

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

THIS SECOND AMENDED AND RESTATED AGREEMENT FOR THE EXCHANGE OF WATER (“Agreement”) is made and entered into as of ~~October 10, 2003~~, June 2, 2025 between The Metropolitan Water District of Southern California (hereinafter “Metropolitan”) and the San Diego County Water Authority (hereinafter “SDCWA”) (the “2025 Exchange Agreement” or “Agreement”). Metropolitan and SDCWA are sometimes referred to as the “Parties”.

RECITALS

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

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

C. SDCWA is a member agency of Metropolitan.

D. On April 29, 1998, SDCWA and the Imperial Irrigation District (“IID”) entered into an Agreement for Transfer of Conserved Water, as amended by the Revised ~~Fif~~fourth Amendment dated as of ~~October 10, 2003~~December 21, 2009, between SDCWA and IID (as thereby amended, the “Transfer Agreement”).

E. On November 10, 1998, SDCWA and Metropolitan executed a Contract for the Exchange of Water to be acquired by SDCWA under the Transfer Agreement; ~~this Agreement amends and restates that Contract in its entirety.~~

F. In 2003, SDCWA, Metropolitan, and This Agreement is one of several agreements executed and delivered as of the date hereof by the Parties and by other agencies, including IID, MWD and Coachella Valley Water District (“CVWD”) executed and delivered several agreements, including the Amended and Restated Agreement Between the Metropolitan Water District of Southern California and the San Diego County Water Authority for the Exchange of Water (“2003 Exchange Agreement”), pursuant to the Quantification Settlement Agreement among IID, MWD and CVWD dated as of October 10, 2003 (the “QSA”), which settles a variety of long-standing disputes regarding the priority, use, and transfer of Colorado River water and establishes the terms for the further distribution of Colorado River water among these entities for up to seventy-five (75) years based upon the water budgets set forth therein.

G. Also, on October 10, 2003, as contemplated by the QSA, SDCWA entered into the Allocation Agreement with the United States of America, IID, CVWD, MWD and other parties named therein (the “Allocation Agreement”) pertaining to the allocation and distribution

of water to be conserved from the All-American Canal Lining Project and the Coachella Canal Lining Project (as such terms are defined therein), which, among other things, allocated water to SDCWA in consideration for amendments by MWD and SDCWA to the price term of the 2003 Exchange Agreement.

H. On June 2, 2025, following litigation, trials, and appeals in cases filed by SDCWA against Metropolitan in 2010 (Case No. CPF-10-510830), 2012 (Case No. CPF-12-512466), 2014 (Case No. CPF-14-514004), 2016 (CPF-16-515282), 2017 (Case No. CGC-17-563350), and 2018 (CPF-18-516389) (all filed in Los Angeles Superior Court and subsequently transferred to San Francisco Superior Court), and Metropolitan’s Cross-Complaints in the same cases filed in 2014, 2016, and 2018, the parties reached a settlement fully and finally resolving all disputes among and between them relating to the claims and cross-claims (i) remaining in the cases filed in 2014, 2016, and 2018 (the “Pending Cases”), (ii) that were asserted in the Pending Cases and in the case filed in 2017 that were subsequently dismissed or removed without prejudice, and (iii) that could have been asserted in any of the cases relating to the subject matter of those cases (the “2025 Settlement Agreement”), and agreed to amend the 2003 Exchange Agreement as reflected in the 2025 Settlement Agreement and incorporated in this 2025 Exchange Agreement.

H.I. This 2025 Exchange Agreement amends and restates the 2003 Exchange Agreement in its entirety.

AGREEMENT

NOW THEREFORE, the Parties in consideration of the foregoing recitals and the

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

I.

DEFINITIONS AND RULES OF CONSTRUCTION

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

(a) “Administrative Code” means the Metropolitan Water District Administrative Code adopted on ~~January 13, 1987~~April 8, 2025, as amended from time to time thereafter, and as in existence on the date of this Agreement, subject to modification to the extent provided in Paragraph 13.12 of this Agreement.

(b) “Allocation Agreement” is as defined in Recital G, subject to modification for purposes of this Agreement after the date hereof to the extent provided in Paragraph 13.13 of this Agreement.

(c) “Alternative Facilities” means facilities other than facilities owned and operated by Metropolitan.

(d) “Bureau” means the Bureau of Reclamation of the United States Department of the Interior.

(e) “California Plan” means the draft plan dated May 11, 2000, to ensure that California can live within the state’s apportionment of Colorado River water; provided,

however, if any final California Plan is approved by the Colorado River Board of California and all the public agencies represented on the Colorado River Board of California, “California Plan” means such final California Plan.

(f) “Canal Lining Water” means the quantity of Colorado River water allocated each Year to SDCWA in accordance with the Allocation Agreement.

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

(h) “Conserved Water” means Conserved Water as such term is defined in Section 1.1 of the QSA.

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

~~(j) — “Early Exchange Water” means the Exchange Water to be delivered by Metropolitan to SDCWA in exchange for Early Transfer Water to be Made Available by SDCWA to Metropolitan under this Agreement.~~

~~(k) — “Early Transfer Water” means the aggregate ten thousand (10,000) acre-feet of Conserved Water to be transferred to SDCWA by IID in accordance with Section 3.5 of the Transfer Agreement.~~

~~(j) “Effective Date” means the date upon all parties execute this Agreement. Effective Date as such term is defined in Section 1.1 of the QSA.~~

~~(m)(k)(t)~~ “(Exchange Unit Price)” means the applicable amount to be paid per acre-foot of Exchange Water delivered by Metropolitan ~~to SDCWA~~ at the Metropolitan Point(s) of Delivery under this Agreement pursuant to Paragraph 5.2. In Years that SDCWA Makes Available to Metropolitan 227,000 acre-feet or less for exchange, SDCWA will pay to Metropolitan the total Baseline Exchange Payment set forth in Paragraph 5.1.

