

the effective date of January 28, 1998, the original January 28, 1998 Agreement is terminated as of the effective date of this Amended Agreement.

Zone 7 obtains water from the State Water Project ("SWP") through its contract with the California Department of Water Resources ("DWR"), executed on November 20, 1961, and presently providing for a total contract entitlement of 46,000 acre-feet per year. From time-to-time, Zone 7 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 1,112,730 acre-feet per year. This amount may be further reduced by up to 130,000 acre-feet by contract amendments required to implement the transfer provision of the Monterey Agreement. 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 provided for a combined contract entitlement of 158,000 acre-feet per year. This later amount was reduced to 155,000 acre-feet by the contract amendments required to implement the Kern Water Bank exchange under the Monterey Agreement. 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 Zone 7 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"). Pumpback operations to return stored water will take place primarily during the "off-peak" irrigation season, (i.e., generally between September 1 of any year and March 1 of the following year) when groundwater pumping and conveyance capacity are more likely 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. Zone 7 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 Zone 7 the water deposited by Zone 7 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 Zone 7'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 Zone 7, all in accordance with the terms of this Agreement. This Agreement will provide additional groundwater storage for Zone 7, resulting in better utilization of its SWP supplies, and will provide improved reliability of supplies and overall higher groundwater levels for Semitropic.

2 E. This Agreement is consistent with the goal of making optimum use of water
3 and facilities and is consistent with conservation objectives of Zone 7, Semitropic, Agency
4 and DWR.

5 F. Consistent with the California Environmental Quality Act ("CEQA"), Semitropic,
6 acting as lead agency has completed an environmental impact report concerning the
7 proposed water banking and exchange program (the "EIR"). Semitropic's Board of Directors,
8 on July 13, 1994, certified the EIR as being in compliance with CEQA (The EIR was
9 prepared for the full program of 1,000,000 acre-feet). Semitropic is also responsible for
10 implementing and monitoring the mitigation measures defined in "Findings and Mitigation
11 Monitoring Plan" dated July 1994, adopted as part of the Final EIR. The Supplemental EIR
12 prepared and certified by Zone 7 on January 7, 1998 for the use of the water supplied by
13 Zone 7 to an expanded Dublin San Ramon Service District service area in Contra Costa
14 County addresses the environmental impacts of the Zone 7 delivering water to the
15 Dougherty Valley Service Area to the extent these impacts have not been addressed in
16 previous studies.

17 Additional CEQA work is being done on Zone 7's Water Supply Planning Program.
18 A draft EIR is scheduled to be released in early 1999 which addresses the 22,000 acre-foot
19 of Semitropic storage associated with this amended Semitropic-Zone 7 Agreement.

20 G. Semitropic has also entered into a Memorandum of Understanding ("MOU")
21 with neighboring districts, dated September 14, 1994, to implement in part said monitoring
22 and mitigation measures, which this Agreement is subject to. The MOU is on file with both
23 Zone 7 and Semitropic.

24 H. The Semitropic Water Banking and Exchange Program authorized in the
25 above-referenced EIR (the "Program") has a defined total storage capacity of 1,000,000
26 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 22,000 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. Zone 7's participation may not fully utilize these capacities. Therefore, Semitropic has developed and has offered and will continue to offer other potential Banking Partners (as defined in Article 1) the opportunity to participate in the Program on substantially the same terms and conditions as Zone 7. Currently there are three other banking partners; The Metropolitan Water District of Southern California (Metropolitan) with the right of up to thirty-five percent (35%) of the program, Santa Clara Valley Water District (Santa Clara) with the right of about thirty-five percent (35%) of the program, and the Alameda County Water District (Alameda) with the right of about five percent (5%) of the program. Zone 7 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 Zone 7. Zone 7 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. Zone 7's participation under this 1997 Agreement is under Option 3; Alameda's, Metropolitan's and Santa Clara's current participation are under Option 2.

I. As a part of this Agreement, Semitropic, as trustee, will hold in trust for Zone 7, in accordance with the terms of this Agreement, the water deposited by Zone 7 (or its equivalent), together with the right to withdraw it and to deliver it to the California Aqueduct.

2 The parties create this trust relationship for the purpose of protecting Zone 7's ability to
3 recover Stored Water, and Semitropic's fiduciary duty is limited to Semitropic's
4 responsibilities as set forth in this Agreement. In addition, Semitropic, in a non-fiduciary
5 capacity, will provide such water resource management services as are necessary to
6 implement and operate the Program. Semitropic's non-fiduciary obligations include taking
7 such actions, including the construction of facilities, securing agreements and entering into
8 operational arrangements, as are necessary to receive from Zone 7 water delivered by Zone
9 7 for storage hereunder and to return equivalent water to Zone 7 in accordance with the
10 terms of the Agreement. The Program, as implemented with respect to Zone 7 by this
11 Agreement, when combined with other necessary actions undertaken by Zone 7, will thus
12 allow the delivery of Stored Water to Zone 7. These actions will include obtaining any
13 necessary agreements between agencies responsible for transferring water to and from
14 Program Storage (Point of Delivery Agreement as provided in Article 8). When such
15 services are provided by Semitropic, Zone 7 will make payments to Semitropic, as provided
16 for in this Agreement, to compensate Semitropic for its services and expenses. These
17 include: payments for storage, as provided in Section 6.2; payments when water is returned
18 from storage, as provided in Section 6.3; payments with respect to energy used to recover
19 water from the groundwater basin and to deliver that water to the California Aqueduct, as
20 provided in Section 6.3.3; and payments for operation and maintenance expenses under
certain circumstances, as provided in Section 6.5.

21 Zone 7 will acquire at least 6.5 percent of the Program's capabilities, rights and
22 capacities described in Recital I and elsewhere in this Agreement. Under Option number
23 3 of the Program Options, Zone 7 will pay \$8,199,277^{W45 5424137} in ten annual payments to store water
24 as provided for in Section 6.2.1. After Zone 7 has made all ten payments Zone 7 may elect
25 to acquire additional Permanent Storage Allocation under Section 6.4, if available. Until
26 Zone 7 has stored an initial amount of water equal to its Permanent Storage Allocation there
27 will be no additional storage fee. After Zone 7 has stored an initial amount of water equal
28 to its Permanent Storage Allocation, Zone 7 will pay \$50 per acre-foot to store water. Until
29 Zone 7 has recovered an initial amount of water equal to its Permanent Storage Allocation,

Zone 7 will pay \$10 per acre-foot plus power costs for water recovered. After Zone 7 has recovered an initial amount of water equal to its Permanent Storage Allocation, Zone 7 will pay \$50 per acre-foot plus power costs for water recovered.

Under the terms of this Agreement, the \$10 per acre-foot payment for withdrawal of the first 65,000 acre-feet will be adjusted using the Engineering News Record Index and all other amounts will be adjusted using the Consumer Price Index, as hereinafter provided.

J. The trust relationship between Zone 7, 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 Zone 7's interest in water delivered by Zone 7 to Semitropic hereunder for storage, and the right of Zone 7, also held in trust by Semitropic for Zone 7 to recover from the Semitropic Basin, water in a quantity sufficient to return to Zone 7, a quantity equal to Zone 7'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 Zone 7 hereunder will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Semitropic in its capacity as trustee for Zone 7 with respect to such water and the easements and rights relating thereto provided for herein. Zone 7 has herein authorized Semitropic, as trustee, to commingle, exchange or otherwise dispose of the water delivered by Zone 7 hereunder. In exchange for those rights and for water delivered hereunder, Semitropic has granted, and does hereby grant, to Zone 7 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 Zone 7 as specified in the Point of Delivery Agreement therein, all upon, and subject to the provisions of, this Agreement (all of which rights and easements may be referred to herein, collectively, as the "Trust Property"). Zone 7 has granted, and does hereby grant, to

1 Semitropic said Trust Property, in trust, for the use and benefit of Zone 7. The trust
2 relationship created by this Agreement is not otherwise intended to apply to or affect the
3 obligations of Semitropic or Zone 7 hereunder, or the remedies in the event of default; it
4 being expressly understood and agreed that Semitropic's obligations hereunder to, among
5 other things, construct facilities and enter into agreements with others in furtherance of the
6 Program shall not be fiduciary in nature. Notwithstanding creation of a trust under this
7 Agreement, Semitropic may benefit from the Program set forth in this Agreement.

8 **DECLARATION OF TRUST**

9 Zone 7 hereby appoints Semitropic to hold, and Semitropic hereby accepts such
10 appointment and agrees to hold, in trust, for the use and benefit of Zone 7, as beneficiary,
11 Zone 7's Stored Water (as hereinafter defined), together with all of the other Trust Property
12 (as defined in Recital I above), upon the terms set forth in this Agreement. The trust created
under this paragraph exists only for the purposes described in Recitals I and J above,
14 relating to protection of Zone 7's ability to recover its Stored Water if Semitropic fails or
15 refuses to do so when required to do so by this Agreement, and only with respect to the
16 Stored Water and the other Trust Property. The creation of a trust under this paragraph
17 does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the
18 extent Semitropic performs its obligations as provided in this Agreement, Semitropic will not
19 be deemed or construed to have breached any fiduciary duty to Zone 7 arising out of the
20 trust provided for in this Agreement.

21 **ARTICLE 1. DEFINITIONS**

22 As used in this Agreement, each of the following terms shall have the respective
23 meaning given to it in this Article 1 unless expressly stated to the contrary where such term
24 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 Zone 7-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, Zone 7 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 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 as identified in the EIR, 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 who has elected Option 2 of the Program Options, 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, the Interim Storage Allocation of that Banking Partner is reduced by an identical amount.

1.5 "Lower Priority Banking Partner" means an entity 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 "Zone 7's Share of Total Program Capital Cost" means, as of December 31, 1995, \$8,710,000.00 (which is six and five tenths percent (6.5%) of the Total Program Capital Cost). When required under Article 6 the "Adjustment Index" shall be used.

5,762,000

4.376

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 1996 with respect to the determination of Zone 7's Share of Total Program Capital Cost for 1997) and the denominator shall be the Construction Cost Index for June 1994, which the parties agree is 6,550.36 (based on a 1913 value of 100). 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.

1.7 "Permanent Storage Allocation" means, with respect to any particular Banking Partner and as of any particular time, the portion of the total 1,000,000 acre-foot Program storage capacity which is allocated to that Banking Partner as of that time. Zone 7's Permanent Storage Allocation equals 65,000 acre-feet which may be increased under provisions of Section 6.4.

1 1.8 **"Program"** means those facilities, agreements and operational activities,
2 described in Recital H and elsewhere, necessary for Semitropic to provide the water storage,
3 management, pumpback and exchange services specified in this Agreement and in other
4 water banking and storage agreements contemplated by this Agreement.

5 1.9 **"Program Delivery Capability"** means the capability to deliver water for
6 storage made available as a result of the construction of Program facilities as identified in
7 the EIR, agreements and operational activities. The absorptive capability of the proposed
8 23,000 acre In-Lieu Service Area plus improvements in the delivery capability to the existing
9 SWSA and TWSA are currently estimated to be 90,500 acre-feet per year, based on current ✓
10 cropping patterns and irrigation efficiencies. Program Delivery Capability for this Agreement
11 is as shown on Exhibit B.

12 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
14 amount of Semitropic's allocation of Agency's SWP Entitlement Water from the California
15 Aqueduct pursuant to this Agreement or other similar agreements between Semitropic and
16 other Banking Partners. Upon completion of such an exchange by Zone 7, Zone 7's
17 beneficial interest in the Stored Water that was the subject of the exchange shall vest in
18 Semitropic and the quantity so exchanged shall be deducted from Zone 7's Storage Account
19 Balance. Upon completion of necessary Program facilities as identified in the EIR, the total
20 amount of Program Entitlement Exchange Rights available to Banking Partners each year
21 will be equal to Semitropic's SWP Entitlement allocation less the first 22,000 acre-feet (was
22 25,000 acre-feet prior to the implementation of Monterey Amendments). If the nature or
23 description of Semitropic's allocation of the Agency's SWP Entitlement Water is modified,
24 such alternative supply from the SWP shall to such extent be substituted for Semitropic's
25 allocation of Agency's SWP Entitlement Water. Alternative supplies shall include water
26 purchases by the SWP or from sources generally available to State water contractors, as
well as water from facilities in which participation is generally made available to State water
28 contractors. Nothing in the preceding sentence shall obligate Semitropic to participate in

such programs. When all necessary Program facilities are constructed and fully vested, the maximum Program Entitlement Exchange Rights of the Banking Partners at any time will be 133,000 acre-feet per year (derived from 158,000 acre-feet minus 25,000 acre-feet or after implementation of the Monterey Amendments derived from 155,000 acre-feet minus 22,000 acre-feet) times the sum of all Banking Partners Permanent Storage Allocation divided by 1,000,000 acre-feet. Exhibit A specifies the maximum Program Entitlement Exchange Rights as Banking Partners' Permanent Storage Allocation is accumulated. Until such time as the Permanent Storage Allocation is fully vested, the Program Entitlement Exchange Rights of each Banking Partner shall be computed as a percentage of all Banking Partners' Interim and Permanent Storage Allocation.

