

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, CA
Board of Directors Meeting
Agenda
June 19, 2017 at 7:00 p.m.

Teleconference Location: AmericInn Lodge & Suites Hampton
702 Central Ave W, Hampton, IA 50441

- 1. Call to Order, Flag Salute, Invocation and Roll Call**
- 2. Statement Regarding Teleconferencing**
 - This meeting is also being held at a Teleconference Location which has been identified on the agenda.
- 3. Adoption and Adjustment of Agenda**
- 4. Public Comment:** Members of the public may address the Board at this time concerning items relating to any matter within the Agency's jurisdiction. To comment on specific agenda items, please complete a speaker's request form and hand it to the board secretary.
- 5. Consent Calendar:** If any board member requests that an item be removed from the Consent Calendar, it will be removed so that it may be acted upon separately.
 - A. Approval of the Minutes of the Regular Board Meeting, June 5, 2017* (p. 3)
 - B. Approval of the Minutes of the Engineering Workshop, June 12, 2017* (p. 8)
 - C. Approval of the Minutes of the Special Board Meeting, June 12, 2017* (p. 10)
- 6. Reports:**
 - A. General Manager's Report
 1. Operations Report
 2. General Agency Updates
 - B. General Counsel Report
 - C. Directors' Reports
- 7. New Business:**
 - A. Public Hearing: Consideration and Possible Action to enter into Water Supply Agreement with Antelope Valley – East Kern Water Agency (AVEK)* (p 11)
 - B. Consideration and Possible Action on Exchange Agreement with Crestline–Lake Arrowhead Water Agency for 2000 Acre-Feet of Water in 2017 and to Authorize Filing a Notice of Exemption * (p. 99)
 - C. Consideration and Possible Action on Resolution 2017-10 Nominating Director David Castaldo to ACWA's Region 9 Board of Directors* (p. 106)
 - D. Consideration and Possible Action to Change Date of the July 3rd Board Meeting.
- 8. Topics for Future Agendas**

9. Announcements:

- A. Finance and Budget Workshop, June 26, 2017 at 4:00 p.m.
- B. Finance and Budget Workshop, June 26, 2017 at 4:00pm
- C. San Geronio Pass Regional Water Alliance, June 28, 2017
 - 1. Regular Meeting at 5:30 pm— Banning City Hall

10. Adjournment

***Information included in Agenda Packet**

(1) Materials related to an item on this Agenda submitted to the Board of Directors after distribution of the agenda packet are available for public inspection in the Agency's office at 1210 Beaumont Avenue, Beaumont during normal business hours. (2) Pursuant to Government Code section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available for public inspection at the Agency's office, located at 1210 Beaumont Avenue, Beaumont, California 92223; during regular business hours. When practical, these public records will also be made available on the Agency's Internet Web site, accessible at: www.sgpwa.com (3) Any person with a disability who requires accommodation in order to participate in this meeting should telephone the Agency (951 845-2577) at least 48 hours prior to the meeting in order to make a request for a disability-related modification or accommodation.

SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, California 92223

Minutes of the
Board of Directors Meeting
June 5, 2017

Directors Present: David Fenn, President
Ron Duncan, Vice President
Lenny Stephenson, Treasurer
Blair Ball, Director
David Castaldo, Director
Stephen Lehtonen, Director
Michael Thompson, Director

Staff Present: Jeff Davis, General Manager
Thomas Todd, Finance Manager
Jeff Ferre, General Counsel

1. **Call to Order, Flag Salute, Invocation, and Roll Call:** The meeting of the San Gorgonio Pass Water Agency Board of Directors was called to order by Board President Fenn at 7:00 p.m., June 5, 2017 in the Agency Boardroom at 1210 Beaumont Avenue, Beaumont, California. President Fenn led the Pledge of Allegiance to the flag. Director Ball led the invocation. A quorum was present.
2. **Adoption and Adjustment of Agenda:** *President Fenn asked if there were any adjustments to the agenda.* There being none the Agenda was adopted as presented.
3. **Public Comment:** *President Fenn asked if there were any members of the public that wished to make a public comment on items that are within the jurisdiction of the Agency.* There were no members of the public that wished to comment at this time.
4. **Consent Calendar:**
 - A. Approval of the Minutes of the Regular Board Meeting, May 15, 2017
 - B. Approval of the Minutes of the Finance and Budget Workshop May 22, 2017
 - C. Approval of the Finance and Budget Workshop Report, May 22, 2017

Director Stephenson made a motion, seconded by Director Thompson, to adopt the consent calendar as presented. Motion passed 7-0.

5. Reports:

A. General Manager's Report:

(1) Operations Report: (a) SWP Water Deliveries: The Agency delivered a total of 1418 acre-feet to the Noble Creek Connection, for the month of May; a total of 5451 acre-feet so far this year.

(2) General Agency Updates: (a) Cal Water Fix: USFWS and NMFS issue final Biological Opinion this week (Friday). Once the ROD/NOD has been issued engineering and design work will progress toward construction. More updates will

be provided in the coming weeks and months. Cal Water Fix is not needed for the state as a whole, it will also protect our investment in EBX; Lowers our marginal cost of water; possibly incentivize other Contractors to sell or lease their Table A water to other Contractors. **(b) Flume Update:** The PEs have submitted an alternate cost share agreement in the amount of \$100k instead of \$600k and are working on setting up a follow-up meeting with the Regional Forester.

B. General Counsel Report: (a) General Counsel Jeff Ferré deferred from reporting due to the length of the agenda.

C. Directors Reports: (1) **President Fenn** reported on the City of Beaumont Council meeting that he attended on May 16th. He also reported on the May 18th BCVWD Board meeting stating that its board approved the Sites cost sharing agreement with the Agency. (2) **Director Ball** reported on the BCVWD May 18th Board meeting. (3) **Director Castaldo** reported on the BCVWD May 18th Board meeting.