~~(n)(l)~~ “(Exchange Water)” means, for each Year, water that is delivered by Metropolitan to SDCWA or as directed by San Diego by Metropolitan at the Metropolitan Point(s) of Delivery in a like quantity as the quantity of water that SDCWA has Made Available to Metropolitan under the Transfer Agreement and/or the Allocation Agreement and this Agreement for the same Year. The Exchange Water may be from whatever source or sources and shall be delivered using such facilities as may be determined by Metropolitan, provided that the Exchange Water delivered in each Year is of like quality to the Conserved Water and/or the Canal Lining Water which is Made Available to Metropolitan at the SDCWA Point of Transfer in such Year.

~~(o)(m)~~ “(IID)” is as defined in Recital D.

~~(p)(n)~~ “(Implementation Agreement)” is as defined in Section 1.1 of the QSA.

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

~~(r)(o)~~ “(Local Water)” means water supplies not served by Metropolitan. Such Local Water includes, for example, ground water, surface water production, recycled water,

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

~~(s)~~(p) "Made Available," "Make Available" or "Making Available." As used herein, Conserved Water and Canal Lining Water will be deemed to have been Made Available to Metropolitan when (1) such water has been transferred to SDCWA pursuant to the Transfer Agreement and/or allocated to SDCWA pursuant to the Allocation Agreement, (2) valid and continuing authorization has been given by the Bureau legally entitling Metropolitan to divert, for the Year in question, Conserved Water and/or Canal Lining Water at the SDCWA Point of Transfer, in addition to the water that Metropolitan is otherwise authorized to divert from the Colorado River, ~~and~~ (3) all other necessary legal rights, entitlements, approvals and permissions, under the laws of the United States and the State of California for diversions from the Colorado River by Metropolitan, if any, have been obtained and are in full force and effect, and (4) SDCWA has designated that water for exchange or transfer under this Agreement. Metropolitan owns the Conserved Water and Canal Lining Water once it has been Made Available to Metropolitan as defined herein. The transfer of ownership does not change the decision in *San Diego County Water Authority v. Metropolitan Water District of Southern California*, 12 Cal. App. 5th 1124 (2017) ("*SDCWA I*") holding that "[t]he exchange agreement cannot fairly be construed to constitute a purchase of water from Metropolitan within the meaning of the preferential rights statute," and therefore, concluding the Water Authority's "payments under the exchange

agreement must be included in the preferential rights calculation.” “Make Available” and “Making Available” are grammatical variations of “Made Available.”

~~(t)~~(q) Metropolitan Point(s) of Delivery is as defined in Paragraph 3.5(b).

~~(u)~~”Price Dispute” is as defined in Paragraph 11.1.

~~(u)~~(r) “SDCWA Point of Transfer” is as defined in Paragraph 3.5(a).

~~(v)~~(s) “Secretary” means the United States Secretary of the Interior.

~~(w)~~(t) “Termination Date” means the termination date determined under Paragraph 7.1, subject to the provisions of Paragraph 7.2.

~~(x)~~(u) “Transfer Agreement” is as defined in Recital D, subject to modification to the extent provided in Paragraph 13.13 hereof.

~~(y)~~(v) “Treated Exchange Water” means Exchange Water that has been treated by filtration and disinfection at a Metropolitan water filtration facility for ~~direct~~ delivery to SDCWA.

~~(z)~~—“Treatment Surcharge” means the rate(s), charge(s) and/or other fee(s) as determined pursuant to the Administrative Code for the provision of treated water service.

~~(aa)~~(w) “Year” means the period commencing on the Effective Date and ending on the immediately following December 31 (the first (1st) Year), and each consecutive calendar year thereafter during the term of this Agreement.

1.2 Rules of Construction

(a) Unless the context clearly requires otherwise:

(i) The plural and singular forms include the other;

- (ii) “Shall,” “will,” “must,” and “agrees” are each mandatory;
- (iii) “May” is permissive;
- (iv) “Or” is not exclusive;
- (v) “Includes” and “including” are not limiting; and
- (vi) “Between” includes the ends of the identified range.

(b) Headings at the beginning of 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.

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

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

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

(f) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or

reenacted, in whole or in part, and in effect from time to time, including any rules and regulations promulgated thereunder.

II.

REPRESENTATIONS AND WARRANTIES

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

(a) Metropolitan is a metropolitan water district, duly organized, validly existing and in good standing under the laws of the State of California, ~~and subject to satisfaction of Metropolitan's conditions precedent, as set forth in Paragraph 8.1 hereof,~~ Metropolitan has all necessary power and authority to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by Metropolitan and the performance by Metropolitan of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Metropolitan is a party or by which Metropolitan is bound.

(b) The Parties entered into the 2003 Exchange Agreement subject to the execution and delivery of the QSA and the Related Agreements (as defined in Section 1.1 of the QSA) ~~Subject to the satisfaction of Metropolitan's conditions precedent, as set forth in Paragraph 8.1 hereof.~~ The QSA and the Related Agreements were executed and delivered in 2003 and therefore this Agreement is not subject to the execution and delivery of those agreements. This Agreement is entered concurrently with the 2025 Settlement Agreement and is a valid and

binding obligation of Metropolitan, enforceable in accordance with its terms, subject to the requirements of applicable law.

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

(a) SDCWA is a county water authority, duly organized, validly existing and in good standing under the laws of the State of California, ~~and subject to satisfaction of SDCWA's conditions precedent as set forth in Paragraph 8.2 hereof,~~ SDCWA has all necessary power and authority to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by SDCWA and the performance by SDCWA of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which SDCWA is a party or by which SDCWA is bound.

(b) The Parties entered into the 2003 Exchange Agreement subject to the execution and delivery of the QSA and the Related Agreements (as defined in Section 1.1 of the QSA). The QSA and the Related Agreements were executed and delivered in 2003 and therefore this Agreement is not subject to the execution and delivery of those agreements. Subject to the satisfaction of SDCWA's conditions precedent, as set forth in Paragraph 8.2, This Agreement is entered concurrently with the 2025 Settlement Agreement and is a valid and binding obligation of SDCWA enforceable in accordance with its terms, subject to the requirements of applicable law.