1.10.1 **"Unused Program Entitlement Exchange Rights"** means those exchange rights established under paragraph 1.10 and Exhibit A of this Agreement that are not used by the Banking Partners that established those rights.

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

1.11.1 **"Unused Program Pumpback Capacity"** refers to that minimum pumpback capacity established under Section 1.11 and Exhibit A of this Agreement that is not used by Semitropic or by the Banking Partners that established the Program Pumpback Capacity.

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 or at other locations approved by the Point of Delivery Agreement referred to in Article 8, less losses deducted in accordance with Article 4, which losses shall be accounted for concurrently with the delivery of water to Semitropic for storage. Zone 7 acknowledges that Zone 7'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 Zone 7 Storage Account Balance shall be deemed to be Zone 7's Stored Water. So long as water in the amount of Zone 7's Storage Account Balance remains in the Semitropic Basin, Semitropic, as trustee, shall be deemed to remove Zone 7's Stored Water from storage only as and when requested by Zone 7 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 Zone 7'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
2 adversely impact Banking Partners' ability to utilize any benefits under this Agreement. If
3 Semitropic or one or more then existing Banking Partners believe that other potential
4 Banking Partners' proposed agreements or potential Lower Priority Banking Partners'
5 proposed agreements violate any of the provisions of this Agreement or other such
6 Agreement, any Party may seek dispute resolution pursuant to Article 9 concerning such
7 matter. In this event, Semitropic shall only enter into agreements in conformity with the
8 result of the dispute resolution.

9 2.4 At no time under this Program shall the sum of all Banking Partners' Interim
10 and Permanent Storage Allocations exceed 1,000,000 acre-feet.

11 2.5 With the exception of agreements which Semitropic enters into with agencies
12 or districts within Kern County, Semitropic shall first offer to Metropolitan; then on an equal
13 percentage basis, in proportion to their respective Permanent Storage Allocation, to Santa
14 Clara, Alameda, and Zone 7; and then to all other Banking Partners a right of first refusal
15 for any agreement which Semitropic proposes to enter into with a Lower Priority Banking
16 Partner. Further, after December 12, 1999, if Semitropic negotiates an agreement with
17 another potential Banking Partner, Semitropic shall first offer to Metropolitan; then on an
18 equal percentage basis, in proportion to their respective Permanent Storage Allocation, to
19 Santa Clara, Alameda, and Zone 7; and then to all other Banking Partners a right of first
20 refusal for the Interim and Permanent Storage Allocation provided for in such agreement on
21 the same terms and conditions, irrespective of the maximum amount specified in Section
22 2.5. Banking Partners must notify Semitropic in writing of the intent to exercise such options
23 within forty-five (45) days of receiving written notice from Semitropic transmitting the
24 proposed agreement.

ARTICLE 3.

**DELIVERY OF WATER BY BANKING PARTNERS
TO SEMITROPIC**

2
3
4 3.1 Under the terms of the Point of Delivery Agreement referred to in Article 8,
5 Zone 7, at its sole cost and expense, may deliver a portion of its SWP or other water to
6 Semitropic at the location in the California Aqueduct specified in the Point of Delivery
7 Agreement. Zone 7 shall notify Semitropic of its intent as early in the year as possible,
8 preferably no later than April 15. Such water will be scheduled and delivered to Semitropic
9 at times and rates of delivery acceptable to Semitropic, the Agency and Zone 7, and shall
10 not exceed the Program Delivery Capability and Unused Semitropic Delivery Capability nor
11 shall it exceed the available capacity of Semitropic's distribution system.

12 3.2 Semitropic will take control and possession of water delivered to Semitropic
13 by any Banking Partner for storage, at the locations specified in their respective Delivery
14 Agreements and will credit the Storage Account Balance of that Banking Partner with Stored
15 Water in an amount equal to the water so delivered less the deduction for losses provided
16 for in Article 4 with respect to such water (the "Stored Water"). At the time Semitropic takes
17 control and possession of water delivered by Zone 7, legal title to Zone 7's water, together
18 with the right to withdraw from the Semitropic Basin an amount sufficient to return to Zone 7
19 the Stored Water, shall vest in Semitropic, as trustee for Zone 7. Upon taking control and
20 possession of water delivered hereunder for storage by Zone 7, Semitropic, at its sole cost
21 and expense, will do either of the following: (i) transport and store such water by direct
22 percolation; or (ii) exchange that water for an interest in and right to withdraw from the
23 Semitropic Basin an amount of water sufficient to return to Zone 7 the Stored Water (which
24 interest and right shall thereafter be Trust Property). In either case, Semitropic shall
25 thereafter hold and return or otherwise dispose of the Trust Property as provided for in this
26 Agreement. Upon crediting Zone 7's Storage Account Balance for the amount of any water
27 exchanged as described in clause (ii) above, Semitropic may deliver the exchanged water
28 to water users for surface water service in lieu of pumping groundwater. Semitropic shall
29 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 B.

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 10 A of the California Aqueduct and at other turnouts as provided in the Point of Delivery Agreement referred to in Article 8. This amount and the Storage Account Balance shall be modified in the future,

1 if the results of studies to be conducted jointly by Zone 7, other Banking Partners and
2 Semitropic under a mutually agreeable procedure establish the actual loss to be different
3 than the assumed ten percent (10%) losses. The Storage Account Balance shall be
4 adjusted accordingly and resulting adjustments in compensation payments shall be in
5 accordance with Section 6.8.

6 **ARTICLE 5.**

7 **RETURN OF WATER BY SEMITROPIC TO ZONE 7**

8 5.1 In any year, upon request by Zone 7, Semitropic shall return Stored Water to
9 Zone 7 by the method set forth in Section 5.1.1 or the method set forth in Section 5.1.2 or
10 both.

11 5.1.1 Semitropic may exchange an amount of Zone 7's Stored Water for an
12 equal amount of Semitropic's SWP Entitlement Water. Zone 7 hereby consents to such an
13 exchange and Semitropic will be deemed to have effected such an exchange by delivering
14 a portion of its SWP Entitlement Water to Zone 7 in compliance with the Point of Delivery
15 Agreement. Upon completion of such an exchange, Zone 7's beneficial interest in the
16 Stored Water that was the subject of the exchange and the right to withdraw such water shall
17 be vested in Semitropic in its individual capacity, and Semitropic may thereafter deliver such
18 water to its water users who would otherwise have received the portion of Semitropic's SWP
19 Entitlement Water that was delivered to Zone 7 as a result of the exchange.

20 5.1.2 Semitropic may return Zone 7's Stored Water to Zone 7 by pumping
21 water from the groundwater basin back to the Aqueduct for delivery to Zone 7 as specified
22 in the Point of Delivery Agreement.

23 5.2 The return of Stored Water by Semitropic to Zone 7 shall be subject to the
24 following terms and conditions:

2 5.2.1 Subject to the provisions of this Agreement, for each acre-foot of Stored
3 Water held by Semitropic for Zone 7, Semitropic shall ultimately return one acre-foot of water
4 to Zone 7.

5 5.2.2 Subject to the provisions of this Agreement, when Zone 7 requests the
6 return of Stored Water, Semitropic shall return at a minimum the quantities of water
7 calculated in accordance with the following, using its reasonable efforts to accommodate
8 Zone 7's delivery schedule:

9 5.2.2.1 Program Pumpback Capacity shall be allocated among
10 Banking Partners according to the ratio of each Banking Partner's combined Interim and
11 Permanent Storage Allocations divided by 1,000,000 acre-feet. Each Banking Partner shall
12 have a right to any then existing Program Pumpback Capacity not used by other Banking
13 Partners, subject to mitigation of impacts to other Banking Partners pursuant to Section 5.6.
14 If requests by Banking Partners for unused Program Pumpback Capacity exceed such
15 capacity, then the unused Program Pumpback Capacity shall be allocated to each Banking
16 Partner according to the ratio of its combined Interim and Permanent Storage Allocations,
17 divided by the sum of the combined Interim and Permanent Storage Allocations of all
18 Banking Partners wishing to use the unused capacity times the amount of unused Program
19 Pumpback Capacity.

20 5.2.2.2 Program Entitlement Exchange Rights shall be allocated
21 to each Banking Partner according to the ratio of its combined Interim and Permanent
22 Storage Allocations divided by 1,000,000 acre-feet times the Program Entitlement Exchange
23 Rights to be allocated. Each Banking Partner shall have a right to any Program Entitlement
24 Exchange Rights not required for use by other Banking Partners, subject to mitigation of
25 impacts to other Banking Partners pursuant to Section 5.6. If requests by Banking Partners
26 for unused Program Entitlement Exchange Rights exceed such rights, then the unused
27 Program Entitlement Exchange Rights shall be allocated to each Banking Partner according
28 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 under full Program development 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 since Metropolitan was the first banking partner, and if Metropolitan's Permanent Storage Allocation is Fully Vested, and, during the first ten (10) years of the **"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"**(Metropolitan's Agreement), dated December 12, 1994, 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 acquired under the December 12, 1994 Agreement 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 and shall not be used in any proration of capacity rights between Banking Partners. 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 Metropolitan's Agreement, whether or not Metropolitan's Permanent Storage Allocation is fully vested, Metropolitan shall be allocated all of said capacity and rights. If, however, Metropolitan's Permanent Storage Allocation is reduced, below 350,000 acre-feet, 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 Sections 5.2.2.1., 5.2.2.2 and 5.5. Except for Metropolitan's rights set forth in this Section 5.2.3, all Banking Partners established under this Program shall have equal priority within their allocated capacity and unused capacity.

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5.3 Zone 7 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 Zone 7's request. In the event of an emergency need for water by Zone 7, Semitropic shall endeavor to return Stored Water to Zone 7 to the maximum extent feasible considering the capacity rights of other Banking Partners.

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5.4 Semitropic has obtained 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 Zone 7 by either Program Pumpback or Program Entitlement Exchange.

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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.

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5.6 If the use by other Banking Partners, Lower Priority Banking Partners or Semitropic of unused Program Pumpback Capacity or unused Program Entitlement

1 Exchange Rights referenced in Sections 5.2.2.1 and 5.2.2.2 interferes with the recovery of
2 Zone 7's or any other Banking Partner's Stored Water by causing a reduction or termination
3 of pumping pursuant to the MOU, the Party or Parties responsible for the action(s) which
4 impacts Zone 7 or any other Banking Partner shall reduce its withdrawal of Stored Water to
5 make up Zone 7's or other Banking Partner's loss and, to the extent reductions in the
6 withdrawal of Stored Water are insufficient, shall provide, at the election of the impacted
7 Banking Partner, an equivalent water supply in that year or cash in the amount of the
8 replacement cost of such water, such water or cash to be for the benefit of and to be
9 immediately distributed to the impacted Banking Partners. Semitropic shall adjust the
10 Banking Partners' accounts to reflect any such water exchange.

11 Zone 7 recognizes that it may be required to reduce its withdrawal of Stored Water or furnish
12 equivalent water or cash to another Banking Partner under the circumstances described
13 above, if its own use of unused Program Pumpback Capacity or unused Program
14 Entitlement Exchange rights interferes with other Banking Partner's recovery of Stored
15 Water. Semitropic agrees promptly to pursue amendments to its existing Banking and
16 Storage Agreements, and to include in all future such agreements, a similar provision which
17 clarifies that Section 5.6 imposes obligations on the Banking Partner or Lower Priority
18 Banking Partner, as well as providing benefits to it. Zone 7 will only be bound by Section 5.6
19 with respect to a Banking Partner which is reciprocally obligated to Zone 7.

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21 5.7 Wells within Semitropic can currently produce water that will meet DWR's water
22 quality standards to return water to the California Aqueduct. Semitropic shall take no direct
23 action which would knowingly cause the quality of recovered groundwater to not meet such
24 water quality standards in effect. The preceding sentence shall not apply to delivery of water
25 under non-banking programs or otherwise operating under this Program. In the event that
26 future water quality standards change, or the quality of groundwater from Semitropic wells
27 is such that Semitropic cannot meet acceptable DWR water quality requirements for

1 pumping into the California Aqueduct, Stored Water shall be returned to Banking Partners
2 by Program Entitlement Exchange or alternative methods satisfactory to the affected
3 Banking Partners. Such alternative methods may include, but are not necessarily limited to:
4 purchases, exchanges with others, and/or by improving Stored Water quality to acceptable
5 standards for direct pumpback, with the additional costs of any such methods being paid by
6 Banking Partners accepting such alternative methods. Semitropic's operations and financial
7 situation shall not be adversely impacted as a result of these alternative methods.

