEPARTMENT'S then current water quality criteria applicable to all other similar inflow situations at the time of the introduction of water into the California Aqueduct within the AGENCY'S service area of the California Aqueduct. The DISTRICT, at its sole expense, shall pay all costs for water quality sampling and analysis, and equipment maintenance associated with monitoring of the input of Local Water placed into the California Aqueduct. The DEPARTMENT, at its option, may perform water quality sampling and analysis, water measurement, and equipment maintenance on behalf of the DISTRICT. The DISTRICT agrees to pay to the DEPARTMENT any reasonable costs incurred by the DEPARTMENT as a result of such activities. The DEPARTMENT will provide the DISTRICT with advance notice of such testing.

(b) Before Local Water is placed into the California Aqueduct, the DISTRICT shall provide to the DEPARTMENT for its review and approval the results of all water quality tests conducted within the previous five (5) years for each well providing water to the California Aqueduct under this Agreement. Additional water quality monitoring shall be conducted by the

DISTRICT for Local Water introduced into the California Aqueduct.

6. CHARGES

(a) The DISTRICT shall pay all costs of installation, operation, and maintenance of the facilities required to deliver Local Water into the California Aqueduct under this Agreement.

(b) The DISTRICT agrees to pay to the DEPARTMENT a one-time Contract Development Charge of Two Thousand Dollars ($2,000).

(c) The DISTRICT agrees to pay all reasonable costs resulting from DISTRICT'S actions pursuant to this Agreement or that result in demonstrable increased costs to the DEPARTMENT and any State Water Contractors.

7. PAYMENTS

Upon execution of this Agreement, the DEPARTMENT will bill the DISTRICT the Contract Development Charge. Payment of all charges pursuant to this agreement are due thirty (30) days after date of invoice. Late payments shall be charged interest at one (1) percent per month.

8. LIABILITY

(a) The DISTRICT shall be responsible for any and all liability, losses, claims, demands, and damages, including but not limited to property damage, personal injury or death, which may arise out of work permitted under this Agreement or which may arise out of failure on the DISTRICT'S part to perform its obligations under this Agreement. In the event any claim of liability is made under this Agreement against the AGENCY, the State of California, or any of their departments,

officers, or employees, the DISTRICT agrees to defend, indemnify, and hold each of them harmless from such claims.

(b) Neither the State of California, the AGENCY nor any of their departments, officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of Local Water before it is introduced into, and after it is delivered from the California Aqueduct. The DISTRICT shall be responsible for any and all liabilities, losses, claims, demands, and damages, including but not limited to property damage, personal injury or death, which may arise from the delivery of such water. In the event any claim of such liability is made against the State of California, the AGENCY or any of their departments, officers, or employees, the DISTRICT agrees to defend, indemnify, and hold each of them harmless from such claims.

9. TERM

This Agreement shall become effective on the date of execution hereof, and shall terminate on January 1, 2005 unless extended by mutual consent of all parties. However, the DEPARTMENT may suspend this Agreement upon written notice to the AGENCY and the DISTRICT if, in the judgement of the DEPARTMENT, its continuance could result in disruption or damage, including but not limited to reductions in water quality, to the State Water Project. If the DEPARTMENT should suspend this Agreement, the DISTRICT shall not be relieved of its obligation to return any water owed back to the DEPARTMENT or to pay any charges incurred up to the time of termination described in Paragraph 6 and the DEPARTMENT shall

still be obligated to return any Local Water that had been placed in the California Aqueduct that had not yet been returned.

10. NO MODIFICATION OF WATER SUPPLY CONTRACTS

This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contract between the DEPARTMENT and the AGENCY dated November 15, 1963, or the three (3) water supply contracts between the AGENCY and the DISTRICT.

11. WORKERS' COMPENSATION

The DISTRICT affirms that it is aware of the provisions of Section 3700 of the California Labor Code which require every employee to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and the DISTRICT affirms that it will comply with such provisions before commencing the performance of the work under this Agreement.

12. CLAIMS DISPUTE

Any claim that a Party may have against another shall be presented in accordance with Part 3 (commencing at 900, Division 3.6 of the Government Code). The PARTIES shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution. Any unresolved disputes shall be subject to arbitration pursuant to the Code of Civil Procedure Section 1281.6.

13. NONDISCRIMINATION

During the performance of this Agreement, the DISTRICT shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical

or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. The DISTRICT shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. The DISTRICT shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereafter (California Administrative Code, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code Sections 11135 - 11139.5), and the regulations or standards adopted by the DEPARTMENT to implement such article. The DISTRICT shall permit access by representatives of the Department of Fair Employment and Housing and the DEPARTMENT upon reasonable notice at any time during the normal business hours, but in no case less than 24-hours notice, to such of its books, records, accounts, other sources of information and its facilities as the Department of Fair Housing or the DEPARTMENT shall require to ascertain compliance with this clause. The DISTRICT shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The DISTRICT shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

14. ASSIGNMENT OF AGREEMENT

Without the written consent of the DEPARTMENT and the AGENCY this Agreement is not assignable by the DISTRICT in whole or in part.