(c) SDCWA will have obtained such approvals and permissions as may be

necessary, under applicable laws of the United States and the State of California, to Make Available to Metropolitan Conserved Water and Canal Lining Water pursuant to this Agreement.

III.

QUANTITY, DELIVERY AND SCHEDULING

3.1 Conserved Water and Canal Lining Water.

(a) SDCWA will Make Available up to 277,700 acre-feet of the Conserved Water and/or the Canal Lining Water to Metropolitan at the SDCWA Point of Transfer each Year, ~~in the manner set forth below. The quantity of Conserved Water and/or Canal Lining Water Made Available to Metropolitan by SDCWA at the SDCWA Point of Transfer each Year shall be the lesser of: (1) the sum of the quantity of water which HD transfers to SDCWA under the Transfer Agreement in such Year and the quantity of Canal Lining Water allocated to SDCWA under the Allocation Agreement in such Year; or (2) up to 277,700 acre-feet.~~ Metropolitan owns the Conserved Water and Canal Lining Water once it has been Made Available to Metropolitan as defined herein. The transfer of ownership does not change the SDCWA I decision holding that “[t]he exchange agreement cannot fairly be construed to constitute a purchase of water from Metropolitan within the meaning of the preferential rights statute,” and therefore, concluding SDCWA’s “payments under the exchange agreement must be included in the preferential rights

calculation.” The Conserved Water and/or the Canal Lining Water Made Available in each Year shall be deemed to have been Made Available to Metropolitan in the month that it is delivered to Metropolitan at the SDCWA Point of Transfer. ~~monthly installments, with one-twelfth (1/12) of such water deemed to have been Made Available in each calendar month of such Year (provided that, in the first Year, the quantity of such water deemed to have been Made Available in each month shall be determined by dividing the total quantity for that Year by the number of calendar months or portions thereof in that Year).~~

~~(b) — SDCWA will also Make Available to Metropolitan, in the manner set forth in subparagraph (a) above, the Early Transfer Water, in three annual installments as follows:~~

In calendar year 2020	2,500 acre-feet
In calendar year 2021	5,000 acre-feet
In calendar year 2022	2,500 acre-feet

(c) SDCWA will provide to Metropolitan annual written notice by November 1st each Year (or, in the case of the first Year, reasonable advance written notice) of the quantity of Conserved Water ~~(including Early Transfer Water, if applicable)~~ to be transferred to SDCWA in accordance with the Transfer Agreement, and of the quantity of Canal Lining Water to be allocated to SDCWA in accordance with the Allocation Agreement, and in each case to be Made Available to Metropolitan at the SDCWA Point of Transfer

during the immediately following Year. The Conserved Water and/or the Canal Lining Water will be Made Available to Metropolitan by SDCWA in a manner consistent with the Bureau's operations schedule and will be measured as provided in Paragraph 3.4.

3.2 Exchange Water.

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

(b) Metropolitan's delivery of Exchange Water at the Metropolitan Point(s) of Delivery shall be governed by its rules and regulations for delivery of water set forth in Chapter 5 of Division IV of the Administrative Code, as amended over time, in the same manner as other water delivered by Metropolitan, except as may otherwise be provided in this Agreement.

(c) The Exchange Water to be delivered in any Year shall be delivered ~~in approximately equal monthly installments over the Year so that at the end of the twelfth~~

~~month the aggregate quantity of Exchange Water delivered by Metropolitan will be equal to the aggregate quantity of Conserved Water (including Early Transfer Water, if applicable) and Canal Lining Water Made Available to Metropolitan at the SDCWA Point of Transfer for that Year, or at the times, locations, and in the amounts as the Parties may otherwise agree SDCWA requests, subject to the Parties' operational constraints, in the same manner Metropolitan delivers full-service water purchases. The cumulative total Exchange Water Metropolitan delivers at the end of the Year at the Metropolitan Point(s) of Delivery shall be equal to the aggregate quantity of Conserved Water and Canal Lining Water SDCWA Makes Available to Metropolitan at the SDCWA Point of Transfer for that Year, minus any water Metropolitan purchases from SDCWA.~~

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

~~(e) — Metropolitan shall have the right to deliver Exchange Water utilizing such facilities and by such delivery path as shall be determined by Metropolitan at its sole discretion. Utilization of a particular delivery path for any such delivery shall not operate~~

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

(d) In addition to 3.2(a) through (c), SDCWA may elect to make offers in the manner set forth in this paragraph. First, SDCWA will offer to a Metropolitan member agency or agencies the right to receive a specified amount of Exchange Water deliveries. If accepted by a Metropolitan member agency, nothing in this Exchange Agreement changes other than the Metropolitan Point(s) of Delivery designated by SDCWA. If no member agency accepts SDCWA's offer, SDCWA will offer to Metropolitan the right to purchase a specified amount of Conserved Water and/or Canal Lining Water. The offers and agreements must be made in the manner set forth herein.

ii. First Right of Refusal to a Metropolitan Member Agency or Agencies. SDCWA will offer to a Metropolitan member agency or agencies the right to receive Exchange Water deliveries and shall notify Metropolitan of any offer by November 1st prior to the Year the Conserved Water and/or Canal Lining Water will be Made Available to Metropolitan by SDCWA for exchange under this Agreement (the "Purchase Year"). SDCWA must notify Metropolitan by December 30th of the Year prior to the Purchase Year of any agreement with a member agency or agencies to acquire the right to receive Exchange Water deliveries pursuant to this paragraph. The terms of the right to receive Exchange Water deliveries will be determined by SDCWA and the Metropolitan member agency or agencies acquiring the right (the "Contracting Member Agency or Agencies") subject to subparagraphs A through C below.