8 5.8 This Agreement shall be subject to the "Agreement Between the Department
9 of Water Resources of the State of California, Kern County Water Agency and Semitropic
10 Water Storage District for 1990 Demonstration Semitropic Local Element," dated May 1,
11 1990, which provides for Semitropic to return all banked water to DWR solely by entitlement
12 exchange. Said agreement expires when all banked water is withdrawn, or on December
13 31, 2010, whichever first occurs. Until such expiration, DWR has priority over Banking
14 Partners in any year water is to be returned by entitlement exchange. The amount owed to
15 DWR is 40,131 acre-feet as of January 1, 1998 with a maximum withdrawal rate of 10,033
16 acre-feet per year. Any amendment to such agreement shall be subject to this Agreement
17 and the review of the Banking Partners.

18 5.9 Zone 7 also recognizes that Semitropic has entered into an "Agreement
19 Between Shafter-Wasco Irrigation District and Semitropic Improvement District of Semitropic
20 Water Storage District Providing for Construction and Operation of an Intertie Pipeline,"
21 dated December 6, 1993, which implements a water banking and exchange program.
22 Semitropic has committed to return water to Shafter-Wasco by delivery of either surface
23 water in excess of its needs from any available source or by pumping groundwater. The
24 agreement with Shafter-Wasco is based on the use of existing Semitropic facilities for the
25 delivery of water to storage and for the withdrawal or return of water. Shafter-Wasco,
26 therefore, has priority over Banking Partners in the use of existing facilities. Semitropic's
27 obligation under said agreement does not require commitment of SWP entitlement nor the
28 use of pumpback facilities required for the return of Banking Partners' Stored Water.

ARTICLE 6. COMPENSATION

Zone 7 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 Zone 7'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 Zone 7 with Program Pumpback Capacity and Program Entitlement Exchange Rights in a timely manner as described in Exhibit A hereto and, as payments of Zone 7's Share of Total Program Capital Cost are made, provide increases in Program Delivery Capability to Zone 7's share of Program Delivery Capability as described in Exhibit B, all in accordance with this Agreement.

Zone 7 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 Zone 7.

6.2 Storage Payments.

43 6.2.1 Zone 7's storage payment to provide capital contribution are computed for 65,000 acre feet of Permanent Storage Allocation as $[(65,000 \text{ acre-feet}/1,000,000 \text{ acre-feet} \times \$134,000,000) - (65,000 \text{ acre-feet} \times \$10.00 \text{ per acre-foot})]$ or \$8,060,000⁵³⁸²⁰⁰. The amounts of \$134,000,000 and \$10.00 are in 1994 dollars and under Option 3 are escalated to the year this Contract is signed. As of January 1, 1998 escalation is derived from the ratio 6,663.55/6,550.36 adjusting the total Capital amount to \$8,199,277⁵⁴²⁴¹³⁷. This amount shall be paid in annual payments over the 10-year period. First payment of \$542,413.70 shall be made within 45 days of the effective date of this agreement and the subsequent nine equal annual payments of \$850,762.59 shall be made within forty-five (45) days of January 28, which is considered the anniversary date of this agreement

6.2.2 From and after the time when Zone 7 has delivered to storage 65,000
2 acre-feet of water, Zone 7 shall pay Fifty Dollars (\$50.00) per acre-foot for any additional
3 Stored Water credited to Zone 7's Storage Account Balance pursuant to Section 6.4,
4 adjusted at the beginning of each year as provided in this Section 6.2.2, and the adjusted
5 amount shall apply to all Stored Water credited to Zone 7's Storage Account Balance for that
6 year and to which this Section 6.2.2 is applicable. The adjusted amount under this Section
7 6.2.2 for any particular calendar year shall be the amount equal to Fifty Dollars (\$50.00)
8 multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban
9 Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the
10 "CPI") for December of the calendar year immediately preceding the calendar year with
11 respect to which the adjusted amount is being determined (that is, for December 2000 with
12 respect to the adjusted amount for 2001; December 2001 for 2002; and so on), and the
13 denominator of which shall be the CPI for June 1994 (which, the Parties agree, is 148.6
14 (based on 1982-84 index).

6.2.3 If publication of either of the indexes referred to in Section 1.6 or 6.2.2
15 ceases or if the basis for such indexes is substantially modified, the Parties shall negotiate
16 and mutually agree on an alternative but equivalent index or, in the absence of agreement,
17 the matter shall be resolved pursuant to Article 9.
18

6.3 Withdrawal Payments.

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6.3.1 Zone 7 shall pay to Semitropic Ten Dollars (\$10.00) per acre-foot, for
20 each acre-foot of water for the first 65,000 acre-feet of Zone 7 water removed from storage,
21 when such water is returned to Zone 7. Said Ten Dollar (\$10.00) charge shall be adjusted
22 annually on the basis of the Engineering News Record Construction Cost Index as provided
23 in this Section 6.3.1. Subsequent to calendar year 1995, the Ten Dollars (\$10.00) per
24 acre-foot shall be adjusted at the beginning of each year as provided in this Section 6.3.1,
25 and the adjusted amount shall apply to all Water which is withdrawn from Zone 7's Storage
27 Account Balance under this Section 6.3.1. The adjusted amount for any particular calendar

year after 1995 shall be the amount equal to Ten Dollars (\$10.00) multiplied by a fraction, the numerator of which is the Construction Cost Index for Los Angeles published by the Engineering News Record ("Construction Cost Index") 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 (which the parties agree is 6,550.36 based on a 1913 value of 100).

6.3.2 Zone 7 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 Zone 7. 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, Zone 7 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, Zone 7 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 Zone 7'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 Zone 7 requests such information and shall provide Zone 7 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 C. For all Stored Water returned by Semitropic's exercise of Program Entitlement Exchange Rights, Semitropic shall pay all applicable SWP costs thru the Harvey O. Banks Pumping Plant to the turnout of the South Bay Aqueduct.

6.3.4 Exhibit C may be revised from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. The intent of Exhibit C is to provide Semitropic with sufficient revenue to recover the power costs incurred by Semitropic for Zone 7'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 When Zone 7's payments under Sections 6.2.1 have been made in full for 65,000 acre-feet of Permanent Storage Allocation, at Zone 7's election and Semitropic's concurrence, Zone 7 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 Zone 7'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 additional payments shall be escalated in accordance with Sections 6.2.1 and 6.3.1. The amount of such increase shall be determined pursuant to Section 1.7.

6.5 Except as otherwise provided at Sections 6.5.1 or 6.5.2, Zone 7 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 Zone 7. 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 starts on the date of this Agreement.

6.5.1 In any year, Zone 7 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 6.5. 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 6.3.2 that is greater than the O&M fee paid that year is then due and payable to Semitropic.

6.5.2 If Semitropic or other Banking Partners use Program Deliver Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights allocated to Zone 7, such entity using said capacity shall pay a portion of Zone 7's O&M Fee under Section 6.5. The portion to be paid shall be then current O&M Fee of \$3.98 per acre-foot (Base Amount) prorated 20 percent to Program Delivery Capability, 50 percent to Program Pumpback Capacity and 30 percent to Program Entitlement Exchange Rights. This payment shall be based on that portion of the capacity or exchange rights shown on Exhibits A and B during the months they were actually used. The payment made for the use of Zone 7's unused capacity rights shall be deducted from the next payment due from Zone 7 under this Agreement. This Section 6.5.2 shall not apply when Semitropic uses unused program capacity rights for its own groundwater recharge or other District purposes.

6.5.3 If Zone 7 uses another Banking Partner's unused Program Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights, Zone 7 shall pay the share of the other Banking Partner's O&M Fee under this Section 6.5 that is represented by its use and determined in the same manner set forth in Section 6.5.2.

6.6 Semitropic may bill Zone 7 no more than monthly for payments under Sections 6.2.2, 6.3.1 or 6.3.2, 6.3.3, 6.5.1 and 6.5.3 hereof and annually for payments under Section 6.5, which payments shall be due Semitropic and shall become delinquent forty-five (45) days after Zone 7 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 Zone 7. Semitropic shall correct any erroneous billing promptly upon discovery of the error. If Zone 7 has been underbilled, payment of the underbilled amount shall be due and become delinquent forty-five (45) days after Zone 7 receives the corrective invoice and data justifying the change. Overpayments by Zone 7 shall be refunded to Zone 7 within forty-five days of discovery, together with interest thereon at the average investment yield of Zone 7's investments as reported monthly by the Treasurer of Alameda County.

6.7 Zone 7 will pay to Semitropic which in turn it will pay to Metropolitan an amount to reimburse Metropolitan for a portion of its expenses in developing the Program. Zone 7's reimbursement for Metropolitan shall be equal to Zone 7's Permanent Storage Allocation multiplied by thirty cents (\$0.30 per acre-foot) per acre-foot adjusted in the same manner as in Section 6.2.2.

6.8 In the event there is an adjustment in Zone 7's Storage Account Balance as provided at Article 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:

6.8.1 To the extent the Storage Account Balance is reduced (i.e., losses are determined to exceed ten percent (10%)), Semitropic shall reimburse Zone 7 for the charges paid under Sections 6.2.2 and 6.4 within one year of such determination.

2 6.8.2 To the extent the Storage Account Balance is increased (i.e., losses are
3 determined to be less than ten percent (10%)), Zone 7 shall pay Semitropic for charges that
4 would have been paid under Sections 6.2.2 and 6.4 for such additional water determined to
be in the Zone 7 Storage Account Balance within one year of such determination.

5 6.9 It is recognized that changes in Semitropic's actual costs of operating the
6 Program may occur on or after the date this Agreement is executed as a result of
7 enactments, amendments, changes in implementation or interpretation, or repeal of any
8 federal or state law, rule, regulation or ordinance (each, a "Regulatory Change"). If either
9 Party determines that a Regulatory Change has occurred that would result in a material
10 change (upward or downward) in Semitropic's costs for storing, recovering or transporting
11 water pursuant to the terms of this Agreement, which change in Semitropic's costs is not
12 reflected in the adjustments in the payments due from Zone 7 to Semitropic pursuant to
13 Article 6 or other provision of this Agreement (including, but not limited to, this Section 6.9),
14 such Party shall promptly inform the other Party of the nature and extent of such alleged
15 Regulatory Change and of the reason why that party believes an adjustment pursuant to this
16 Section 6.9 is warranted in the payments due from Zone 7 to Semitropic. Promptly
17 thereafter, Semitropic shall provide Zone 7 with its calculation of the costs or cost savings
18 associated with such Regulatory Change and the facts and assumptions underlying that
19 calculation. Upon agreement by the parties hereto (i) that a charge or credit affecting any
20 payment due from Zone 7 to Semitropic should be made as a result of a Regulatory Change,
21 (ii) of the amount of such charge or credit, (iii) as to whether such charge or credit is to affect
22 the basic payment amount or is to be separately accounted for (and, if so, in what manner),
23 and (iv) as to the period during which such charge or credit is to apply, such charge or credit
24 shall be incorporated into an amendment to this Agreement setting forth the foregoing and
25 other particulars necessary to implement that adjustment. If such agreement cannot be
26 reached within forty-five (45) days after Semitropic has provided the required notice and
27 information to Zone 7, the matter shall be resolved pursuant to Article 9, the qualified third
28 party or arbitration panel being charged with determining (x) whether a Regulatory Change
29 has occurred (if that is in dispute), (y) the amount of change, if any, in Semitropic's costs

2 resulting from the Regulatory Change, and (z) the manner in which the payments due from
3 Zone 7 to Semitropic are to be adjusted to fairly and equitably reflect that change in
4 Semitropic's costs (it being the intent of the parties that no windfall or unwarranted
5 compensation or benefit should result to any party as a result of any adjustment made
6 pursuant to this Section 6.9). Any adjustment to the payments due from Zone 7 to
7 Semitropic made pursuant to this Section 6.9 shall be effective as of the first day such
8 Regulatory Change affects Semitropic's operations hereunder unless the parties otherwise
9 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.

10 **ARTICLE 7. DIVISION OF RISK RESPONSIBILITIES**

11 Semitropic and Zone 7 agree to cooperate, and Semitropic shall require other
12 Banking Partners to cooperate, in reducing, to the greatest extent practicable, the risk from
13 claims arising against any of the Parties from implementation of this Agreement. In the
14 event of claims by third parties relating to this Agreement, the responsibilities of Semitropic,
15 whether acting in its individual and/or trustee capacity, Zone 7 and the other Banking
16 Partners shall be divided as follows:

17 7.1 Semitropic shall defend, indemnify and hold harmless Zone 7 and the other
18 Banking Partners, and their respective directors, officers, agents and employees against any
19 and all losses, claims, demands and causes of action (herein collectively referred to as
20 "claims") and shall assume responsibility for payment of any settlements, judgements, costs
21 and attorneys' fees arising from claims concerning the following:

- 22 (a) Control, carriage, handling, use, disposal, or distribution of water in
23 Semitropic's facilities;
- 24 (b) Any contest or dispute by any landowner or water user within the
service area of, or otherwise served by, Semitropic concerning the

2 allocation of benefits among or the assessment of charges to
Semitropic landowners or water users;

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

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

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

8 If Zone 7 is named in any such action, it may submit its defense to Semitropic, which
9 shall bear the full cost of defense, except to the extent that Zone 7 utilizes its own counsel
10 for such defense. Notwithstanding the foregoing, the responsibility for any claims
challenging the validity, underlying authority or enforceability of the Program under this
12 Agreement shall be as provided at Section 7.3.