6. New Business:

A. Public Hearing on Determination of Whether to Form a Groundwater Sustainability Agency Pursuant to the SGMA for the Yucaipa Sub-basin: *President Fenn opened the Public Hearing at 7:12 pm.* A colored map of the Yucaipa Sub-basin was handed out to the Board and to members of the public. General Manager Davis provided his report on this item. He stated that the map is of the Yucaipa Basin. He explained why SGPWA was invited to be a participant. He also reviewed why this agreement is different from other GSA's that the Agency is now a part of. General Manager Davis answered questions from the Board. After discussion, General Manager Davis concluded his report for the public hearing. President Fenn requested public comment. *There being none President Fenn closed the Public Hearing at 7:24.*

B. Consideration and Possible Action Regarding Adoption of Resolution No. 2017-09 – Election to become a Groundwater Sustainability Agency (GSA) for the Yucaipa Sub-Basin: A staff report, Resolution No. 2017-09 and a Memorandum of Agreement were included in the agenda packet. After discussion, Director Duncan made a motion, seconded by Director Stephenson to adopt Resolution 2017-09, creating the Yucaipa Sub-Basin GSA, and to participate as a member of the GSA in developing a Groundwater Sustainability Plan (GSP) for the Yucaipa Sub-basin. Motion passed 7-0.

C. Consideration and Possible Action Regarding Engagement of New Auditor for Fiscal Year 2016-2017: A staff report and an Engagement Letter from Eadie & Payne were included in the agenda packet. General Manager Davis explained the interview process that he and Finance Manager Thomas Todd conducted in order to secure an auditor. He stated that the Auditor reports to the Board and not to Staff. He is confident that Eadie & Payne is the best firm to perform the Agency's audit for 2016-2017 at a proposed cost of \$19,900. The funds are budgeted for next year; there will be no fiscal impact. Discussion took place between the board members on the process of hiring auditors for the future and that perhaps it would be best to have

board members have a more active role in the hiring of the auditor and to invite the auditor to a Finance and Budget workshop to answer questions from the Board. After discussion, Director Stephenson made a motion, seconded by Director Ball, to authorize contracting with Eadie & Payne to perform the 2016-2017 Audit, and to authorize the President and General Manager to sign the engagement letter. Motion passed 7-0.

D. Consideration and Possible Action Regarding Cost of Living Adjustment for Agency Staff: A staff report was included in the agenda packet. President Fenn made a motion, seconded by Director Duncan, that Agency staff (not including the General Manager) receives a 2.7% cost of living increase starting July 1st. Motion passed 7-0.

E. Consideration and Possible Action Regarding Nominations for ACWA Region 9 Board of Directors: A staff report and ACWA Nomination materials were included in the agenda packet. General Manger Davis reported on the Agency's past involvement and expected duties of ACWA Region 9 Board members. He also explained the potential fiscal impact, as the Agency would be responsible for travel costs for meetings and other events. After discussion, Director Castaldo requested to be nominated. General Manager Davis stated that a nomination resolution will be drafted for consideration at the next regular board meeting.

F. Consideration and Possible Action Regarding Authorization to Advertise Fiesta Recharge Facility for Construction: A staff report was included in the agenda packet. General Manager Davis stated that the Board directed staff to move forward in getting a packet ready for advertising of the construction of the facility. The purpose of this item is for the Board to decide if it would like to proceed with the advertising at this point in time. The estimated cost of construction and other post-design costs is approximately \$2.75 million, not including fencing, landscaping, water, or power. The cost estimate includes an unofficial inflation accounting from the original cost estimate. The project is eligible for funding under Prop 1 and can be applied for even if construction has been completed. The Agency has spent approximately \$5.7 million to date on land, CEQA, preliminary and final design, and construction of the pipeline portion of the project. Director Ball felt that going out to bid at this time would diminish the Agency's chances of Prop 1 funding. He questioned additional costs that will be incurred above and beyond the construction of the facility. Director Duncan stated that the action on this item is to go out to bid only. This information will be used to determine if it is feasible to begin construction now or to wait until a future date. General Manager Davis stated that Prop 1 funding decisions could be another year or more before a funding decision is made. General Manager Davis then explained the bidding process. Director Stephenson stated that Beaumont Cherry Valley Parks and Recreation has indicated an interest in utilizing some of our purchased land and it is possible that they may assist with some of the burden of landscaping. General Manager Davis stated that BCVPR has indicated that they might share a well, but improvements to the well are needed. The Board requested Staff to provide additional cost estimates for fencing and landscaping at a future meeting. After discussion, Director Stephenson made a motion, seconded by Director Duncan, to move forward with advertising for the construction of the facility. President Fenn requested a roll call vote:

<u>Roll Call:</u>	<i>Aye</i>	<i>Noes</i>	<i>Absent</i>	<i>Abstain</i>
Director Stephenson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Ball	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Lehtonen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Castaldo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Thompson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Fenn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion passed 6-1, with Director Ball opposed.

G. Consideration and Possible Action Regarding Adoption of Ordinance 13 Amending Ordinance 8: A staff report was included in the agenda packet. General Counsel Ferre explained that the Agency is not changing Ordinance 8; the Agency is changing the Rules and Regulations. Adoption of Ordinance 13 will change portions of the applicable Rules and Regulations in regards to an application for service. The change will remove the return flows requirement that is currently in the Rules and Regulations Section 4.09. Should the Board adopt Ordinance 13, Section 4.09 would be removed and the rest of the application requirements will remain in place. Director Duncan made a motion, seconded by Director Thompson, making the change that was indicated by counsel. President Fenn requested a roll call vote:

<u>Roll Call:</u>	<i>Aye</i>	<i>Noes</i>	<i>Absent</i>	<i>Abstain</i>
Director Stephenson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Ball	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Lehtonen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Castaldo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Duncan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Director Thompson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Fenn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion passed 7-0.