A. The agreement between SDCWA and the Contracting Member Agency or Agencies transfers the right to receive the Exchange Water deliveries from Metropolitan so long as SDCWA Makes Available to Metropolitan an equivalent amount of

Conserved Water and/or Canal Lining Water to allow for the exchange between SDCWA and the Contracting Member Agency or Agencies.

B. Metropolitan will deliver to the Contracting Member Agency or Agencies Exchange Water at the designated Metropolitan Point(s) of Delivery. Exchange Water deliveries to the Contracting Member Agency or Agencies are subject to Metropolitan's operational constraints, in the same manner Metropolitan delivers full-service water purchases. The Contracting Member Agency or Agencies takes ownership of the water at the service connection in the same manner as full-service water deliveries.

C. Metropolitan will bill SDCWA for all Exchange Water deliveries to the Contracting Member Agency or Agencies in the same manner as Exchange Water deliveries to SDCWA. However, for purposes of any Metropolitan rate or charge measured by deliveries to a specific service connection, the delivery of Exchange Water to the Contracting Member Agency or Agencies will be attributed to the service connection where the delivery was made. As of the effective date of this Agreement, that includes Metropolitan's Capacity Charge.

ii. Second Right of Refusal to Metropolitan. If SDCWA does not enter into an agreement with any Metropolitan member agency pursuant to Paragraph 3.2(b)(i) by December 30th, SDCWA will notify Metropolitan by the next day, December 31st, that it will offer Conserved and/or Canal Lining Water for purchase by Metropolitan during the Purchase Year. The terms of the purchase will be subject to subparagraphs A through C below.

A. Metropolitan has the right to purchase the Conserved Water and/or Canal Lining Water at the unit price in Table 1. Unit Sale Price (Flow Weighted Average Price).

Table 1. Unit Sale Price (Flow Weighted Average Price)

The Unit Price for Water Sale by SDCWA to Metropolitan is equal to the total annual IID Transfer Agreement actual costs to SDCWA, as documented by SDCWA (Conserved Water Costs) in the prior Year plus the total annual Canal Lining actual costs to SDCWA, as documented by SDCWA (Canal Lining Water Costs) in the prior Year, divided by the total Conserved Water available for transfer to SDCWA from IID and total Canal Lining Water allocated to SDCWA in the same Year.

Flow Weighted Average Price Formula	Price \$ per Acre-Foot
(Conserved Water Costs + Canal Lining Water Costs)/ Total Conserved Water available for transfer to SDCWA from IID and total Canal Lining Water allocated to SDCWA in the same Year	\$/acre-foot

B. Metropolitan shall have the exclusive right of refusal for sixty (60) days from the date SDCWA provides notice of the offer.

C. Metropolitan will reconcile all deliveries to SDCWA at the end of the Purchase Year with the December Metropolitan billing to SDCWA. Under no circumstances will Metropolitan purchase water from SDCWA in the same Year that SDCWA purchases water from Metropolitan even if Metropolitan has exercised its right to purchase pursuant to this paragraph. Payment for any Metropolitan purchase of Conserved Water and/or Canal Lining Water pursuant to this paragraph will be due after the

Purchase Year at the same time as SDCWA's payment is due to Metropolitan for Metropolitan's December bill.

iii. Notwithstanding the timing obligations for the first right and second right of refusals in paragraphs 3(b)(i) and (ii) above, the parties may agree to different time periods for notice or for exercising/not exercising a right of refusal upon mutual written agreement of the SDCWA General Manager and Metropolitan General Manager.

iv. This Exchange Agreement is not applicable to SDCWA, Metropolitan, or any other party's rights or obligations with respect to any water transaction, including the right to sell, exchange, transfer, or trade any water, except as provided specifically in this Agreement between SDCWA and Metropolitan.

3.3 Temporary Shutdown of Metropolitan Facilities. Metropolitan's ~~Chief Executive Officer~~General Manager shall have the right to control, curtail, interrupt or suspend the delivery of Exchange Water to SDCWA in accordance with the Administrative Code. SDCWA understands that any number of factors, including emergencies, inspection, maintenance or repair of Metropolitan facilities or the State Water Project facilities, may result in a temporary and incidental modification of the delivery schedule contemplated in Paragraph 3.2. Metropolitan shall notify SDCWA of any control, curtailment, interruption or suspension of delivery of Exchange Water in accordance with and to the extent set forth in the Administrative Code, as if the Exchange Water were water served by Metropolitan. Metropolitan agrees that delivery of Exchange Water shall be resumed as soon as possible following any such curtailment, interruption or suspension of delivery. Unless Metropolitan

is otherwise relieved of its obligations under the provisions of this Agreement, a curtailment, interruption or suspension of the delivery of Exchange Water pursuant to this Paragraph 3.3 shall not change the amount of Exchange Water Metropolitan is obligated to deliver during any Year.

3.4 Measurement of Deliveries. The quantity of Exchange Water delivered in each Year by Metropolitan at the applicable Metropolitan Point(s) of Delivery, which amount will be metered at such Point(s) of Delivery as provided in the Administrative Code, shall be equal to the aggregate quantity of Conserved Water ~~(including Early Transfer Water, if applicable)~~ and Canal Lining Water Made Available to Metropolitan in such Year at the SDCWA Point of Transfer, minus any water sold to Metropolitan. The Parties agree that they will be bound by such meter readings.

3.5. Points of Transfer or Delivery.

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

(b) The Metropolitan Point(s) of Delivery. As used herein, the “Metropolitan Point(s) of Delivery” shall be any or all Metropolitan existing connections to SDCWA San Diego Pipelines One through Five (inclusive) or at similar facilities that may be constructed in the future at a point near the San Luis Rey River in Northern San Diego County, or another Metropolitan connection to another Metropolitan member agency as designated by SDCWA pursuant to Section 3.1(b).