13 7.2 Each Banking Partner (including Zone 7) shall defend, indemnify and hold
14 harmless Semitropic and the other Banking Partners, and their respective directors, officers,
15 agents and employees, against any and all claims and shall assume responsibility for
16 payment of any settlements, judgements, costs or attorneys' fees arising from claims
17 concerning the following:

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

22 (b) Any claim by a landowner, resident, public agency or other entity within
23 the service area of, or otherwise served by, that Banking Partner

2 challenging the appropriateness of that Banking Partner entering into
this Agreement;

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

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

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

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

14 7.3 As for any claims by a third party with respect to the Program which are not
15 otherwise provided for at Sections 7.1 or 7.2, including any claims challenging the underlying
16 authority for or the validity or enforceability of the Program under this Agreement, each
17 Banking Partner shall be responsible for payment of its allocable share of any settlements
18 or judgments to which it is a party with respect to such claims. If Semitropic is named in any
19 action with respect to such a claim, it may submit its defense to the Banking Partners which
20 are parties to that action with respect to that claim and those Banking Partners shall bear the
21 full cost of defense, except to the extent Semitropic utilizes its own counsel for such defense.

22 7.4 At the request of Zone 7 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
24 interests in which case the requesting Party shall reimburse Semitropic for all of its costs of

1 defense. However, and notwithstanding Section 7.3 with respect to claims in which one or
2 more of the plaintiffs resides or does business in Kern County challenging the recovery of
3 groundwater under this Agreement, and with respect to any third party claim challenging this
4 Agreement or the right of Zone 7 to the return of its Stored Water in accordance with the
5 terms of this Agreement, Zone 7 may demand that Semitropic join in the defense of claims.
6 In such case, Semitropic must comply with any such demand, the Parties shall jointly
7 manage the litigation, and Zone 7 and other Banking Partners who are parties to such
8 litigation shall pay one-half of Semitropic's defense costs, if one or more of the plaintiff
9 resides or does business in Kern County; and in other such cases, shall reimburse
10 Semitropic for all of its costs of defense.

11 7.5 In all other water banking and exchange agreements involving Semitropic and
12 any Banking Partner, the division of risk and indemnification responsibilities between and
13 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:

15 7.5.1 Each Banking Partner shall be required to assume the duty to defend,
16 indemnify and hold harmless Semitropic and the other Banking Partners from claims arising
17 from or otherwise concerning the activities described in Section 7.2 of that Banking Partner.

18 7.5.2 Each Banking Partner shall be required to assume the duty to pay its
19 allocable share of any claims of the type described in Section 7.3. Unless otherwise
20 provided in the settlement or judgment, each Banking Partner's share of such settlements,
21 judgments, or attorney fees as provided at Section 7.3 shall be determined according to the
22 ratio of that Banking Partner's combined Interim and Permanent Storage Allocation divided
23 by the sum of all involved Banking Partners' combined Interim and Permanent Storage
24 Allocations.

26 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

2 Semitropic and one or more Banking Partners, payments shall be divided in proportion to
3 the relative liability of each arising from the common claim. If the Parties cannot agree on
4 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.

5 **ARTICLE 8. REQUIRED FOR IMPLEMENTATION**

6 Implementation of this Agreement is contingent upon the following:

- 7 (a) Compliance with the California Environmental Quality Act (CEQA) and
8 the time has expired in which any party could challenge CEQA
9 documentations.
- 10 (b) No entity within Kern County exercising its right of first refusal under the
11 same terms and conditions provided to Zone 7 in this Agreement within
12 forty-five (45) days after notification of this Agreement to Kern County
13 Water Agency member agencies.

14 Semitropic will promptly notify Zone 7 when condition (b) has been met and the
15 Parties will keep each other informed concerning the satisfaction of the other Article 8
16 Conditions.

17 Zone 7 may commence delivering water for banking under terms of Agreement upon
18 a Point of Delivery Agreement being entered into between DWR, the Agency and Zone 7.

19 **ARTICLE 9. DISPUTE RESOLUTION**

20 9.1 In the event of dispute regarding interpretation or implementation of this
21 Agreement, or if the parties are unable to agree upon a matter as to which their agreement
22 is provided for hereunder, the Parties will endeavor to resolve the dispute by using the
23 service of a mutually acceptable consultant. The fees and expenses of the consultant shall
24 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 Zone 7 (or if the dispute is between various Banking Partners and Semitropic, the Banking Partners involved shall collectively agree on the member).
- (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 or if Banking Partners are unable to agree on a member among themselves, either Party may petition a court to appoint such member pursuant to Code of Civil Procedure Section 1281.6. The fees and expenses of the panel members shall be paid as follows: Semitropic pays for its member, Zone 7 pays for its member (or if the dispute involves more than one Banking Partner, the participating Banking Partners share the fees and expenses of the member according to the ratio of each participating Banking Partner's Permanent Storage Allocation divided by the sum of all participating Banking Partner's Permanent Storage Allocations), 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 shared among the other Banking Partners participating in the dispute resolution process according to the ratio of each participating Banking Partner's Permanent Storage Allocation divided by the sum of all participating Banking Partner's Permanent Storage Allocations. Alternatively, if the dispute is between Banking Partners and Semitropic has no direct interest in the outcome, the total costs of arbitration shall be paid

by the Banking Partners according to the ratio of each participating Banking Partner's
2 Permanent Storage Allocation divided by the sum of all participating Banking Partner's
3 Permanent Storage Allocations.

4 If a Party asserts that another Party has breached obligations under this Agreement,
5 it may request that the arbitration panel order the other Party to comply with this Agreement.
6 Upon the panel finding that a Party has in fact breached this Agreement, the panel shall
7 order compliance. The panel may order any other equitable relief permitted by California
8 law, including declaratory or injunctive relief, applicable to the matter before the panel for
9 resolution. If termination is sought by a party pursuant to the terms hereof, the panel may
10 determine the issues of whether a default has occurred or other condition precedent to the
11 termination alleged has been satisfied and, if so, may issue orders implementing that
12 termination. The orders of the panel shall be judicially enforceable. The panel may order
13 that the effective date of its order be the date of the breach, if appropriate. If Zone 7 has
14 suspended payments under Section 11.1.2, it shall reimburse Semitropic for any monies
15 withheld and then due to Semitropic as soon as Semitropic again fully complies with this
16 Agreement. The panel may not order any damages (including consequential or punitive
17 damages) beyond those provided for or permitted under this Agreement.

18 9.3 All future new, renewed, or amended water banking agreements between
19 Semitropic and Banking Partners or potential Banking Partners shall contain language
20 consistent with this Section 9.1 and 9.2. Until such time as the agreement between
21 Semitropic and Metropolitan is amended, Sections 9.1 and 9.2 of that agreement shall
22 control disputes involving Metropolitan.

23 **ARTICLE 10. TERM OF AGREEMENT**

24 Unless this Agreement is earlier terminated pursuant to this Article 10 or pursuant to
25 Sections 11.1.3, 11.2, 11.3, or 12.2, this Agreement shall terminate on December 31, 2035,
the date of termination of the Agency's Long-Term Water Supply Contract; *provided,*
27 *however,* that, if Zone 7 has timely requested return of Stored Water pursuant to Article 5

at such a time and in such a manner that Zone 7's Stored Water could have been returned prior to December 31, 2035 but, because of conditions beyond the control of Zone 7, all of Zone 7'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 Zone 7 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. Zone 7 may elect to terminate this Agreement at any time by giving written notice to Semitropic of Zone 7's intent to terminate not less than one year in advance of the termination date selected by Zone 7 and specified in the notice and by conveying its beneficial interest, as agreed upon between the parties, in the amount of Zone 7's Stored Water in Zone 7's Storage Account Balance on that termination date to Semitropic. Upon Zone 7'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 Zone 7 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 12.2, 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, Zone 7 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 Zone 7 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 Zone 7 has given notice to Semitropic pursuant to Section 11.1.1, Zone 7 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 Zone 7's payment obligations, this Agreement shall remain in effect unless and until Zone 7 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 Zone 7 under this Section 11.1.2 to suspend payment obligations, Zone 7 or Semitropic may thereafter also seek relief under Article 9.

11.1.3 If, pursuant to Section 11.1.1, Zone 7 elects to terminate this Agreement, Semitropic will purchase the amount of Zone 7's Stored Water in its Storage Account Balance for an amount equal to Zone 7'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 Zone 7 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, Zone 7's beneficial interest in the amount of Zone 7's Stored Water in Zone 7'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 Zone 7's Voluntary Failure to Perform.

If Zone 7 has not substantially performed according to the terms of this Agreement, and notice has been provided to Zone 7 pursuant to Section 13.4 and Zone 7 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 Zone 7 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 shall purchase the amount of Zone 7's Stored Water in Zone 7's Storage Account Balance in the manner and for the price provided in Section 12.2; provided, however, if Semitropic has financed construction of facilities, all or in part, based in reliance upon this Agreement, and such financed securities have, not being prepaid, Semitropic shall not be required to pay such amount if it so elects. Zone 7 may challenge at any time, through Article 9, whether in fact there has been a breach of this Agreement by Zone 7.

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) Zone 7 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) Zone 7 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, Zone 7 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* Zone 7 may notify Semitropic that Zone 7 is entitled to and intends to exercise its right to appointment of a successor trustee in place of Semitropic and, thereafter, Zone 7 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 any and all rights theretofore held by Semitropic as trustee for Zone 7, 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 Zone 7's Stored Water in Zone 7's Storage Account Balance and has transported that water to the California Aqueduct at Reach 10A for exchange to Zone 7 pursuant to Section 5.1 of this Agreement. Upon the receipt by Zone 7 of water in an amount equal to Zone 7'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 and 12.2, and any other attempt by Semitropic to resign shall be deemed to be a breach of its obligations hereunder.

12.2 Involuntary Termination. Notwithstanding Article 11, in the event that Semitropic is unable despite its best efforts 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 Zone 7 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 Zone 7 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 Zone 7 upon involuntary termination under this Section 12.2 shall be financed over time upon terms mutually agreeable to Zone 7 and Semitropic. If Zone 7 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 Zone 7's Stored Water in Zone 7'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 Zone 7 pursuant to this Agreement, and which capacity would have been available to Zone 7 absent such involuntary termination, the Parties shall negotiate a payment schedule to reimburse Zone 7 for the undepreciated balance of capital costs which Zone 7 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 D are the assumptions to be used in such calculation. If Zone 7 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

2 **13.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit
3 of the successors and assigns of the Parties; provided, however, neither Party shall assign
4 any of their rights or obligations under this Agreement without the prior written consent of the
5 other. Any successor to Semitropic shall be a successor Trustee hereunder. Nothing in this
6 Agreement is intended to confer any right or remedy under this Agreement on any person
7 other than the Parties to this Agreement and their respective successors and permitted
8 assigns, or to relieve or discharge any obligation or liability of any person to any Party to this
9 Agreement, or to give any person any right of subrogation or action over or against any Party
10 to this Agreement.

11 **13.2 Allocation Among Semitropic Improvement Districts.** Semitropic shall
12 allocate the rights and obligations under this Agreement between the water users and
13 landowners of Semitropic Water Storage District, Semitropic Improvement District,
14 Buttonwillow Improvement District and Pond-Poso Improvement District as it deems
15 appropriate, so long as Zone 7's and the other Banking Partners right to obtain the return
16 of Stored Water is not adversely impacted. Regardless of such allocations, Semitropic shall
17 remain the trustee under this Agreement.

18 **13.3 No Modification of Existing Contracts.** This Agreement shall not be
19 interpreted to modify the terms or conditions of either the water supply contracts between
20 the DWR and the Agency or Zone 7 or the water supply agreements between the Agency
21 and Semitropic.

22 **13.4 Waiver/Cure of Defaults.** The failure of any Party to enforce against the other
23 a provision of this Agreement shall not constitute a waiver of that Party's right to enforce
24 such a provision at a later time. No Party shall be deemed to be in default of any provision
25 of this Agreement unless the other Party has given written notice specifically stating the
26 alleged default and the Party in default fails to cure the default within thirty (30) days of
27 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 "Zone 7" 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

2 matters provided for herein and, except as herein provided, supersedes all prior and/or
3 contemporaneous agreements and understanding, whether written or oral pertaining
4 between the Parties relating to the matters provided for herein.