H. Consideration and Possible Action Regarding Application from BCVWD to Expand Noble Connection from 20 cfs to 34 cfs Pursuant to Revised Ordinance 8: A staff report and a Biological Resources Assessment performed by Webb were included in the agenda packet. General Manager Davis stated that this item was discussed last month. The agenda packet includes a new staff report and last month's staff report. The recommendation is that the Board approves BCVWD's application, and that the Noble Connection expansion is exempt from CEQA Class 1 and Class 3 exemptions. The Board would also need to direct staff (BBK) to have a CEQA Notice of Exemption lawfully filed. Director Thompson made a motion, seconded by Director Duncan, to approve as recommended. Motion passed 7-0.

7. Topics for Future Agendas: **1.** Director Ball would like a staff report on High Valleys water needs. **2.** Director Castaldo would like for the Board to consider reviewing the policy for the hiring of an auditor. General Counsel Ferre stated that the Board could direct the Finance Committee to be involved in the interviews. **3.** Director Lehtonen asked that discussion on fencing and power for the Beaumont Avenue Recharge Facility be addressed at the next Engineering Committee meeting.

8. Announcements:

- A. Engineering Workshop June 12, 2017 at 4:00 p.m.
- B. Regular Board Meeting, June 19, 2017 at 7:00 p.m.
- C. Finance and Budget Workshop June 26, 2017 at 4:00 p.m.

9. Adjournment

Time: 8:20 pm

Draft - Subject to Board Approval

Jeffrey W. Davis, Secretary of the Board

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SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, CA 92223
Minutes of the
Board of Directors Engineering Workshop
June 12, 2017

Directors Present: David Fenn, President
Blair Ball, Director
David Castaldo, Director
Ron Duncan, Director
Steve Lehtonen, Director
Leonard Stephenson, Director

Directors Absent: Michael Thompson, Director

Staff Present: Jeff Davis, General Manager
Jeff Ferre, General Counsel
Cheryle Rasmussen, Executive Assistant

1. Call to Order, Flag Salute and Roll Call. The Engineering workshop of the San Gorgonio Pass Water Agency Board of Directors was called to order by Director Duncan at 4:00 p.m., June 12, 2017 in the Agency Conference room at 1210 Beaumont Avenue, Beaumont, California. Director Duncan led the Pledge of Allegiance to the flag. A quorum was present.

2. Public Comment. No members of the public wished to speak at this time.

3. Discussion of Principles of Proposed Water Exchange with Crestline Lake Arrowhead Water Agency. A list of principles was included in the agenda package. General Manager Davis reviewed the proposed exchange agreement with the Board. The agreement is for 2000 acre-feet of water coming to the Agency in 2017, with the Agency being required to provide 1000 acre-feet back to CLAWA within ten years, with no more than 500 acre-feet in any given year. Each party would pay the variable costs of the water delivered to it. After discussion, it was the consensus of the Board that this agreement be brought forward for action.

4. Discussion of Possible Fencing and Landscaping Options for Fiesta Recharge Facility. Options and costs for fencing were included in the agenda package. General Manager Davis noted that these were the same handouts used in the April 2013 Engineering workshop, so the prices would likely be higher today. After discussion, the Board asked General Manager Davis to gather updated cost information on various fencing options, discuss possible partnering options with the regional parks district, and come back to the Board for further discussion. General Council Ferre noted that staff has everything it needs to advertise the project for construction; the information requested by the Board would be used at a later date for potential installation of fencing and/or landscaping.

5. Discussion of District Transparency Certificate of Excellence. Information on the District Transparency Certificate of Excellence from the Special District Leadership Foundation was included in the agenda package. General Manager Davis told the Board that it is his impression that the Board wishes to be as transparent as possible on all issues, and indicated that the Agency could earn a certificate of excellence in transparency if it wishes. He reviewed the major requirements for such a certificate, noting that the Agency already has met most of

the requirements. After discussion, it was the consensus of the Board not to apply for such a certificate. The Board noted that they felt the Agency Board and staff are doing an excellent job in being transparent and that the Agency did not need a certificate to advertise this fact.

6. Announcements

- A. Regular Board Meeting, June 19, 2017 at 7:00 pm.
- B. Finance and Budget Workshop, June 26, 2017 at 4:00 pm.
- C. San Geronio Pass Regional Water Alliance, June 28, 2017
 - 1. Regular Meeting at 5:30 pm—Banning City Hall

7. Adjournment

Director Duncan adjourned the meeting at 5:03 pm.

Draft - Subject to Board Approval

Jeffry Ferre, Legal Counsel

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SAN GORGONIO PASS WATER AGENCY
1210 Beaumont Avenue, Beaumont, CA 92223
Minutes of the
Special Board Meeting
June 12, 2017

Directors Present: David Fenn, President
Ron Duncan, Vice President
Blair Ball, Director
David Castaldo, Director
Steve Lehtonen, Director
Leonard Stephenson, Director

Directors Absent: Michael Thompson, Director (Absent)

Staff Present: Jeff Davis, General Manager
Jeff Ferre, General Counsel

1. Call to Order, Flag Salute and Roll Call: The Special Meeting of the San Gorgonio Pass Water Agency Board of Directors was called to order by President David Fenn at 5:04 p.m., June 12, 2017 in the Agency Board room at 1210 Beaumont Avenue, Beaumont, California. A quorum was present.

2. Adoption and Adjustment of the Agenda: There were no changes to the agenda.

3. Public Comment. President Fenn asked if there was any public comment. Tom Shalhoub (Director of YVWD) referenced the last item that was discussed during the June 12th Engineering Workshop. He stated the California Special District Association is for a tool for special districts to use for educational purposes. No other members of the public wished to speak at this time.