15. PARAGRAPH HEADINGS

The paragraph headings of this Agreement are for the convenience of the parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

16. TERMS TO BE REASONABLE

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

17. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the party

for whom they sign. A certified copy of the resolution authorizing the AGENCY and the DISTRICT to enter into this Agreement shall be delivered to the DEPARTMENT before Local Water may be introduced into the California Aqueduct.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to Legal Form
and Sufficiency

Chief Counsel
Department of Water Resources

4/20/95
DATE

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Director

5-2-95
DATE

SEMITROPIC WATER
STORAGE DISTRICT (Acting on behalf of itself, SID, PPID and BID)

Name Vido G. Fabbri

President, Board of Directors
Title

March 28, 1995
DATE

KERN COUNTY WATER AGENCY

Name

General Manager
Title

March 23, 1995
DATE

State of California
The Resources Agency
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 1
TO THE
AGREEMENT AMONG
DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA,
KERN COUNTY WATER AGENCY
AND
SEMITROPIC WATER STORAGE DISTRICT
FOR
INTRODUCTION OF LOCAL WATER
INTO
THE CALIFORNIA AQUEDUCT

That certain agreement dated May 2, 1995, by and between the parties hereto is hereby amended as follows:

Paragraph 9 is amended to read as follows:

9. TERM

This Agreement shall become effective on the date of execution hereof, and shall terminate on November 4, 2035 unless extended by mutual consent of all parties. However, the DEPARTMENT may suspend this Agreement upon written notice to the AGENCY and the DISTRICT if, in the judgement of the DEPARTMENT, its continuance could result in disruption or damage, including but not limited to reductions in water quality, to the State Water Project. If

the DEPARTMENT should suspend this Agreement, the DISTRICT shall not be relieved of its obligation to return any water owed back to the DEPARTMENT or to pay any charges incurred up to the time of termination described in Paragraph 6 and the DEPARTMENT shall still be obligated to return any Local Water that had been placed in the California Aqueduct that had not yet been returned.

Except as herein amended all terms and conditions of said agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this amendment this 21 day of August, 1995.

Approved as to Legal Form
and Sufficiency

for David B. Anderson
Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Director

SEMITROPIC WATER STORAGE DISTRICT
(Acting on behalf of itself,
SID, PPID and BID)

Name

Engineer Manager
Title

KERN COUNTY WATER AGENCY

Name

General Manager
Title General Manager

SEMITROPIC IMPROVEMENT DISTRICT
OF THE
SEMITROPIC WATER STORAGE DISTRICT

SID RESOLUTION NO. 94-7

IN THE MATTER OF

CERTIFICATION OF FINAL ENVIRONMENTAL IMPACT REPORT
SEMITROPIC GROUND WATER BANKING PROJECT
AND APPROVAL OF PROJECT

SECTION A.

WHEREAS, this Board of Directors declares and determines as follows:

1. On July 1, 1993, a Notice of Preparation was issued on preparing an Environmental Impact Report on the Semitropic Ground Water Banking Project ("Project") and a noticed public scoping meeting was held on July 15, 1993.

2. On March 29, 1994, a Draft Environmental Impact Report ("DEIR") was released on the Project followed by a public review period of 45 days, that is through May 13, 1994, pursuant to the California Environmental Quality Act ("CEQA") Section 15106.

3. Published Notice of Preparation of the "DEIR" was provided pursuant to CEQA Section 15087(a).

4. A public hearing was held to receive comments on the DEIR on April 19, 1994, pursuant to CEQA Section 15202(c) and (d).

5. The District's staff and consultants, together with staff and consultants of Metropolitan Water District of Southern California have reviewed and evaluated all comments received on the DEIR and have prepared "Public Participation and Response to Comments", which in turn has been provided to those who commented on the DEIR and reviewed by this Board, which document together with the DEIR shall constitute the Final Environmental Impact Report ("FEIR").

6. There has further been prepared and reviewed by this Board "Findings and Mitigation Monitoring Plan", dated July, 1994.

7. The DEIR, Public Participation and Response to Comments, Findings and Mitigation Monitoring Plan, have all been submitted to this Board, the decision making body of the lead agency for the Project, and this Board has reviewed and

considered the information contained therein, and finds that certification of the FEIR is in the public interest.

8. A "Memorandum of Understanding Regarding Operation and Monitoring of the Semitropic Water Storage District Ground Water Banking Project ("MOU") has been negotiated with neighboring districts.

NOW, THEREFORE, BE IT RESOLVED by this Board of Directors as follows:

1. The foregoing findings are true and correct.

2. That this Board certifies that:

   (a) The Final Environmental Impact Report, that consisting of the DEIR plus Public Participation and Response to Comments, has been prepared in compliance with the California Environmental Quality Act; and

   (b) The FEIR was presented to this Board as the decision making body of Semitropic Water Storage District and this Board has reviewed and considered the information contained therein prior to approving this Project.

3. As is set forth in detail in the "Findings and Mitigation and Monitoring Plan", which is incorporated by this reference, the Project as described more fully in the FEIR, will not have a significant effect on the environment, or in specific instances referenced therein, significant or potentially significant impacts on the environment have been eliminated or substantially lessened where feasible, and any remaining unknown significant effects on the environment are unavoidable due to overriding concerns.

4. Subject to the foregoing and subject to entering into acceptable agreements approved by this Board with prospective banking partners, the Project is approved.

5. The District's staff and consultants are authorized and directed to do all things necessary to carry out this certification and approval including, but not limited to, filing a Notice of Determination and filing the FEIR, all as required by Sections 15094 and 15095 of the State CEQA guidelines.

6. The MOU, as revised (dated July 12, 1994), is approved in place of the draft referenced in the Public Participation and Response to Comments.

All the foregoing, being on the motion of Director Wegis and seconded by Director Crawford was authorized by the following vote:

AYES: Directors Crawford, Fabbri, Frey, Franceschi, Portwood, Page and Wegis

NOES: None

ABSENT: None

ABSTAIN: None

I HEREBY CERTIFY that I am the Secretary of SEMITROPIC WATER STORAGE DISTRICT and that the foregoing resolution was adopted by the Board of Directors of said District at a meeting held on the 13th day of July, 1994, at which meeting a quorum was present at all times and acting.

IN WITNESS WHEREOF, I have set my hand and the seal of said District this 13th day of July, 1994.

Secretary of the Board of Directors

[DISTRICT SEAL]

RESFEIR