4 **13.7 Severability.** In the event that a court of competent jurisdiction or a arbitration
5 panel as provided at Article 9 determines that a provision included in this Agreement is
6 legally invalid or unenforceable and such decision becomes final, the Parties to this
7 Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final
8 decision identify by mutual agreement the provisions of this Agreement which must be
9 revised, and (ii) within three (3) months thereafter promptly agree on the appropriate
10 revision(s). The time periods specified above may be extended by mutual agreement of the
11 Parties. Pending the completion of the actions designated above, to the extent it is
12 reasonably practical and can be done without violating any applicable provisions of law, the
13 provisions of this Agreement which were not found to be legally invalid or unenforceable in
14 the final decision shall continue in effect. If the Parties cannot agree on appropriate
15 revisions, this Agreement shall be involuntarily terminated in accordance with Section 12.2.

16 **13.8 Force Majeure.** All obligations of the Parties other than monetary or payment
17 obligations shall be suspended for so long as and to the extent the performance thereof is
18 prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes,
19 facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or
20 governmental agencies having competent jurisdiction, or other events or causes beyond the
21 control of the Parties. Other events or causes beyond the control of the Parties shall have
22 the same meaning as "Reasons beyond its control" in Section 12.2. In no event shall any
23 liability accrue against a Party, to its officers, agents or employees, for any damage arising
24 out of or connected with a suspension of performance pursuant to this Section 13.8. In
25 event of such an occurrence of duration in excess of one year, Section 12.2 shall control,
26 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 Zone 7 shall be sent to the General Manager at 5997 Parkside Drive, Pleasanton, CA 94588. 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.

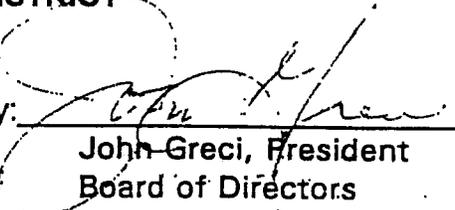
13.11 **Counterparts.** This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed 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

1 Agreement or of such an amendment, supplement, document or instrument may be
2 detached from any counterpart without impairing the legal effect of any signatures thereon,
3 and may be attached to another counterpart identical in form thereto but having attached to
4 it one or more additional signature pages. In proving this Agreement or any such
5 amendment, supplement, document or instrument, it shall not be necessary to produce or
6 account for more than one counterpart thereof signed by the party against whom
7 enforcement is sought.

8 **13.12 Recording of Memorandum.** A memorandum of this Agreement in the form
9 attached hereto as Exhibit E shall be recorded in the Office of the County Recorder, County
10 of Kern.

11
12 Executed the day and year first hereinabove written.

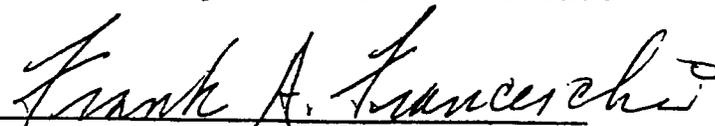
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14 **Zone 7 OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT**

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18 By: 
19 John Greci, President
20 Board of Directors
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22

23
24 **APPROVED AS TO FORM:**

25
26
27
28 By: 
29 Brian Washington
30 Assistant County Counsel
31

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34 **SEMITROPIC WATER STORAGE DISTRICT**

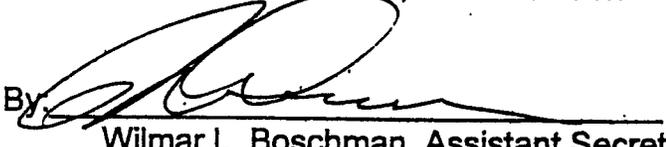
35
36
37 By: 
38 Frank A. Franceschi, Vice President

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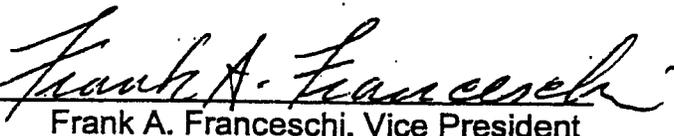
By: 
Wilmar L. Boschman, Assistant Secretary

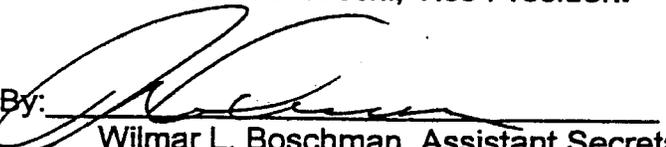
**SEMITROPIC IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Frank A. Franceschi, Vice President

By: 
Wilmar L. Boschman, Assistant Secretary

**BUTTONWILLOW IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Frank A. Franceschi, Vice President

By: 
Wilmar L. Boschman, Assistant Secretary

**POND-POSO IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Frank A. Franceschi, Vice President

By: 
Wilmar L. Boschman, Assistant Secretary

BUILDUP SCHEDULE
FOR
PROGRAM ENTITLEMENT EXCHANGE RIGHTS
AND
PROGRAM PUMPBACK CAPACITY

Sum of All Banking Partners' Deliveries or Funds Paid to Establish Program Pumpback and Permanent Storage Allocation (acre-feet)	Maximum Program Entitlement Exchange Rights Available For All Banking Partners At Full SWP Supply Allocations ¹ (acre-feet per year)	Minimum Program Pumpback Capacity ¹ (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

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

The Maximum Entitlement Exchange Rights in any year is the lesser of the indicated amount in the table above or Semitropic's maximum available entitlement in that year shown in the table on the right.

² Maximum instantaneous flowrate at this level is 300 cfs.

SWP Water Supply
Allocation (%)

Semitropic's Maximum
Entitlement Available
For Exchange (Ac. Ft. per year.)

14.2	- 0 -
20.0	9,000
30.0	24,500
40.0	40,000
50.0	55,500
60.0	71,000
70.0	86,500
80.0	102,000
90.0	117,500
100.0	133,000

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:		<u>10,000 AF/Yr</u>
	Total		90,500 AF/Yr

II. Zone 7's share of Maximum Estimated Program Delivery Capability:

1.	By Establishing an In-Lieu Service Area 23,000 acres x 0.065 = 1,495 acres 1,495 acres x 3.5 AF/acre	=	5,233 AF/Yr
2.	By Increasing System Capacity 10,000 AFY x 0.065	=	<u>650 AF/Yr</u>

Total Zone 7 Share of Maximum Estimated Program Delivery Capability	5,883 AF/Yr
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Semitropic shall not be obligated to change its commitment to have developed 1,495 acres of in-lieu land by the time Zone 7 has paid Zone 7's share of Total Project Capital Cost over a ten year period. In the event that the Program Delivery Capability becomes less than that stated under Item II 1. above, Semitropic will make every effort to increase the Unused Semitropic Delivery Capability stated in Section 1.16 and then allocate to Zone 7 its prorated share of Unused Semitropic Delivery Capability, up to the amount of the deficiency under said Item II 1.

Expected Monthly Distribution of Zone 7'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 Zone 7's share of "Program Delivery Capability " Acre-Feet Per Month
JANUARY	* 2,444	1.0	59
FEBRUARY	* 22,185	9.8	576
MARCH	21,185	9.6	565
APRIL	17,984	7.9	465
MAY	24,373	10.6	623
JUNE	36,138	15.9	935
JULY	41,123	18.1	1,065
AUGUST	34,084	15.1	888
SEPTEMBER	12,310	5.4	318
OCTOBER	6,373	2.8	165
NOVEMBER	4,015	1.9	112
DECEMBER	4,206	1.9	112
TOTAL	226,420 AF	100.0	5,883 AF

* Average of 1984 and 1989 only

SEMITROPIC WATER STORAGE DISTRICT
CALCULATION OF POWER PAYMENTS UNDER SECTION 6.3.3
Agreement for the Semitropic Water Banking and Exchange Program

BASIC FORMULA

(ENERGY CONSUMED to WITHDRAW WATER from STORAGE) x $\frac{(\text{TOTAL SEMITROPIC ENERGY COSTS})}{(\text{TOTAL ENERGY CONSUMED BY SEMITROPIC})}$ = (WITHDRAWAL PAYMENTS)

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:
 $\text{KWH} = 1.707 \times (\text{PUMPING LIFT in feet}) \times (\text{ACRE-FEET EXTRACTED})$
 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

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

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)

7. 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:
 $\text{KWH} = 1.707 \times (\text{PUMPING LIFT in feet}) \times (\text{ACRE-FEET EXTRACTED})$
 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 is as follows:

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

Recording Requested By
And When Recorded Return to:

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

AMENDED
MEMORANDUM OF AGREEMENT
FOR A ZONE 7-SEMITROPIC
WATER BANKING AND EXCHANGE PROGRAM
(Ref. Section 13.12)

THIS MEMORANDUM OF AGREEMENT (this "Memorandum of Agreement"), dated as of _____, 1999, is entered into by and between ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7 ("Zone 7") 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 Zone 7-Semitropic Water Banking and Exchange Program, dated of even date herewith, by and among Zone 7 and Semitropic (which Agreement, as of any particular time, as amended through that time, may be referred to herein as the "Agreement"). Zone 7 and Semitropic may be referred to individually as "Party" or, collectively, as "Parties".

RECITALS

A. Zone 7 obtains water from the State Water Project ("SWP") through its contract with the California Department of Water Resources ("DWR"). From time to time Zone 7 may 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 Zone 7 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 ground water basin underlying the area within Semitropic's boundaries (the "Semitropic Basin") directly to the California Aqueduct. Semitropic's boundaries, various well sites 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 the Memorandum of Agreement (which Exhibit is incorporated herein by this reference). In addition Semitropic will construct other facilities in the area shown on Exhibit 1 as provided in the Agreement. Semitropic's pumpback operations to return stored water to Zone 7 at the California Aqueduct, as provided for in the Agreement, will take place primarily during the "off-peak" irrigation season, when ground water pumping and conveyance capacity are available.

D. Zone 7 and Semitropic find that it will be mutually advantageous to enter into a ground water banking and exchange program whereby Semitropic will hold in trust for Zone 7 the water deposited by Zone 7 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 Zone 7'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, by exchange, to Zone 7, all in accordance with the terms of the Agreement. The Agreement will provide additional ground water storage for Zone 7, resulting in better utilization of its SWP and/or CVP supplies, and will provide improved reliability of supplies and overall higher ground water 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 Zone 7, Semitropic, Agency and DWR.

F. Consistent with the California Environmental Quality Act ("CEQA"), Semitropic, acting as lead agency, and The Metropolitan Water District of Southern California, ("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. A draft EIR is scheduled to be released in early 1999 which addresses the 22,000 acre-foot of Semitropic storage associated with this amended Semitropic-Zone 7 Agreement.

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 Zone 7 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 22,000 acre-feet, as described in the Agreement. Facilities necessary to accomplish the foregoing will increase the absorptive and withdrawal capabilities of Semitropic over and above the pre-Program conditions. Semitropic has entered into agreements with Metropolitan Water District of So. California, Santa Clara Valley Water District and Alameda County Water District which collectively reserve about seventy-five percent (75%) of Program capacities for Metropolitan, Santa Clara and Alameda. Zone 7's participation will not fully utilize unreserved 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, Alameda, Santa Clara and Zone 7.

Zone 7 has reviewed the terms and conditions of that certain document entitled "Semitropic Ground Water 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 Zone 7. Zone 7 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 Zone 7, in accordance with the terms of the Agreement, the water deposited by Zone 7 (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 Zone 7'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 Zone 7 water delivered by Zone 7 for storage hereunder and to return equivalent

water to Zone 7 in accordance with the terms of the Agreement. The Program, as implemented with respect to Zone 7 by the Agreement, when combined with other necessary actions undertaken by Zone 7, will thus allow the delivery of Stored Water to Zone 7 during Zone 7's peak demand periods. When such services are provided by Semitropic, Zone 7 will make payments to Semitropic, as provided for in the Agreement, to compensate Semitropic for its services and expenses. It is anticipated that Zone 7 will acquire about six point five percent (6.5%) of the Program's capabilities, rights and capacities described in Recital I and elsewhere in the Agreement.

Zone 7 will acquire a proportionate share of total Program capabilities, capacities and rights for the term of this Memorandum of Agreement as defined in Section 1.7 of the Agreement. After Zone 7 Permanent Storage Allocation is Fully Vested, as provided in said Section 1.7, Zone 7 may increase its vested Permanent Storage Allocation as provided for in Sections 6.4 of the Agreement.

J. The trust relationship between Zone 7, 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 Zone 7's interest in water delivered by Zone 7 to Semitropic hereunder for storage, and the right of Zone 7, also held in trust by Semitropic for Zone 7, to recover from the Semitropic Basin water in a quantity equal to Zone 7'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 Zone 7 under the Agreement will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Semitropic in its capacity as trustee for Zone 7 with respect to such water and the easements and rights relating thereto provided for herein and in the AGREEMENT. Zone 7 has authorized Semitropic, as trustee, to commingle, exchange or otherwise dispose of the water delivered by Zone 7 under the Agreement. In exchange for those rights and for water delivered under the Agreement, Semitropic has granted, and does hereby grant, to Zone 7 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 Zone 7 by exchange, 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"). Zone 7 has granted, and does hereby grant, to Semitropic said Trust Property, in trust, for the use and benefit of Zone 7. The trust relationship created by the Agreement is not otherwise intended to apply to or effect the obligations of Semitropic or Zone 7 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.