3.6 Quality of Exchange Water. Metropolitan in its sole discretion shall have the right to deliver Exchange Water of a quality which exceeds the quality of the Conserved Water and/or Canal Lining Water ~~which that~~ Metropolitan receives, and such Exchange Water shall fully satisfy

Metropolitan's obligation to deliver Exchange Water of like quality to such Conserved Water and Canal Lining Water. In such event, Metropolitan's election shall not operate as or be construed to be a commitment to deliver Exchange Water of better quality in the future, and in no event shall SDCWA be deemed to have any right to receive Exchange Water of better quality than the Conserved Water and/or Canal Lining Water.

3.7 Alternative Facilities. SDCWA may determine, in its sole discretion, permanently to reduce the aggregate quantity of Conserved Water and Canal Lining Water to be Made Available to Metropolitan under this Agreement to the extent SDCWA decides continually and regularly to transport Conserved Water and/or Canal Lining Water in an amount equal to such reduction in quantity to San Diego County through Alternative Facilities; provided, however, that SDCWA shall furnish to Metropolitan a minimum of five (5) years' advance written notice of such determination. The written notice shall confirm the quantity of Conserved Water and/or Canal Lining Water (if any) which SDCWA will continue to Make Available to Metropolitan. If SDCWA exercises its right under this Paragraph 3.7, Metropolitan's obligation to deliver Exchange Water shall be limited to that specified quantity of Conserved Water and/or Canal Lining Water that SDCWA continues to Make Available to Metropolitan pursuant to this Agreement.

IV.

CHARACTERIZATION OF EXCHANGE WATER

4.1 Exchange Water as an Independent Local Supply. The Exchange Water shall be characterized for the purposes of all of Metropolitan's ordinances, plans, programs, rules and regulations, including any then-effective Drought Management Plan, and for calculation of any

Readiness-to-Serve Charge share, in the same manner as the Local Water of other Metropolitan member agencies, ~~except as provided in Paragraphs 4.2 and 5.2.~~

~~4.2 — Exception for Interim Agricultural Water Program and Determination of Price.~~

~~Notwithstanding the provisions of Paragraph 4.1, the Exchange Water delivered to SDCWA shall be characterized as Metropolitan water and not as Local Water only for the limited purposes of Paragraph 5.2 and the Interim Agricultural Water Program.~~

V.

PRICING AND PAYMENTS

5.1 Payments. As of January 1, 2026, SDCWA shall pay to Metropolitan the Baseline Exchange Payment, equal to the Exchange Unit Price for each Year multiplied by 227,000 acre-feet, even if SDCWA Makes Available to Metropolitan less than 227,000 acre-feet for exchange and without regard to what month water is Made Available to Metropolitan. SDCWA shall pay the Baseline Exchange Payment in 12 equal monthly installments. If SDCWA Makes Available more than 227,000 acre-feet to Metropolitan for exchange, SDCWA shall pay to Metropolitan the Exchange Unit Price for each additional acre-foot above 227,000 of Exchange Water (including Early Exchange Water, if applicable) delivered by Metropolitan at the Metropolitan Point(s) of Delivery. Payments due for Exchange Water deliveries above 227,000 acre-feet will be billed in the month following the delivery by Metropolitan to SDCWA at the Metropolitan Point(s) of Delivery.

~~5.2 — The Price. The Price on the date of Execution of this Agreement shall be Two Hundred Fifty Three Dollars (\$253.00). Thereafter, the Price shall be equal to the charge or charges set by Metropolitan's Board of Directors pursuant to applicable law and regulation and~~

~~generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies. For the term of this Agreement, neither SDCWA nor Metropolitan shall seek or support in any legislative, administrative or judicial forum, any change in the form, substance or interpretation of any applicable law or regulation (including the Administrative Code) in effect on the date of this Agreement and pertaining to the charge or charges set by Metropolitan's Board of Directors and generally applicable to the conveyance of water by Metropolitan on behalf of its member agencies; provided, however, that Metropolitan may at any time amend the Administrative Code in accordance with Paragraph 13.12, and the Administrative Code as thereby amended shall be included within the foregoing restriction; and, provided, further, that (a) after the conclusion of the first five (5) Years, nothing herein shall preclude SDCWA from contesting in an administrative or judicial forum whether such charge or charges have been set in accordance with applicable law and regulation; and (b) SDCWA and Metropolitan may agree in writing at any time to exempt any specified matter from the foregoing limitation.~~

5.2 The Exchange Unit Price. The price per acre-foot for deliveries of Exchange Water (the "Exchange Unit Price") shall be as follows for purposes of calculation of the Baseline Exchange Payment and for each additional acre-foot of Exchange Water deliveries above 227,000 acre-feet:

(a) Year 2026: The Exchange Unit Price in Year 2026 shall be \$671.

(b) Years 2027 through 2034: The Exchange Unit Price for Years 2027 through 2034

shall be as reflected in Table 2.

Table 2. Exchange Unit Price Calendar Years 2027 - 2034

<u>Effective Date of Exchange Unit Price</u>	<u>Exchange Unit Price per Acre-Foot</u>
<u>January 1, 2027</u>	<u>\$671</u>
<u>January 1, 2028</u>	<u>\$703</u>
<u>January 1, 2029</u>	<u>\$737</u>
<u>January 1, 2030</u>	<u>\$772</u>
<u>January 1, 2031</u>	<u>\$809</u>
<u>January 1, 2032</u>	<u>\$848</u>
<u>January 1, 2033</u>	<u>\$888</u>
<u>January 1, 2034</u>	<u>\$930</u>

(c) The Exchange Unit Price for 2026 through 2034 reflects a bargained-for amount between the Parties and is not subject to or related to the validity of Metropolitan's rates, charges, rate structure, or costs. The Parties mutually agreed to the fixed dollar amount in this Agreement for the Exchange Unit Price with the intent of separating the price term from Metropolitan's rate structure, rate-setting process, and budget. The Exchange Unit Price from 2026 through 2034 and subsequent increases are not intended and shall not be interpreted to be subject to or related to Metropolitan's rates, charges, rate structure, costs, or budgets.