4. Closed Session (1 Item) Time: 5:05 p.m.
A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Invitation of litigation pursuant to paragraph (4) of subdivision (d)
of Government Code Section 54956.9
(One Potential Case)

The meeting reconvened to open session at: Time: 5:55 pm

General Counsel Ferre stated that there was no action taken during closed session that is reportable under the Brown Act.

5. Announcements
A. Regular Board Meeting, June 19, 2017 at 7:00 p.m.
B. Finance and Budget Workshop, June 26, 2017 at 4:00 p.m.
C. San Gorgonio Pass Regional Water Alliance, June 28, 2017
1. Regular Meeting at 5:30 p.m.— Banning City Hall

6. Adjournment Time: 5:56 pm

Draft – Subject to Board Approval
Jeffrey W. Davis, Secretary of the Board

MEMORANDUM

TO: Board of Directors

FROM: General Manager

RE: Consideration and possible action to enter into a Water Supply Agreement with the Antelope Valley-East Kern Water Agency

DATE: June 19, 2017

Summary:

The Agency has been in negotiations with the Antelope Valley-East Kern Water Agency (“AVEK”) regarding the potential lease of 1,700 acre feet per year (“AFY”) of non-state water project water from the Kern River (“Nickel Water”). The Nickel Water has been made available to AVEK through a series of agreements and parties including, but not limited to, the Nickel Family LLC and the Kern County Water Agency. AVEK has offered to lease the Nickel Water to the Agency pursuant to the proposed Water Supply Agreement, a copy of which is included in the agenda package.

Background:

The Agency has for some time sought additional water supplies over and above its contracted amount of State Water Project Water of 17,300 acre-feet per year. This has included both long-term supplies and short-term supplies. The Agency has had some success in this regard, as listed below:

- Contracting for additional supplies from Yuba County Water Authority in years in which they are available (long-term).
- Purchasing 1000 extra acre-feet of water from a multi-year pool created by State Water Contractors.
- Signing several exchange agreements with Crestline-Lake Arrowhead Water Agency bringing water to the Agency’s service area up front, with a portion of that being exchanged back to CLAWA over a ten-year period.

Overall, the Agency has obtained approximately 6000 acre-feet of additional supplies through these mechanisms, with some portion of that needing to be returned to CLAWA.

However, the Agency recognizes that additional long-term supplies will be required, and has continued to seek these out. Last year, the Agency contracted with Provost & Pritchard to identify supplies that may be available throughout the State, and the Board directed staff to seek out some of these opportunities. Since that time, staff has been seeking such supplies through a number of potential transactions.

Detailed Report:

One of the opportunities identified in the Provost & Pritchard report was the Nickel Water, originally Kern River water rights belonging to the Nickel Family LLC that were sold to KCWA and subsequently leased to other parties in various portions. One portion, 1700 acre-feet, is currently under the control of AVEK and AVEK has offered to lease that Nickel Water to the Agency.

The proposed Agreement includes, but is not limited to, the following deal points:

- The water will be available annually for 20 years, beginning in 2017.
- The Agency will have the right of first refusal to renew the term of the Agreement for an additional 20-year term subject to agreement and consultation between the parties.
- Should AVEK not wish to renew the term, it will provide the Agency with one year's written notice.
- The 1700 acre-feet per year will be delivered by AVEK to the Tupman Turnout on the California Aqueduct, which is South of the Delta. The Agency will schedule delivery of this water with AVEK each year.

The Agreement and its exhibits define the cost of the water with an annual cost of living adjustment. Thus, the cost will increase each year. There are three components to the cost, not including the cost to pump it to the Agency's service area:

- Purchase of the water (annual adjustment)
- Replenishment charge (annual adjustment)
- Administrative charge (no annual adjustment)

The replenishment charge will start at \$300 per acre-foot in 2017, escalating annually either 3% or by the consumer price index in Los Angeles, Orange, and Riverside Counties, whichever is larger. The cost of the water will increase by the same index. The current or 2017 cost of this water is \$716.29 per acre-foot. The administrative charge is \$5 per acre-foot.

Thus, the cost per acre-foot of this water at the Tupman Turnout in 2017 is \$1021.29. This does not include the cost to pump the water to the Agency's service area. The approximate 2017 cost to do so is \$247, slightly less than the cost to pump from the Delta. For planning purposes, the Board should think in terms of the \$1021.29 increasing by approximately 3% per year. Over time, the variable rate to pump the water to the Agency's service area is likely to increase by more than 3% per year.

The total cost of the water, in 2017, including pumping it to the Agency's service area, is approximately \$1268.

Fiscal Impact:

In 2017, the cost to procure the 1700 acre feet (not including pumping it) would be approximately \$1.74 million. This would increase approximately 3% per year going forward (this could be more than 3% in years in which the regional CPI is greater than 3%).

CEQA Compliance

Agency staff has evaluated the proposed Agreement in light of the standards for environmental review set forth in the California Environmental Quality Act (Pub. Resources Code, §§ 21000 et seq.) and the California Code of Regulations (Cal. Code Regs., tit. 14, §§ 15000 et seq.) ("State CEQA Guidelines"). Based on that review,

staff has determined that the Agreement is exempt from CEQA review pursuant to State CEQA Guidelines section 15301. Specifically, the Agreement is exempt because implementation of the Agreement would consist of the continued operation of an existing public infrastructure system, the California Aqueduct, and would result in no construction or expansion of the existing use of the Aqueduct. Thus the Agreement is exempt from CEQA review.