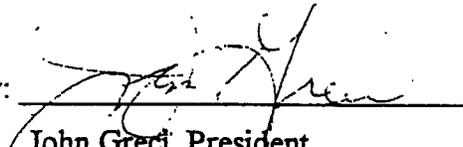
NOW, THEREFORE, in consideration of the foregoing recitals (which are, by this reference incorporated herein and made a part hereof for all purposes) and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, Zone 7 and Semitropic do further agree as follows:

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 Zone 7 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 December 31, 2035, the date of termination of Zone 7's Long-Term Water Supply Contract; *provided, however, that, if Zone 7 has timely requested return of Stored Water pursuant to Article 5 of the Agreement at such a time and in such a manner that Zone 7's Stored Water could have been returned prior to December 31, 2035 but, because of conditions beyond the control of Zone 7, all of Zone 7'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 Zone 7 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*

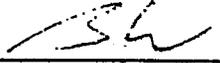
not such amendment is recorded. Zone 7 may elect to terminate the Agreement at any time by giving written notice to Semitropic of Zone 7's intent to terminate not less than one year in advance of the termination date selected by Zone 7 and specified in the notice and by conveying its beneficial interest in the amount of Zone 7's Stored Water in Zone 7's Storage Account Balance on that termination date to Semitropic. Upon Zone 7'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.

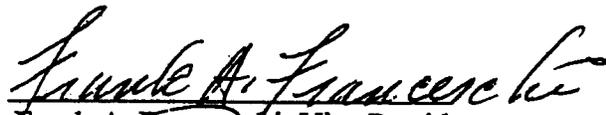
**ZONE 7 OF ALAMEDA COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By: 
John Greci, President
Board of Directors

APPROVED AS TO FORM:

By: 
Brian Washington
Assistant County Counsel

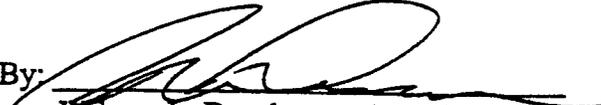
SEMITROPIC WATER STORAGE DISTRICT

By: 
Frank A. Franceschi, Vice President

By: 
Wilmar L. Boschman, Asst. Secretary

**SEMITROPIC IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Frank A. Franceschi, Vice President

By: 
Wilmar L. Boschman, Asst. Secretary

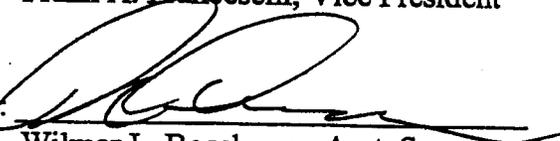
**BUTTONWILLOW IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Frank A. Franceschi, Vice President

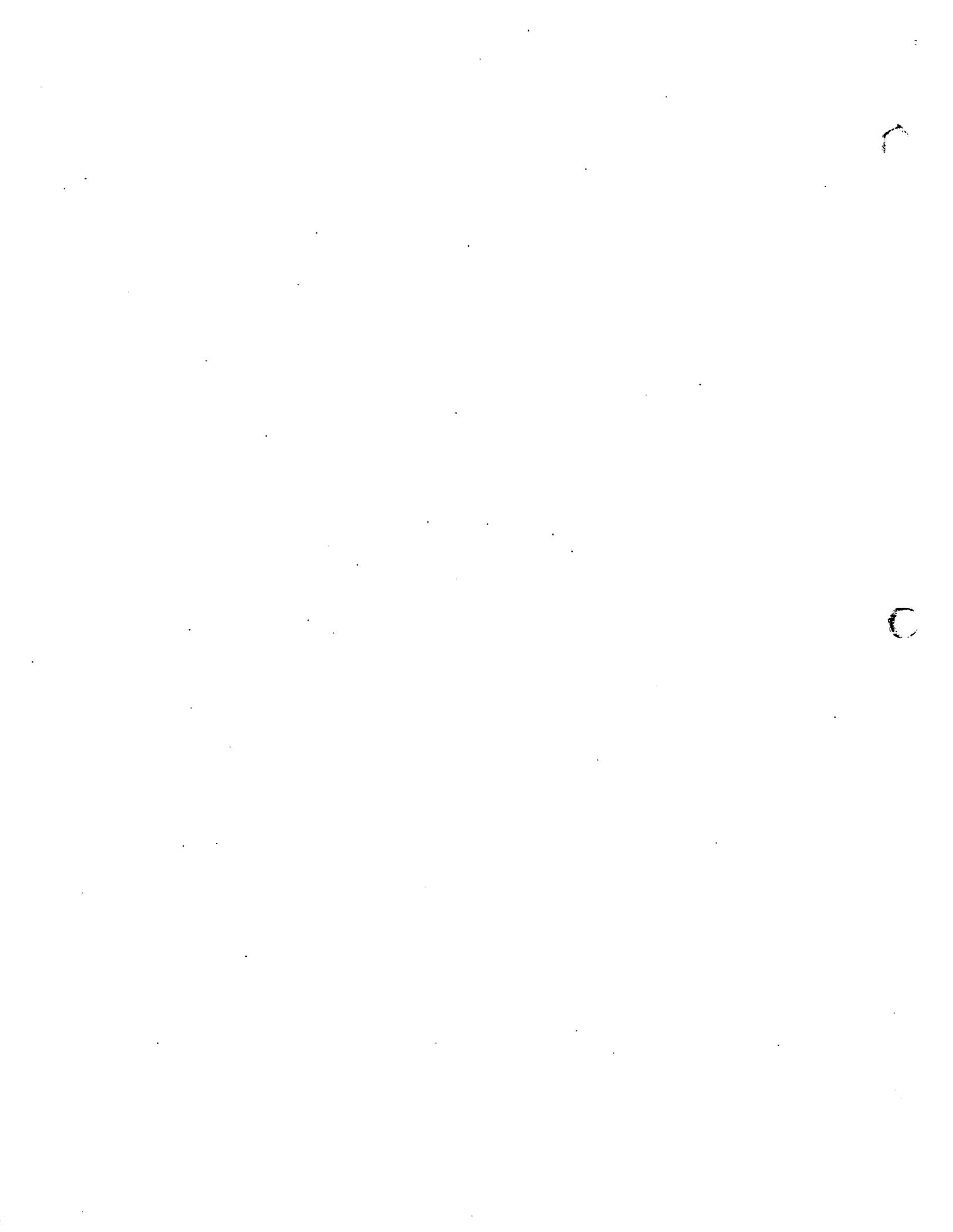
By: 
Wilmar L. Boschman, Asst. Secretary

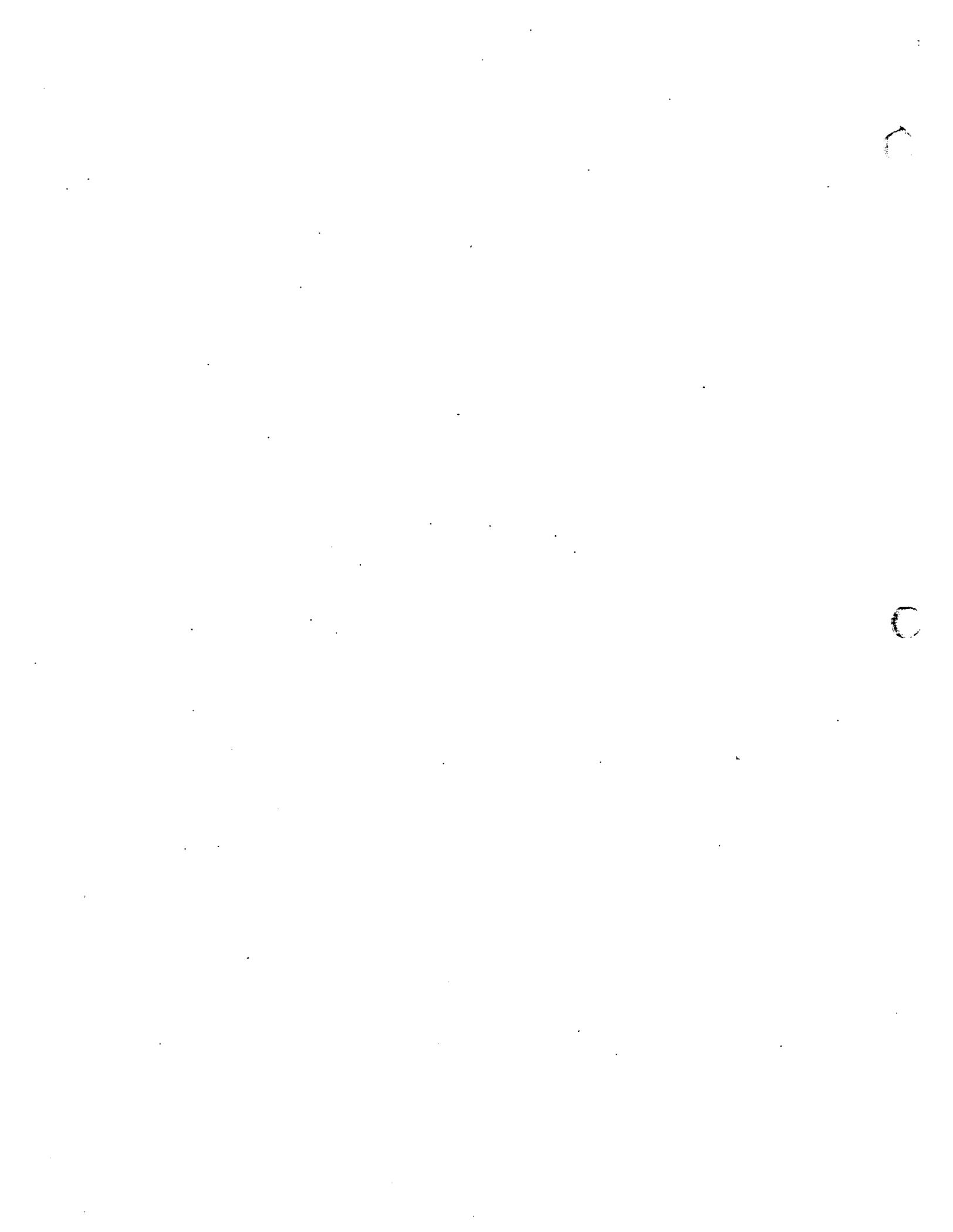
**POND-POSO IMPROVEMENT DISTRICT
OF SEMITROPIC WATER STORAGE DISTRICT**

By: 
Frank A. Franceschi, Vice President

By: 
Wilmar L. Boschman, Asst. Secretary

Z7EGB.WPD





D

APPENDIX D

Ordinances Related to Water Conservation and Water Recycling

ORDINANCE NO. 242

ORDINANCE DETERMINING AND DECLARING WATER SHORTAGE EMERGENCY,
ESTABLISHING REGULATIONS AND RESTRICTIONS ON THE DELIVERY AND
CONSUMPTION OF WATER, AND ESTABLISHING PENALTIES FOR VIOLATION
THEREOF

BE IT ORDAINED by the Board of Directors of the Dublin San Ramon Services District, a public agency in the counties of Alameda and Contra Costa, California, as follows:

SECTION 1. Findings and Determinations.

- (a) Pursuant to Agreement dated September 10, 1963, as amended, by and between the Alameda County Flood Control Water Conservation District, Zone 7 ("Zone 7") and the Dublin San Ramon Services District (then named the Valley Community Services District) this District purchases treated potable water for District purposes and for resale to customers and users of the District's water system.
- (b) A generally prevailing condition of drought has seriously reduced the supply of water available to Zone 7 and to the District.
- (c) Zone 7 has heretofore placed the District on notice that Zone 7 is planning to reduce deliveries of water to its water customers, including the District, by 50% during the period April-October, 1991; provided that said notification also advises that if additional sources of water become available to Zone 7, said Zone

will discuss with the District further changes to scheduled deliveries of water to the District.

(d) The above-described reduction of the water supply and uncertainty governing the availability of water from Zone 7 requires the establishment of rules, regulations and restrictions which address the reduced and uncertain availability of water to the District for its water customers and users.

(e) The ordinary demands and requirements of water customers and users of the water system of the District cannot be satisfied without depleting the water supply of the District to the extent that there would be insufficient water for human consumption, sanitation, and fire protection.

(f) On March 26, 1991, following notice duly given, a public hearing was held by this Board at which hearing all consumers of the water supply of the District had an opportunity to be heard on the question of the existence of a water shortage emergency condition, to protest against the declaration thereof, and to present their respective needs to this Board.

(g) The rules, regulations and restrictions set forth in this Ordinance on the delivery of water and the consumption within the water service area in the District of water supplied for public use are intended to conserve the water supply of said District for the

greatest public benefit with particular regard to domestic use, sanitation and fire protection.