(d) Years 2035 Through Remainder of Term: The Exchange Unit Price every Year as of January 1, 2035, shall be equal to the prior Year's Exchange Unit Price increased by a percentage equal to the Consumer Price Index for All Urban Consumers (CPI-U) for water and sewerage, as published by the U.S. Bureau of Labor Statistics, measured from October of two years prior to October of the prior year. For example, as of January 1, 2035, the Exchange Unit Price shall be \$930 (from 2034), increased by the CPI-U for water and sewerage, measured from October 2033 to October 2034.

i. The applicable index, series, and item are:

Index: Consumer Price Index for All Urban Consumers (CPI-U)
Series ID: CUUR0000SEHG01
Series Title: Water and sewerage maintenance in U.S. city average, all urban consumers, not seasonally adjusted
Area: U.S. city average
Item: Water and sewerage maintenance
Base Period: 1982-84 = 100

- ii. In the event the CPI-U for water and sewerage is no longer published, the Exchange Unit Price will increase on a yearly basis based on the average annual percentage of the index over the ten years prior to the date it is no longer published.

(e) Prevailing Party in Dispute. In the event that SDCWA contests ~~a matter pursuant to the foregoing sentence~~ the Baseline Exchange Payment or Exchange Unit Price, the prevailing Party shall be entitled to recovery of all reasonable costs, including non-statutory costs directly associated with litigating the dispute, and attorneys' fees incurred in prosecuting or defending against such contest.

5.3 Billing and Payments. Metropolitan shall mail monthly invoices to SDCWA in accordance with the Metropolitan Administrative Code, and SDCWA shall make monthly payments of amounts due pursuant to Paragraphs 5.1 and 5.2 in accordance with the Metropolitan Administrative Code. ~~The amount of each monthly billing and payment pursuant to this Agreement shall be the quantity in acre-feet of Exchange Water to be delivered by~~

~~Metropolitan at the Metropolitan Point(s) of Delivery during the applicable Year, multiplied by the Price as of the commencement of that Year, divided by twelve (12).~~

5.4 Treatment Surcharge. SDCWA shall pay to Metropolitan an amount equal to the Treatment Surcharge, in addition to the Price, for each acre-foot of Treated Exchange Water. SDCWA may choose to receive treated water as part of its Exchange Water deliveries. Such deliveries of treated water shall be subject to an additional charge for Metropolitan's treated water service, which is Metropolitan's Treatment Surcharge (or successor rate or charge for treated water service) in effect as of the date of delivery of the Treated Exchange Water. Metropolitan's treated water service and billing for that service will be provided to SDCWA outside of the obligations of this Agreement in the same manner as is provided to all member agencies for full-service deliveries. This Agreement does not create a contractual right for SDCWA to challenge any of Metropolitan's rates and/or charges or the validity of this Agreement based upon the charge for treated water service.

VI.

ADDITIONAL NOTIFICATIONS

6.1 Confirmation of Water Conservation. SDCWA will provide a written report to Metropolitan, prior to March 31 of each Year, describing the method by which any Conserved Water ~~(including Early Transfer Water, if applicable)~~ that was Made Available to Metropolitan in the prior Year was conserved by IID, including a description of conservation projects resulting in the

Conserved Water and the quantity of Conserved Water conserved by each project.

6.2 Notice of Developments.

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

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

VII.

TERM

7.1 Commencement and Expiration. This Agreement shall become effective on the Effective Date and shall expire on the Termination Date, which shall be the later of the dates determined pursuant to subparagraph (a) and (b) below.

~~(a) — Metropolitan's and SDCWA's rights and obligations under this Agreement pertaining to Conserved Water Made Available to Metropolitan pursuant to the Transfer Agreement and this Agreement shall expire and shall thereupon terminate on December 31 of the thirty-fifth (35th) Year, unless SDCWA elects by written Notice to Metropolitan no later than the end of the fifteenth (15th) Year to extend this Agreement to~~

~~December 31 of the forty-fifth (45th) Year, or shall terminate as otherwise provided in Paragraph 7.2.~~

(a) Metropolitan and SDCWA's rights and obligations under this Agreement pertaining to Conserved Water Made Available to Metropolitan pursuant to the Transfer Agreement and this Agreement shall expire on December 31, 2047. In the event that SDCWA and IID extend their Transfer Agreement to December 31, 2077 or earlier, and the terms of the Transfer Agreement in the extension period do not change except as to duration and if applicable, price, and any reduction in the amount to be transferred each year is not greater than 50,000 acre-feet, upon SDCWA providing notice to Metropolitan within three days of SDCWA and IID's agreement to the Transfer Agreement extension described herein, the obligation under this Agreement pertaining to Conserved Water will be deemed to match the new Transfer Agreement termination date but not later than December 31, 2077, with all other terms of this Agreement remaining unchanged. Any other amendment to the term of this Agreement requires approval by each party's Board of Directors. If the amount to be transferred in each year under the extended Transfer Agreement is reduced by more than 50,000 acre-feet, the extension will require the approval of Metropolitan's Board.

(b) Metropolitan's and SDCWA's rights and obligations under this Agreement pertaining to the Canal Lining Water shall expire and shall thereupon terminate on December 31 of the same Year in which the Allocation Agreement terminates, or shall terminate as otherwise provided in Paragraph 7.2.

(c) Check-in Meetings of the Parties. The Parties agree to meet every five years

during the term of this Agreement to discuss the ongoing implementation of this Agreement.
This provision does not create and shall not be interpreted to create a unilateral right of either party to an amendment or modification of this Agreement in any way.