Furthermore, the Agreement is also exempt from CEQA pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Agreement may have a significant impact on the environment. Implementation of the Agreement will only involve a minor annual change in the amount of water received by SGPWA. No physical facilities will be constructed to produce or transport water because all such required facilities already exist. In addition, no new water production or transportation capacity is created by the Agreement. As a result, it can be seen with certainty that there is no possibility that the exchange may have a significant impact on the environment.

Recommendation:

Staff recommends that the Board approve the Water Supply Agreement with the Antelope Valley-East Kern Water Agency, procuring 1700 acre-feet of additional water supply annually for twenty years.

Staff also recommends that the Board find that this action is exempt from the California Environmental Quality Act under Sections 15301 and 15061(b)(3) and direct staff to file the applicable notice.

WATER SUPPLY AGREEMENT

This Water Supply Agreement ("Agreement") is made and entered into as of April __, 2017, by and between the SAN GORGONIO PASS WATER AGENCY ("SGPWA") and ANTELOPE VALLEY-EAST KERN WATER AGENCY ("AVEK"). AVEK and SGPWA are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

A. AVEK and SGPWA are state water contractors and regional water agencies that provides water on a wholesale basis to retail water providers and other public agencies within their respective service areas.

B. As of January 1, 2017, AVEK acquired the right to take delivery of 1,700 acre feet per year ("AFY") of non state water project water ("Kern Water") that is provided by the Kern County Water Agency ("KCWA") through a series of agreements that are described as follows:

(i) Pursuant to that certain Contract to Transfer Kern River Lower River Water Rights dated January 23, 2001 ("KCWA-Nickel Agreement"), the Nickel Family, LLC, a California limited liability company ("Nickel"), conveyed its water rights in the Kern River to KCWA in exchange for a perpetual right to ten thousand (10,000) AFY of water ("Agency Transfer Water") to be made available by KCWA for the benefit of Nickel pursuant to the terms of the KCWA-Nickel Agreement. The KCWA-Nickel Agreement provides that Nickel is entitled to delivery of the Agency Transfer Water at a point called Tupman, located at milepost 238.04 within Reach 12E of the State Water Project's California Aqueduct, in Kern County ("Point of Delivery"). A copy of the KCWA-Nickel Agreement is attached hereto as Exhibit "A" and is incorporated herein by this reference. Nickel has the right to sell or transfer the Agency Transfer Water to third parties within or outside of Kern County;

(ii) In 2007, Nickel entered into that certain Option and Water Purchase Agreement dated May 1, 2007 ("Nickel-DMB Agreement"), with DMB Communities II LLC, an

Arizona limited liability company ("DMBCII"), pursuant to which DMBCII acquired an option to purchase the right to eight thousand three hundred and ninety three (8,393) acre-feet per year ("AFY") of Nickel's Agency Transfer Water ("Nickel Water"). Section 10 of the Nickel-DMB Agreement allows DMBCII to assign Nickel Water, under certain conditions, to third parties upon the consent of Nickel. DMBCII exercised the option in 2008 and Nickel approved DMBCII's assignment of the Nickel-DMB Agreement to DMB Pacific, LLC, a Delaware limited liability company ("DMB"). A copy of the Nickel-DMB Agreement is attached hereto as Exhibit "B" and is incorporated herein by this reference;

(iii) In 2013, DMB assigned to CV Communities, LLC, a Delaware limited liability company, the right to purchase one-thousand seven-hundred (1,700) AFY of Nickel Water pursuant to the terms of that certain Option and Partial Assignment of DMB Interest In 2007 Option And Water Purchase Agreement To CV Communities dated July 10, 2013 ("CV Option Agreement"). Nickel consented to the CV Option Agreement (the "Nickel Consent"). Both the CV Option Agreement and the Nickel Consent are attached hereto as Exhibit "C". CV exercised the option on March 31, 2016; and

(iv) CV assigned all of its rights and interest in the CV Option Agreement to AVEK pursuant to that certain Assignment of CV Communities, LLC, Interest in 2007 Option and Water Purchase Agreement to Antelope Valley East-Kern Water Agency dated June 6, 2016 ("AVEK Assignment") and AVEK assumed all of CV's obligation under the CV Option Agreement. The AVEK Assignment is attached hereto as Exhibit "D". The rights of AVEK pursuant to the AVEK Assignment became effective on January 1, 2017.

C. AVEK desires to supply the Kern Water to SGPWA in accordance with the terms and conditions set forth herein and SGPWA desires to purchase such water on a long term basis to supplement its existing water supplies.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Purpose.** The Purpose of this Agreement is to formalize the terms and conditions by which AVEK will provide the Kern Water to SGPWA, for delivery at the Point of Delivery, beginning on the Effective Date and continuing each year thereafter for as long as this Agreement remains in effect.

2. **Effective Date.** The Effective Date of this Agreement will be as of January 1, 2017, and SGPWA will be entitled to all Kern Water delivered to AVEK as of that date.

3. **Term of Agreement.**

(a) **Contract Term.** The term of the Agreement shall commence on the Effective Date and end on December 31, 2036 ("Term"). AVEK will take all action necessary to maintain its rights pursuant to the CV Option Agreement throughout the Term. SGPWA will have the first right of refusal to renew the Term for an additional twenty (20) year term subject to agreement and consultation among the parties. Should AVEK not wish to renew the Term, it shall provide SGPWA with one year's written notice to that effect.

(b) **Delivery Year.** Each "Delivery Year" shall commence on the Effective Date and any anniversary thereof during the Term and continue for a period of one (1) year.

4. **Quantity of Kern Water.** SGPWA will be obligated to take or pay for its full allocation of Kern Water during each Delivery Year.

5. **Reservation of Kern Water.** Subject to the terms and conditions of this Agreement, AVEK shall take all action necessary to fulfill its obligations to deliver Kern Water to SGPWA under this Agreement. To the extent possible, AVEK will coordinate with KCWA CV, DMB, DMBCII and Nickel, and SGPWA to schedule deliveries of the Kern Water at the Point of Delivery.