(h) The specific uses prohibited or restricted by this Ordinance are non-essential, if allowed would constitute waste of the water supply of the District and should be prohibited or restricted pursuant to the provisions of Water Code §350 et seq., the authority granted this Board pursuant to the Community Services District Law (Gov't. Code §6100 et seq.), and the common law.

(i) The actions taken by and under this Ordinance are exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code §§21000 et seq.,) of the Public Resources Code pursuant to Title 14, California Code of Regulations, Section 15269, as specific actions necessary to prevent or mitigate an emergency.

SECTION 2. Declaration of Emergency. This Board hereby declares, based upon the findings and determinations in Section 1, that a water shortage emergency condition prevails within the water service area of the Dublin San Ramon Services District.

SECTION 3. Definitions. For purposes of this Ordinance, the following words or phrases shall have the meanings respectively ascribed thereto:

(a) Board - District's Board of Directors.

- (b) District - the Dublin San Ramon Services District, a public agency located in the counties of Contra Costa and Alameda, California.
- (c) General Manager - District's General Manager or his or her designee.
- (d) Irrigation - Use of Water for the sustenance of out-of-doors plant life including, without limitation, conveyance and distribution of Water through sprinkler systems, hoses, pipes, flumes, channels, ditches, valves, gates, or any other device or appurtenance thereto which supplies, controls and distributes Water for such purpose.
- (e) Person - any person firm, association, organization, partnership, business trust, corporation, company or public agency.
- (f) Premises - any parcel of land, or any improvement thereon, or any portion of such parcel or improvement to which Water is furnished by the District's Water system, and for which Water quantity charges are imposed.
- (g) Public Agency - any User who or which uses any Premises for a public use or a quasi-public use.
- (h) User - any Person who purchases or is otherwise furnished, or uses, Water from District's Water system, whether such person resides within or without the corporate territory of District.

- (i) Water - water furnished by, through, or from the potable water system of the District; provided, that "Water" does not include reclaimed or recycled water.
- (j) Water Allocation Adjustment Committee - the committee established and existing pursuant to Section 13.
- (k) Water Conservation Appeals Board - the Board established and existing pursuant to Section 14.
- (l) Water Supplier - the Alameda County Flood Control and Water Conservation District, Zone 7, or such other supplier of water from whom or which the District may obtain Water.

SECTION 4. Stages of Reduced Consumption. For purposes of this Ordinance, Water Use reduction shall be implemented in stages, as follows:

Stage I: Voluntary Water conservation measures and practices for Stage I Water use reduction shall be encouraged and requested by the Board pursuant to adoption of a resolution establishing Water conservation guidelines, the purpose of which shall be to achieve an overall reduction of the consumption of Water by 25% during "peak use" months of the year (generally, May-September, unless otherwise specified by the Board);

Stage II: The mandatory regulations established by this Ordinance for Stage II Water use reduction shall become

effective upon a determination by the General Manager that (i) based upon notification from the District's Water Supplier, the supply of Water to the District shall, or may, be reduced over-all by 40% of the District's consumption for the corresponding period of calendar year 1990; or (ii) based upon records of actual Water usage or storage, the supply of water available for delivery to the Users within the District shall, or may, be reduced over-all by 40% of the District's consumption for the corresponding period of calendar year 1990;

Stage III: The mandatory regulations established by this Ordinance for Stage III Water Use reduction shall become effective upon a determination by the General Manager that (i) based upon notification from the District's Water Supplier, the supply of Water to the District shall, or may, be reduced over-all by 50% of the District's consumption for the corresponding period of calendar year 1990; or (ii) based upon records of actual Water usage or storage, the supply of water available for delivery to the Users within the District shall, or may, be reduced over-all by 50% of the District's consumption for the corresponding period of calendar year 1990;

Stage IV: Mandatory involuntary curtailment or cessation in the delivery of Water to Water Users shall be imposed and/or directives to cease or curtail the use of water shall be issued as Stage IV Water use reduction

measures in addition to measures imposed under Stages II or III, as the case may be, when determined necessary by the General Manager upon a finding by him or her that an imminent threat to the safety or health of persons or property exists based upon reduced volumes of water available in District reservoirs or reduced Water pressures below the minimum required for firefighting or other public safety or health purposes.

SECTION 5. Notification of Initiation. Upon initiation of Water use reduction provisions under Stages I, II, and III, respectively, the General Manager shall give written notice thereof as specified in Section 18. Upon initiation of Water delivery curtailment or cessation under Stage IV measures, no prior notice thereof shall be required; provided, that if practicable, the General Manager shall give notice thereof to Users whose Water supply may be substantially reduced thereby by telephone or other available means of direct communication, and by general notice through issuance of requests to local radio and television stations for broadcast of public service announcements advising of the initiation of Stage IV Water delivery curtailment or cessation measures.

SECTION 6. Prohibitions. (a) Stages I - IV. The following uses of Water are hereby determined and declared non-essential and are prohibited from and after notification of initiation of Water use reduction measures under Stages I - IV, inclusive:

(1) Use of Water for construction purposes including, but not limited to, backfill consolidation or compaction and dust control.

(2) Use of Water for flushing or washing streets (excluding the use of vehicular street cleaning equipment operated for municipal purposes), parking lots, driveways, sidewalks, walkways, patios, tennis courts, or similar or like hard-surfaced areas impervious to water.

(3) Use of Water by any public agency for flushing or washing streets, (excluding the use of vehicular street cleaning equipment operated for municipal purposes), flushing sanitary sewer lines, dust control, or other similar activities generally associated with municipal operations.

(4) Notwithstanding the above prohibitions set forth in subdivisions (1) - (3), inclusive, Water may be used for emergency purposes in order to protect the public health, safety, and welfare, including protection of life and property.

(5) The above prohibitions set forth in subdivisions (1) - (3), inclusive, shall be effective, and remain in full force and effect, so long as a supply of recycled water (i.e., reclaimed wastewater) is available to the user who or which requires Water for any of the other purposes therein prohibited.

(b) Stages II - IV. The following uses of water are hereby determined and declared non-essential and are prohibited from and after notification of initiation of Water use reduction measures under Stages II, III, and IV, respectively:

(1) Defective Equipment - Use of Water through, with, or by any plumbing, sprinkler, watering or irrigation system, or other device, equipment or appliance which is broken or defective, or which, for any reason, consumes or fails to use Water in the ordinary and customary manner or quantity for which it was designed, constructed or manufactured.

(2) Surface Flow - Use of Water in any manner which, causes, allows, or permits the flooding of any Premises, or any portion thereof, or which causes, allows, or permits Water to escape from any Premises, or any portion thereof and flow therefrom into gutters, streets, or any surface water drainage system.

(3) Water Conservation Devices - (i) Use of any hose or similar device without a nozzle, valve, or other shut-off mechanism attached thereto and activated to as to reduce the flow of Water to the practicable minimum amount necessary to accomplish the task to be performed thereby; (ii) Use of any shower head or other plumbing device without flow restricters or other Water Use reduction devices, provided that such devices shall be reasonably available.

(4) Exterior cleaning - Use of any hose or similar device for washing or cleaning any automobile, truck, trailer, trailer house, boat, mobilehome, camper, recreational vehicle, or other vehicle or for washing or cleaning the exterior surface of any dwelling, garage, commercial or industrial building, or appurtenance thereto, by directing Water at or upon such surface.

(5) Swimming Pools, etc. - (i) Use of Water for filling any new, or completely refilling any existing, swimming pool, basin, lake, lagoon, spa, hot tub or other contrivance for holding Water for swimming, recreational, decorative or similar purposes; (ii) Permitting swimming pools, hot tubs, or other similar or like devices for which covers are reasonably available to remain uncovered when not in use.

(6) Fountains - Use of Water to clean, fill, or maintain operating levels in decorative fountains, or similar or like ornamental structures.

(7) Irrigation - Use of Water for Irrigation purposes; provided, however, that lawns and other outdoor landscaping may be Irrigated not more than twice weekly only on weekdays (but excluding, in any event, the last day of months with 31 days) prior to 8:00 a.m. as follows:

- (i) Premises with odd street numbers - odd days of the month;
- (ii) Premises with even street numbers - even days

of the month.

(8) Restaurants - (i) the service of Water by any restaurant, or other eating or refreshment establishment to any patron thereof except upon specific request by a patron for such service; (ii) the operation of any restaurant or other eating or refreshment establishment without displaying signs on each table, counter, or other area thereof where food and beverages are consumed, informing patrons of the foregoing limitations upon the service of Water.

SECTION 7. Stage II Allocations. From and after the initiation of Stage II Water use reduction measures, the use of Water in excess of the individual monthly allocations for each User based upon the Water meter sizes corresponding to that serving said Users's Premises as specified in the following table shall be, and hereby is, determined and declared to be non-essential use, and shall be unlawful:

STAGE II WATER ALLOCATIONS

<u>Meter Size (Diameter in inches)</u>	<u>Meter Capacity Factor-Relative¹ to 5/8" Meter</u>	<u>GAL/DAY</u>		<u>HCF/MONTH⁴</u>	
		<u>Std. Meter²</u>	<u>Irrig³ Meter</u>	<u>Std. Meter²</u>	<u>Irrig³ Meter</u>
5/8"	1.0	380	285	16	12
3/4"	1.5	570	425	24	18
1"	2.5	950	713	39	30
1 1/2"	5.0	1,900	1,425	79	59
2"	8.0	3,040	2,280	126	95
3"	17.5	6,650	4,988	276	207
4"	50	19,000	14,250	787	590

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6"	100	38,000	28,500	1,570	1,178
8"	175	66,500	49,875	2,760	2,070
10"	275	105,000	78,750	4,350	3,563

¹ Multiplier converts allocations based on meter size relative to 5/8" meter

² Refers to meters measuring the use of Water for all purposes other than exclusively for Irrigation

³ Refers to meters measuring the use of Water exclusively for Irrigation.

⁴ Hundreds of cubic feet per month (100 cubic feet equals 748 gallons), rounded to nearest whole number.

SECTION 8. Stage III Allocations. From and after the initiation of Stage III Water use reduction measures, the use of Water in excess of the individual monthly allocations for each User based upon the Water meter sizes corresponding to that serving said User's Premises as specified in the following table shall be, and hereby is, determined and declared to be non-essential use, and shall be unlawful:

STAGE III WATER ALLOCATIONS

Meter Size (Diameter in inches)	Meter Capacity Factor-Relative ¹ to 5/8" Meter	GAL/DAY		HCF/MONTH ⁴	
		Std. Meter ²	Irrig ³ Meter	Std. Meter ²	Irrig ³ Meter
5/8"	1.0	310	233	13	10
3/4"	1.5	465	349	19	15
1"	2.5	775	581	32	24
1 1/2"	5.0	1,550	1,163	64	48
2"	8.0	2,480	1,860	103	77
3"	17.5	5,430	4,073	225	169
4"	50	15,500	11,625	642	482
6"	100	31,000	23,250	1,280	960
8"	175	54,300	40,725	2,250	1,688
10"	275	85,300	63,975	3,540	2,655

¹ Multiplier converts allocations based on meter size relative to 5/8" meter.

² Refers to meters measuring the use of Water for all purposes other than exclusively for Irrigation.

³ Refers to meters measuring the use of Water exclusively for Irrigation.

⁴ Hundreds of cubic feet per month (100 cubic feet equals 748 gallons), rounded to nearest whole number.

SECTION 9. Water Quantity Excess Use Charges - Stage II and III. From and after the initiation of Stage II or Stage III Water use reduction measures, an excess Water use charge shall be collected from each User who or which consumes Water in excess of said user's water allocation specified in Section 7 (Stage II) or Section 8 (Stage III), as the case may be, in accordance with the following schedule:

EXCESS USE CHARGE

STAGES II & III Amount Consumed	<u>per HCF*</u>	<u>per 100 gallons</u>
Allocation or Less 101% - 110% of	\$1.26	\$0.17
Allocation 111%-120% of	2.50	0.33
Allocation 121%-130% of	5.00	0.67
Allocation Over 130% of	7.50	1.00
Allocation	10.00	1.34

* HCF - 100 cubic feet (748 gallons)

SECTION 10. Drought Surcharge. (a) Established. From and after the initiation of Stage II or Stage III Water use reduction measures, respectively, a drought surcharge shall be collected from each User to defray the increased cost of providing Water service under Water shortage emergency conditions. The drought surcharge shall be, and is hereby, established in the following monthly amounts for each User based upon the water meter sizes corresponding to that serving said User's Premises as specified in the following table:

DROUGHT SURCHARGES - STAGES II AND III

<u>Meter Size</u>	<u>Meter Capacity Factor - Relative¹ to 5/8" Meter</u>	<u>Stage II & III Drought Surcharge Dollars per Month</u>
5/8"	1.0	5 11.80
3/4"	1.5	17.70
1"	2.5	29.50
1 1/2"	5.0	59.00
2"	8.0	94.40
3"	17.5	206.50
4"	50	590.00
6"	100	1,180.00
8"	175	2,065.00
10"	275	3,245.00

¹ Multiply converts allocations based on meter size relative to 5/8" meter.