7.2 Force Majeure.

(a) If the performance, in whole or in part, of the obligations of the respective Parties, or either of them, to Make Available Conserved Water or Canal Lining Water or to deliver Exchange Water (as the case may be) under this Agreement is prevented: by acts or failure to act of any agency, court or other government authority, or any other person; by natural disaster (such as earthquake, fire, drought or flood), contamination or outbreak of a water borne disease, war, strikes, lockouts, act of God, or acts of civil or military authority; by the operation of applicable law; or by any other cause beyond the control of the affected Party or Parties, whether similar to the causes specified herein or not, then, in any such circumstance, the obligation of the affected Party or Parties to cause the delivery of the Conserved Water or Canal Lining Water or to deliver the Exchange Water (as the case may be) under this Agreement shall be suspended from the time and to the extent that the performance thereof is prevented, but reasonable diligence shall be observed by the affected Party or Parties, so far as it lies in their power, in performing such respective obligations in whole or in part under this Agreement. In the event such performance of either of the Parties under this Agreement is prevented as described above, then during the period of such prevention, performance by the non-affected Party under this Agreement shall be excused until such prevention ceases, at which time both the Parties shall become obligated to resume

and continue performance of their respective obligations hereunder during the term of this Agreement. Notwithstanding the foregoing, no such prevention shall suspend or otherwise affect any payment obligations for Exchange Water actually delivered or any obligation of either Party to indemnify the other pursuant to Paragraph 13.10, or shall extend the term of this Agreement beyond the Termination Date, except as provided in Paragraph 7.2(c) below.

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

(c) In the event the delivery of Exchange Water by Metropolitan is prevented as described in Paragraph 7.2(a) above, and in the event Conserved Water and/or the Canal Lining Water has been stored as contemplated by Paragraph 7.2(b) above, and such stored Conserved Water and/or the Canal Lining Water is Made Available to Metropolitan, the term of this Agreement shall be extended, for a period not to exceed five Years, without the necessity for further action by either Party, if and to the extent necessary to permit Metropolitan to complete the delivery of Exchange Water in a quantity equal to such stored Conserved Water and/or the Canal Lining Water.

7.3 Survival. Notwithstanding the foregoing or anything to the contrary in this Agreement, any remaining payment obligation of SDCWA under Article V, and the provisions

in Paragraphs 12.5, 13.2, 13.3, 13.8, 13.10 and 13.15 and Articles X and XI, shall survive the termination of this Agreement.

VIII.

CONDITIONS PRECEDENT RELATED AGREEMENTS

8.1 ~~Metropolitan's Condition Precedent~~ QSA and the Related Agreements. Metropolitan's obligations under the ~~is- 2003 Exchange Agreement~~ awere subject to the execution and delivery of the QSA and the Related Agreements (as defined in Section 1.1 of the QSA), ~~and to the occurrence of the Effective Date, which were executed and delivered in 2003.~~ References to those agreements in this Agreement are to the fully executed versions.

8.2 ~~SDCWA's Conditions Precedent.~~ SDCWA's obligations under this Agreement are subject to the execution and delivery of the Revised Fourth Amendment to the Transfer Agreement, the Allocation Agreement and the Implementation Agreement, and to the occurrence of the Effective Date.

8.3 ~~Failure of Conditions.~~ If Metropolitan's conditions precedent under Paragraph 8.1 are not satisfied or waived in writing by Metropolitan, or if SDCWA's conditions precedent under Paragraph 8.2 are not satisfied or waived in writing by SDCWA, in each case on or before December 31, 2003, then this Agreement will be void, and all rights and obligations provided hereunder will be terminated.

IX.

COMPLIANCE WITH APPLICABLE LAWS

9.1 Applicable Laws. This Agreement and the activities described herein are contingent upon and subject to compliance with all applicable laws.

X.

ADDITIONAL COVENANTS

10.1 Impact on Transfer Agreement. Nothing in this Agreement shall be construed to amend the Transfer Agreement.

~~10.2 Implementation of Transfer Agreement. Insofar as the Transfer Agreement is consistent with and implemented in accordance with state and federal law and the California Plan, Metropolitan shall not oppose approval or implementation of that Agreement before the California State Water Resources Control Board, the Bureau, the United States Department of the Interior or in any other judicial or administrative proceedings~~

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

~~10.24 Report to Legislature. The Parties SDCWA shall continue reporting as requested to the Legislature of the State of California on the implementation of this Agreement.~~

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

10.346 SDCWA Consent and Waiver. Notwithstanding any limitations set forth in the Transfer Agreement otherwise restricting IID's right to transfer water to Metropolitan, SDCWA hereby consents to IID's transfer of water to Metropolitan as provided in Articles 5 and 6 of the

IID/MWD Acquisition Agreement (as defined in Section 1.1 of the QSA) and waives any right to object thereto. SDCWA shall provide to IID, and shall be bound by, a written acknowledgement of its consent and waiver set forth in the preceding sentence above in such form and to such effect as Metropolitan may reasonably request.

10.7 Allocation Agreement Responsibilities. SDCWA shall indemnify Metropolitan and defend and hold it harmless at SDCWA's sole cost and expense from and against any obligation, liability or responsibility of any kind assigned to SDCWA under and pursuant to the Allocation Agreement and any claim by any person that MWD has any continuing obligation, liability or responsibility of any kind with respect to the matters assigned to SDCWA under the Allocation Agreement.

XI.

DISPUTE RESOLUTION

11.1 Reasonable Best Efforts to Resolve by Negotiation. The Parties shall exercise reasonable best efforts to resolve all disputes, including ~~p~~Price ~~d~~Disputes, arising under this Agreement through negotiation; ~~provided, however, that SDCWA shall not dispute whether the Price determined pursuant to Paragraph 5.2 for the first five (5) Years of this Agreement was determined in accordance with applicable law or regulation (a "Price Dispute").~~ In the event negotiation is unsuccessful, then the Parties reserve their respective rights to all legal and equitable remedies.

XII.

EVENTS OF DEFAULT; REMEDIES

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

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

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

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

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

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

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

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

any material respect.

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

12.4 Enforcement of Transfer and Exchange Obligations.

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

(b) So long as no Event of Default as defined in Paragraph 12.1(a) has occurred and is continuing, and so long as SDCWA tenders to Metropolitan full payment of the ~~Agreement~~ Price Payments when due, Metropolitan shall not suspend or delay, in whole or in part, delivery of Exchange Water as required under this Agreement on account of any breach, or alleged breach, by SDCWA unless first authorized to do so by a final judgment. So long as no Event of Default as defined in Paragraph 12.2(a) has occurred and is continuing, SDCWA shall not suspend or delay, in whole or in part, Making Available Conserved Water and/or Canal Lining Water as required under this Agreement on account of any breach, or alleged breach, by Metropolitan unless first authorized to do so by a final judgment. A violation of the provisions of this subparagraph (b) may be remedied by an order of specific performance.