6. **Purchase Price for Kern Water.** The purchase price for Kern Water delivered

by AVEK to SGPWA shall be (i) the purchase price per acre foot as set forth in the Nickel-DMB Agreement; and (ii) an annual replenishment charge of three hundred dollars (\$300.00) per acre foot payable to AVEK. If SGPWA does not import all the Kern Water to its service area annually, SGPWA can deliver the unused portion of the Kern County water to AVEK's turnout and forgo the replenishment charge for water delivered to AVEK. AVEK will have the right to otherwise store and/or dispose of such water unless SGPWA has entered into a separate water banking agreement with AVEK to store such water. The replenishment charge will be adjusted for each Delivery Year commencing on January 1, 2018, based on the change in the Consumer Price Index - identified in the Nickel Agreement .

7. **Costs of Delivery.** SGPWA will be responsible for (i) all power charges as required pursuant to Section 4.5 of the KCWA-Nickel Agreement to deliver the Kern Water to the Point of Delivery (a copy of Exhibit D to the KCWA-Nickel Agreement is attached hereto as Exhibit "E"); and (ii) all charges to deliver the Kern Water from the Point of Delivery to the SGPWA service areas, including without limitation, all wheeling charges imposed by the Department of Water Resources.

8. **Payments.**

(a) AVEK shall invoice SGPWA on an annual basis in advance for the amounts payable to purchase water pursuant to Section 6(i) and SGPWA will pay such invoice within thirty (30) days of the invoice date. .

(b) The replenishment charge will be payable to AVEK per section 8(a). At the end of each Delivery Year based on the actual number of acre feet of Kern Water that is delivered to SGPWA. and AVEK ; AVEK will credit SGPWA for such amounts delivered to AVEK. SGPWA will be responsible to pay AVEK and/or KCWA for all power charges or other delivery charges payable by SGPWA pursuant to Section 7 of this Agreement within thirty (30) days of the date of an invoice for such amounts.

(c) AVEK shall have the right to charge late fees of up to five percent (5%) of

the overdue amount for any invoice that is not paid within 30 days after the due date or 60 days after the invoice date.

9. Delivery of Water.

(a) **Point of Delivery.** The physical point of delivery of Kern Water pursuant to this Agreement shall be the Point of Delivery, provided, however, that if SGPWA enters into a water banking agreement with AVEK, then the Point of Delivery will be as specified in such agreement. AVEK and SGPWA will be solely responsible for coordinating water deliveries from the Point of Delivery to the SGPWA service area.

(b) **Delivery Schedule.** AVEK will cooperate with SGPWA to coordinate with KCWA for the delivery of the Kern Water to SGPWA at the Point of Delivery upon a mutually agreeable delivery schedule. All deliveries will be subject to the terms of the KCWA-Nickel Agreement.

(c) **Suspension.** The delivery of Kern Water may be suspended or curtailed during any period of public emergency or disaster that is declared by AVEK. For the purposes of this Agreement, a public emergency or disaster shall not include ordinary measures taken during periods of drought or water shortage.

(d) **Obligations of AVEK.** For the purposes of this Agreement and subject to the limitations contained in this Section 9, AVEK shall have fulfilled its obligation to make Kern Water available for delivery so long as the amount of Kern Water scheduled for delivery by SGPWA is available at the Point of Delivery pursuant to a predetermined and mutually agreed upon delivery schedule.

10. Water Quality. AVEK makes no representation or warranty concerning the quality of the Kern Water delivered by KCWA to the Point of Delivery, provided, however, that AVEK will work with SGPWA, CV, DMB, DMBII and Nickel to enforce the terms of the KCWA-Nickel Agreement.

11. **Resale of Kern Water.** SGPWA shall be free to market and sell the Kern Water to other parties within their service area without restriction to price and terms. SGPWA assumes all responsibility for delivery of Kern Water from SGPWA to its customers and contracting parties. AVEK's obligations under this Agreement are solely with SGPWA and no customer of SGPWA nor other third party shall have the right to enforce the terms of this Agreement as a third party beneficiary.

12. **Regulatory Requirements.** The implementation of this Agreement shall be subject to satisfaction by AVEK and SGPWA of the regulatory requirements set forth herein. Each of AVEK And SGPWA shall, if necessary, undertake the following: (i) obtain all permits, consents, entitlements and approvals necessary to enable the AVEK to reserve and sell, and SGPWA to purchase, the Kern Water that is the subject of this Agreement; and (ii) fully and completely comply with the requirements of the California Environmental Quality Act ("CEQA"), including, if it is determined that this transaction is subject to CEQA and not exempt from CEQA, the completion of an initial study, and (1) either (a) there shall have been adopted a negative declaration or a mitigated negative declaration, or (b) a final environmental impact report shall have been completed and approved, and (2) the time shall have expired within which a judicial proceeding may be instituted challenging the validity or completeness of any such determination of exemption, or adoption of a negative declaration or of a mitigated negative declaration, or approval of a final environmental impact report. The lead agency for the purposes of CEQA will be determined in consultation between AVEK and SGPWA.

13. **Service Area Integrity.** Nothing in this Agreement is intended nor shall it be interpreted to change the existing service area of AVEK and SGPWA or to allow AVEK to sell water to any retail customer of SGPWA.

14. **Representations or Warranties of AVEK.** AVEK makes the following representations, warranties and covenants to SGPWA:

(a) **Power and Authority to Execute and Perform this Agreement.** AVEK has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Enforceability.** This Agreement and the CV Option Agreement constitute legal, valid and binding agreements and the obligations of AVEK pursuant to this Agreement and the AVEK Assignment, are enforceable against the AVEK in accordance with their respective terms.