(b) Exception. Notwithstanding the provisions of subdivision (a) no drought surcharge shall be imposed in any monthly billing period for a User who or which consumes less than 80% of the then effective allocation for said User established pursuant to Section 7 (Stage II) or Section 8 (Stage III), as the case may be.

SECTION 11. Excessive Water Use-Remedial Measures. (a) Flow restricting devices. Upon a determination by the General Manager that a User has used Water in violation of any provision of this Ordinance, or of any adjustment or exception granted pursuant to the provisions of Section 13, the General Manager may issue an order to cease and desist from such violation, and further order such User to comply forthwith with such provisions, adjustment or exception, or otherwise to take appropriate remedial or preventive action. If, after the issuance of a cease and desist order, a User continues to use, or again or uses Water in violation of any such provisions, adjustment, or exception, the General Manager may order the installation of a flow restricting device upon the Water service line to the Premises of such User. The flow restricting device shall be installed and maintained for not less than one billing period for each separate violation, and may be ordered to remain installed and maintained for the duration of the emergency declared herein upon a finding by the General Manager that the User is habitually in violation

of any of the provisions of this Ordinance, or the provisions of any adjustment or exception granted pursuant to Section 13.

(b) Termination of Service. Upon a determination by the General Manager that a User has used Water in violation of any of the provisions of this Ordinance, or of any adjustment or exception granted pursuant to Section 13, the General Manager may issue an order to cease and desist from such violation, and further order such User to comply forthwith with such provisions, adjustment or exception, or otherwise to take appropriate remedial or preventive action. If, after the issuance of such cease and desist order, a User continues to use, or again uses Water in violation of any such provision, adjustment or exception, the General Manager may, subject to the provisions for notification and hearing hereinafter set forth, discontinue Water service to the Premises of such User.

Prior to the discontinuance of Water service to any Premises, the General Manager shall give not less than ten (10) days' prior written notice of intention to discontinue such service and of a hearing to be held by the General Manager upon the question of termination. A User determined to be in violation of the provisions of this Ordinance, or of any adjustment or exception granted pursuant to Section 13, the owner of the Premises (if the owner is not the User) and such other persons as the General Manager may deem appropriate, shall be heard at the hearing on the question of termination. If, upon completion of the hearing, the General Manager finds that no

violation has occurred, the General Manager shall order that service shall not be terminated. If, upon completion of the hearing, the General Manager determines that such violation has occurred, or is occurring, the General Manager may order the Water service to be terminated, or may order that service be terminated within a specified period of time unless such violation or the conditions or activities causing such violation cease forthwith, or cease within a specified period of time, or the General Manager may make such other order as he or she deems appropriate under the circumstances and in furtherance of the purposes and intent of this Ordinance.

(c) Mandatory Measures. Notwithstanding the provisions of subdivisions (a) and (b) above, upon a finding by the General Manager that a User has consumed Water in excess of 1 1/2 times said User's allocation as specified pursuant to Section 7 (Stage II Allocations) or Section 8 (Stage III Allocations), as the case may be, the General Manager shall issue a cease and desist order for a first violation based upon such excess usage, cause a flow restricting device to be installed for a second such violation, and order termination of service for a third such violation.

Nothing in this subdivision (c) contained shall be deemed a limitation upon the authority of the General Manager to order installation of flow restricting devices or termination of service pursuant to subdivisions (a) and (b), respectively, or for violations of the prohibitions set forth in Section 6 or for

violations other than those specified in this subdivision (c) of Water allotments imposed under Sections 7 and 8, respectively.

(d) Costs. Actual costs, as determined by the General Manager, for the installation of flow restricting devices and for effecting the termination of service shall be recoverable from the User or other person found by the General Manager to be in violation of the provisions of this Ordinance, or of any adjustment or exception granted pursuant to provisions of Section 13.

SECTION 12. (a) Tampering. It shall be unlawful and a violation of this Ordinance for any Person to tamper with, alter, destroy, or otherwise render inoperative any flow restricting device, service valve or water meter installed, operated or maintained by the District.

(b) Interference. It shall be unlawful and a violation of this Ordinance for any person to interfere with, harass, intimidate, or otherwise obstruct any employee, officer or agent of the District in lawfully carrying out any duty under, or performing any act pursuant to this Ordinance.

SECTION 13. Adjustments; Exceptions. (a) Water Allocation Adjustment Committee. (1) Established. A Water Allocation Adjustment Committee, which shall consist of three (3) members appointed by the General Manager, is hereby established. The term of office for each member of the committee shall expire upon the repeal of this Ordinance; provided, however, that if this Ordinance is not repealed within three (3) years from the date of

its adoption, the term of office of each member of the Committee shall be three (3) years. The Committee shall elect one of its members to be its Chairperson, and another such member to be its Secretary. The Chairperson shall preside over all meetings of the Committee, and the Secretary shall keep accurate records of proceedings before the Committee.

Any User may file an application with the General Manager for an adjustment to the allocation specified for such User pursuant to Section 7 (Stage II Allocations) or Section 8 (Stage III Allocations), or for an exception to a prohibition specified under Section 6, or for review of an order of the General Manager made pursuant to Section 11. Upon filing such application, the Committee shall meet upon the call of the Chairperson, who shall direct the Secretary of the Committee to notify the applicant of the time, date and place of a hearing on the application.

(b) Applications; Hearings. The applicant shall specify in writing the facts and reasons supporting the exception, adjustment, or other relief requested. Hearings on the application shall be held by the Committee within thirty (30) days from the date of filing the application. The applicant, General Manager, and such other persons as the Committee may deem appropriate, shall be heard at the hearing on the application. Upon conclusion of the hearing, the Committee may grant or deny the exception to the prohibitions under Section 6 hereof or the adjustment to the allocation specified under Section 7 or 8, or reverse, modify, or affirm the order of the General Manager made

under Section 11, as the case may be, or the Committee may grant in part, or deny in part, the application or make such other order or determination as the Committee deems just and equitable and in furtherance of the provisions, purposes and intent of this Ordinance.

Without limitation upon the foregoing, the Committee may grant, grant in part, or deny in part, applications under the following circumstances: (i) when necessary to prevent imminent threat to health, sanitation, fire protection or safety of the applicant, his or her family members, or the general public; (ii) when necessary to prevent unfair economic hardship including, but not limited to, loss of employment, loss of production, or inequitable or unnecessary loss of business or a business enterprise; (iii) when necessary to provide sufficient water for single-family residences occupied by more than four (4) full-time residents where the Committee determines that the standard allocation prescribed under Section 7 or 8, as the case may be, is inadequate; and (iv) in order to provide pooling of allocations among Users of Water who, in common, receive water through more than one meter (e.g., homeowners' associations, public agencies, businesses, and individual members thereof, etc.).

SECTION 14. Appeals. (a) Water Conservation Appeals Board.

A Water Conservation Appeals Board, which shall consist of two (2) members of the District's Board of Directors appointed by the President of the Board, is hereby established. The term of

office for each member of the Board shall expire upon the repeal of this Ordinance; provided, however, that if this Ordinance is not repealed within one (1) year from the date of its adoption, the term of office of each member of the Water Conservation Appeals Board shall be one (1) year. The President of the District Board shall appoint one of the members of the Water Conservation Appeals Board to be its Chairperson, and the other member to be its Secretary. The Chairperson shall preside over all meetings of the Water Conservation Appeals Board, and the Secretary shall keep accurate records of proceedings thereof.

(b) Appeals. Any User aggrieved by a determination, order or directive of the Water Allocation Adjustment Committee made pursuant to the provisions of subdivision (b) of Section 13, may appeal such determination, order, or directive to the Water Conservation Appeals Board. Written notification of such appeal shall be filed with the General Manager within ten (10) days after notification of the determination, order, or directive of the Water Allocation Adjustment Committee and shall set forth in detail the facts and reasons supporting the appeal. Hearing on the Appeal shall be held by the Water Conservation Appeals Board within thirty (30) days from the date of filing the notice of appeal. The appellant, General Manager, and such other Person or Persons as the Water Conservation Appeals Board may deem appropriate shall be heard at the hearing on the appeal. Upon conclusion of the hearing, the Water Conservation Appeals Board may affirm, reverse, or modify the determination, order or

directive of the Water Allocation Adjustment Committee, as the Water Conservation Appeals Board deems just and equitable and in furtherance of the provisions, purposes and intent of this Ordinance. During the pendency of any such appeal, the determination, order, or directive of the Committee, as appropriate, shall remain in full force and effect.

In the event of a tie vote of the Water Conservation Appeals Board, the decision from which appeal was taken shall remain in full force and effect. The decision of the Water Conservation Appeals Board shall be deemed final.

SECTION 15. Billing; Monitoring. (a) Billing. Upon implementation of Stages II - IV, inclusive, pursuant to this Ordinance, the District shall institute a monthly (as opposed to bi-monthly) billing frequency for all Users.

(b) Monitoring. All Users are hereby encouraged to monitor their daily usage of Water by maintaining a log of their Water meter readings. District's staff shall provide advice and information regarding meter reading techniques and log keeping.

SECTION 16. Any person violating, or causing the violation of any provision of this Ordinance or of the provisions of any adjustment or exception granted pursuant to Section 13, or any order, directive or decision made or rendered pursuant to this ordinance shall be guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine of not more than One Thousand Dollars (\$1,000) or imprisonment for a term not exceeding thirty (30) days, or by both such fine and imprisonment. Every day, or any portion thereof, any violation

of any provision of this Ordinance, or of any provision of any adjustment or exception granted pursuant to Section 13, or of any order, directive or decision made or rendered pursuant to this ordinance shall continue, shall constitute a separate offense and shall be punishable as hereinbefore provided. Notwithstanding the foregoing, no person shall be deemed in violation, or to have caused the violation, of any directive or order to curtail or cease the use of Water made or issued pursuant to implementation of Stage IV Water curtailment or cessation measures unless actual notification of such directive or order shall have been given to such person, or notification of the implementation of such measures shall have been given pursuant to Section 5 not less than twenty-four (24) hours prior to said implementation.

SECTION 17. Remedies Cumulative. The remedies and penalties provided for in this Ordinance shall be cumulative and not exclusive, and shall be in addition to any and all remedies available to the District.

SECTION 18. Notices. Notices required to be given pursuant to the provisions of this Ordinance shall be in writing and may be combined with water service bills, or other written communications, and shall be delivered personally, or by posting with the United States mail service, and addressed to the last known address shown on the District's billing records for the User to whom given, or to the owner of the Premises to which the water service of such User pertains, shown on the last equalized assessment role of the County Assessor for the County wherein the Premises is located. Notwithstanding the foregoing, notices

given to initiate Stage IV Water use reduction measures may be given by any practicable means including, but not limited to, dissemination of information to local radio and television stations with a request for broadcast thereof, or dissemination to other media for publication or by telephonic, facsimile communications, or by any other means reasonably available to the General Manager.

SECTION 19. Implementation. The General Manager is hereby authorized and empowered to delegate his or her authority hereunder to such assistants, deputies, officers, employees, or agents of the District as he or she shall designate, and to establish such rules, regulations, and procedures, and to prepare or furnish such forms, as he or she deems necessary or appropriate to carry out the provisions of this Ordinance.

SECTION 20. Supercession. In the event any provision of this Ordinance conflicts with any provision of any other Ordinance, any resolution, regulation, rule, order, or permit of this District, the provisions of this Ordinance shall govern and control over the provisions in conflict therewith.

SECTION 21. Section, Subsection Headings. Section and subsection headings as used in this Ordinance are for convenience only and shall not be deemed to amend, modify or otherwise affect the section or subsection headed thereby.

SECTION 22. Severability. If any provision of this Ordinance or any provision of any adjustment or exception granted pursuant to Section 13, or the application of this Ordinance to any Person or circumstance, is held invalid by the judgment or

decree of a Court of competent jurisdiction, such invalidity shall not affect any other provision of this Ordinance, or any other provision of any adjustment or exception, or the application of this Ordinance which can be given effect without the invalid provisions or application, and to this end, the provisions of this Ordinance are severable.

SECTION 23. Emergency Measure; Effective Date. This Board hereby declares this Ordinance to be necessary as an emergency measure for the immediate preservation of public peace, health or safety for the reasons set forth in Section 1, and in accordance with the declaration of emergency set forth in Section 2. This Ordinance shall be effective upon its adoption.

ADOPTED by the Board of Directors of the Dublin San Ramon Services District at its regular meeting held on the 4th day of June, 1991, passed by the following vote:

- AYES: 5 - Directors G.T. (Tom) McCormick, Donald M. Schinnerer, Joseph Covello, Jeffrey G. Hansen, Kenneth S. Caldwell
- NOES: 0
- ABSENT: 0

Kenneth Caldwell
Kenneth Caldwell, President

ATTEST:

Nancy Gamble
Nancy Gamble, District Secretary