(c) In the event of a dispute over the Baseline Exchange Payment or Exchange Unit Price, SDCWA shall pay when due the full amount claimed by Metropolitan until final resolution of the dispute through litigation or otherwise, whether the dispute concerns the Baseline Exchange Payment and/or payment for

~~deliveries over 227,000 acre-feet. Metropolitan may treat and use the funds from the disputed payments in the same manner as non-disputed payments.; provided, however, that, during the pendency of the dispute, Metropolitan shall deposit the difference between the Price asserted by SDCWA and the Price claimed by Metropolitan in a separate interest bearing account. If SDCWA prevails in the dispute, Metropolitan shall forthwith pay the disputed amount, plus all interest earned thereon, to SDCWA. If Metropolitan prevails in the dispute, Metropolitan may then transfer the disputed amount, plus all interest earned thereon, into any other fund or account of Metropolitan.~~

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

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

- (a) being transferred to a “Neutral County,” or instead
- (b) having a disinterested judge from a Neutral County assigned by the

Chairman of the Judicial Council to hear the action or proceeding.

(c) A “Neutral County” is any county other than Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego or Ventura. In the event an action is filed by either party against the other to enforce this Agreement and to obtain damages for its alleged breach, each Party hereby:

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

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

XIII.

GENERAL PROVISIONS

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

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

13.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws provisions; provided, however, that federal law shall be applied as appropriate to the extent it bears on the resolution of any claim or issue relating to the permissibility of the transfers or the Making Available of Colorado River water, as contemplated herein.

13.4 Binding Effect; Term Upon Dissolution; No Assignment. This Agreement is and will be binding upon and will inure to the exclusive benefit of the Parties ~~and, upon dissolution, the legal successors and assigns of their assets and liabilities.~~ Any change in law, regulation, rule, or any legal or administrative action or any other event or occurrence that results in dissolution of either Party shall result in termination of this Agreement and render this Agreement void. Further, ~~N~~neither Party may assign any of its rights or delegate any

of its duties under this Agreement. Any assignment or delegation made in violation of this Agreement is void and of no force or effect.

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

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

Addresses for purpose of giving notice are as follows:

To Metropolitan:

Metropolitan Water District of Southern California

Attn: ~~Chief Executive Officer~~General Manager

Address for U.S. mail:

P.O. Box 54153

Los Angeles, CA 90054-0153

Address for personal or overnight delivery:

700 North Alameda Street

Los Angeles, CA 90012-2944

Telephone: 213-217-6000

Fax: 213-217-6950

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

Metropolitan Water District of Southern California

Attn: General Counsel

To SDWCA:

San Diego County Water Authority

Attn.: General Manager

4677 Overland Avenue

San Diego, California 92123-1233

Telephone: 858-522-6780

Fax: 858-522-6262

With a copy to:

San Diego County Water Authority

Attn.: General Counsel
4677 Overland Avenue
San Diego, California 92123-1233
Telephone: 858-522-6790
Fax: 858-522-6566

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

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

13.6 Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the Agreement between the Parties pertaining to its subject matter and supersedes all prior and contemporaneous understandings or agreements of the Parties. Neither Party has been induced to enter into this Agreement by, nor is either Party relying on, any representation or warranty outside those expressly set forth in this Agreement.

13.7 Time of the Essence. If the day on which performance of any act or the occurrence of any event hereunder (except the delivery of Exchange Water) is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day (~~as defined in Section 4507 of the Administrative Code~~ which excludes a Saturday, Sunday, or a federal or state holiday) 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.

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

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

13.10 Indemnification.

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

(b) Metropolitan shall indemnify SDCWA pursuant to Section 4502 of the Administrative Code, as may be amended over time, against liability in connection with

Metropolitan's delivery of the Exchange Water to the same extent as is required with respect to ~~water supplied by Metropolitan to a member public agency~~full-service water deliveries. Such indemnification shall be in addition to any indemnification rights available under applicable law and to any other remedy provided under this Agreement.

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

13.11 Authority of the Legislature. Nothing in this Agreement will limit any authority of the Legislature of the State of California to allocate or reallocate water.

13.12 Right to Amend the Administrative Code. Metropolitan's obligations under this Agreement are contractual obligations contained herein. Accordingly, Notwithstanding anything to the contrary in this Agreement, express or implied, Metropolitan ~~shall have~~has the right to amend the Administrative Code at its sole discretion, except that, for the purposes of this Agreement, no such amendment shall have the effect of changing or modifying ~~Paragraphs 8.1 and 8.2, or~~ the obligation of Metropolitan to deliver Exchange Water as provided in this Agreement hereunder, unless such effect is first approved by the Board of Directors of SDCWA.

13.13 Right to Amend Transfer Agreement and Allocation Agreement. Notwithstanding anything to the contrary in this Agreement, express or implied, SDCWA shall have the right to amend the Transfer Agreement and/or the Allocation Agreement at its sole discretion, except that, for purposes of this Agreement, no such amendment shall have the effect of changing or modifying

~~Paragraphs 8.1 and 8.2,~~ the obligation of SDCWA to Make Available Conserved Water and/or Canal Lining Water hereunder, or the Price payable by SDCWA with respect to any Exchange Water, or be binding on Metropolitan, unless such effect is first approved by the Board of Directors of Metropolitan.

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

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

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

Approved as to Form:

The Metropolitan Water District of Southern California

By:

By: _____

General Counsel

~~Chief Executive Officer~~General Manager

Approved as to Form:

The San Diego County Water Authority

By:

By: _____

General Counsel

~~Chief Executive Officer~~General Manager