15. **Representations or Warranties of SGPWA.** SGPWA makes the following representations, warranties and covenants to AVEK:

(a) **Power and Authority to Execute and Perform this Agreement.** SGPWA has the power and authority to enter into this Agreement and to perform its obligations and all necessary approvals and authorizations have been obtained.

(b) **Enforceability.** This Agreement constitutes a legal, valid and binding obligation of SGPWA, enforceable against SGPWA in accordance with its terms.

16. **Default and Termination.** In the event either party (“Defaulting Party”) fails to make any payment under this Agreement when due, or fails to perform any obligation otherwise required by this Agreement, the other party (“Non-Defaulting Party”) may demand in writing that the Defaulting Party cure such non-performance. The Defaulting Party shall have ninety (90) days after receipt of such demand to cure. In the event the Defaulting Party fails to cure a default within the ninety (90) day period, the Non-Defaulting Party may pursue the applicable remedies and in the event SGPWA is the Defaulting Party, AVEK may suspend delivery of Kern Water and redirect such water to other uses for the duration of the suspension. During this suspension of deliveries, AVEK and SGPWA shall meet and confer on the dispute in an attempt to resolve it. AVEK shall restore water delivery when SGPWA has cured all outstanding defaults and paid all amounts due to AVEK as agreed to by both parties. In the event that the dispute is not

resolved within 90 days after suspension, AVEK may terminate this Agreement at any time thereafter.

17. Expiration of Term. This Agreement shall terminate and be of no further force and effect as of the expiration of the Term.

18. Indemnity. SGPWA, its successors and assigns, shall hold harmless, defend and indemnify AVEK, its officials, employees, agents, successors and assigns (all of which are herein referred to as the "AVEK Indemnified Parties") from and against all liabilities, obligations, claims, damages, losses, actions, judgments, suits, costs and expenses, including but not limited to reasonable attorneys' fees (collectively, "Damages"), which may be imposed on, incurred by, or asserted against AVEK Indemnified Parties as a result of (i) a breach of SGPWA's obligations; or (ii) the delivery, use or transfer of the Kern Water by SGPWA. Notwithstanding the foregoing, in no event shall SGPWA be liable to indemnify a AVEK Indemnified Party for (i) any Damages resulting from the gross negligence or willful misconduct of AVEK; or (ii) any third party claim brought in connection with regulatory approvals. This indemnification shall survive termination of the Agreement. AVEK, its successors and assigns, shall hold harmless, defend and indemnify SGPWA, its successors and assigns, from and against all Damages which may be imposed on, incurred by, or asserted against SGPWA as a result of a breach of AVEK's obligations under the AVEK Assignment or this Agreement.

19. Third Party Claims. Promptly following notice of any "Third Party Claim" for which AVEK is indemnified hereunder, AVEK shall notify SGPWA of such claim in writing. SGPWA shall have a period of thirty (30) days following the receipt of such notice to notify AVEK of whether SGPWA elects to assume the defense thereof. If SGPWA so notifies AVEK that it elects to assume the defense, SGPWA thereafter shall undertake and diligently pursue the defense of the Third Party Claim. SGPWA shall not consent to entry of judgment or enter into any settlement agreement, without the consent of AVEK, which does not include a complete and unconditional release of AVEK or which imposes injunctive or other equitable relief against AVEK. AVEK shall be entitled to participate in, but not control, the defense thereof, with counsel of its choice and at its own expense. If SGPWA does not give the requisite notice, or

fails to assume and diligently pursue the defense of such Third Party Claim, AVEK may defend against such Third Party Claim in such manner as it may deem appropriate, at SGPWA's expense, including without limitation settlement thereof on such terms as AVEK may deem appropriate, and to pursue such remedies as may be available to AVEK against SGPWA. Notwithstanding the foregoing, AVEK shall not consent to entry of a judgment or enter into any settlement agreement, without the consent of SGPWA, which does not include a complete and unconditional release of SGPWA.

20. Notice of Claims. The Parties shall promptly notify each other within ten (10) days of AVEK or SGPWA becoming aware of: (1) any claims or suits brought against AVEK or SGPWA which involve this Agreement or water supplied to SGPWA pursuant to this Agreement, or (2) any Third Party Claims. Any such notice shall conform to the requirements specified in Section 26 of this Agreement.

21. Remedies Not Exclusive. Remedies provided in this Agreement for enforcement of its terms are intended and shall be construed as cumulative rather than exclusive and shall not be deemed to deprive either Party from also using any other remedies provided by this Agreement or by law.

22. No Transfer of Rights. The rights granted to SGPWA hereunder constitute the right to take delivery of Kern Water only and shall not be interpreted as a sale, transfer, or assignment of any of AVEK's rights under the AVEK Assignment or the CV Option Agreement.

23. Subject to Applicable Law. The Parties acknowledge and agree that this Agreement and the rights and obligations of the Parties shall be subject to the laws governing municipal corporations as they now exist and as they may be amended or codified by the Legislature of the State of California.

24. Entire Agreement. This Agreement contains the entire understanding between SGPWA and AVEK with respect to its subject matter, and supersedes all prior agreements, oral

or written, and all prior or contemporaneous discussions or negotiations between SGPWA and AVEK. This Agreement cannot be amended except in writing signed by both Parties.

25. No Waiver. Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

26. Notices. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at their respective addresses set forth next to their signatures below, or such other address as a Party notifies the other in writing.

27. Headings; Section References. Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

28. Separability. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

29. Binding Effect Assignment. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. SGPWA shall have the right to assign its rights under this Agreement with the written consent of AVEK, provided, however, that the AVEK shall not unreasonably withhold such consent and further

provided that the assignee agrees to be bound by all of the obligations of SGPWA set forth herein. Notwithstanding the foregoing, any assignment by SGPWA will be subject to the requirements of the KCWA-Nickel Agreement, the Nickel-DMB Agreement or the CV Option Agreement.

30. **Attorneys Fees.** In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

31. **Governing Law and Venue.** This Agreement is a contract governed in accordance with the laws of the State of California. THE PARTIES HEREBY AGREE THAT VENUE FOR ANY ACTION BROUGHT TO ENFORCE THE TERMS OF THIS AGREEMENT SHALL BE IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SAN BERNARDINO, CALIFORNIA, AND CONSENT TO THE JURISDICTION THEREOF.

[Signatures follow on the next page]

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

AVEK:

SGPWA:

ANTELOPE VALLEY EAST KERN
WATER AGENCY

SAN GORGONIA PASS WATER
AGENCY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Fax: _____

Fax: _____

Phone: _____

Phone: _____

EXHIBIT "A"

KCWA-NICKEL AGREEMENT

COPY

CONTRACT TO TRANSFER
THE KERN RIVER LOWER RIVER WATER RIGHTS

This Contract is made as of the 23rd day of January 2001, by and between Nickel Family, LLC ("Nickel"), a California limited liability company; the Olcese Water District ("Olcese") and the Kern County Water Agency ("Agency"), both of which are public agencies in the State of California, duly organized, existing and acting pursuant to the laws thereof.

RECITALS

WHEREAS, the Governor's Budget Act for 2000, Chapter 52, Statutes of 2000, appropriated to the Department of Water Resources local assistance grant funds in the amount of \$161,544,000 by budget item 3860-01-6027, payable from the interim Reliable Water Supply and Water Quality Infrastructure and Management Subaccount, and the Kern County Water Agency's Kern River Restoration Project has been selected for funding in the amount of \$23,000,000 from that subaccount; and

WHEREAS, the Agency intends to use money from that appropriation for development of local water supplies, water quality, conveyance and banking programs within Kern County; and

WHEREAS, the Agency has identified the acquisition of the Lower River Water Rights as a source suitable for such programs; and

WHEREAS, the Lower River Water Rights are Kern River rights that historically have yielded on average 50,000 acre-feet per Year; and

WHEREAS, the Agency has purchased the undivided interest in the Lower River Water Rights, and other water rights and inventories, previously owned by Garces Water Company; and

WHEREAS, Olcese owns the remaining interest in the Lower River Water Rights subject to Nickel's right to use any portion of that water that is excess to Olcese's needs in accordance with the March 18, 1981 contract between Olcese and Nickel; and

WHEREAS, the Agency desires to purchase the remaining interest in the Lower River Water Rights and other interests described herein from Olcese and Nickel on the terms provided for in this Contract; and

WHEREAS, pursuant to the Detachment and Water Sale Contract No. 99-150, dated June 30, 1999, between Olcese, the City of Bakersfield and the California Water Service Company, the City of Bakersfield will provide water to meet the future municipal and industrial needs of lands within Olcese that are within the boundaries of the City of Bakersfield, provided those lands are detached from Olcese; and,

WHEREAS, while there is no current demand from the landowners in Olcese for agricultural water supplies, if there should be a demand for water for agricultural use within Olcese over and above the amount that can be supplied to such lands from riparian rights, Olcese will receive sufficient compensation from the sale of its Lower River Water Rights to enable it to meet those demands from sources other than the Lower River Water Rights; and

WHEREAS, the Olcese Board of Directors has determined that the transfer of the Lower River Water Rights to the Agency as provided for in this Contract is in the best interest of its landowners; and

WHEREAS, the Agency, as the lead agency, and Olcese as a responsible agency, have completed all requirements under the California Environmental Quality Act for all actions provided for in this Contract.

NOW, THEREFORE, Nickel, Olcese and the Agency agree as follows:

ARTICLE I. DEFINITIONS

When used in this contract, the following terms have the meanings hereinafter set forth:

1.1 "Agency's Return on Investment Rate" means the County of Kern's Treasury Pool investment rate.

1.2 "Agency SWP Entitlement Water" and "SWP Entitlement Water" mean the SWP water provided for in Table A of the Agency's Water Supply Contract.

1.3 "Agency's Water Supply Contract" means the November 15, 1963 Water Supply Contract between the State of California Department of Water Resources and Kern County Water Agency, as amended.

1.4 "Carmel Rights" means those rights and interests described in Exhibit C.

1.5 "Castrò Ditch Rights" means those water rights and interests described in Exhibit B.

1.6 "CEQA" means the California Environmental Quality Act, California Public Resources Code sections 21000, *et seq.*

1.7 "Close of Escrow" or "Closing Date" means the day on which all applicable conditions precedent to this Contract are completed to Nickel's, Olcese's and the Agency's satisfaction or waived by the party that benefits from the condition precedent as set forth in Articles 8.1, 9.1 and the assignments provision of Article 10.1.

1.8 "DWR" means the Department of Water Resources of the State of California.

1.9 "Escrow Agent" means Chicago National Title Company in its Bakersfield, California office.

1.10 "Agency Transfer Water" means 10,000 acre-feet of water annually, to be provided by the Agency to Nickel for delivery and sale to third parties from the California Aqueduct.

1.11 "Johnson Ditch Rights" means those water rights described in Exhibit B.

1.12 "Lower River Water Rights" means those water rights described in Exhibit A.

1.13 "Rio Bravo Ranch" means that property described as the southern half of the northeast quarter and that portion of the southern half north of the Kern River of Section 33, the southern half of the southern half of Section 34, the southern half of the northern half and the southern half of Section 35, the southern half of the northern half and the southern half of Section 36, Township 28 South Range 29 East Mount Diablo Base and Meridian; Section 1, Section 2, the portion of Section 3 lying east of the Kern River, the northeast quarter of Section 10, Section 11, Section 12, the western half of the northeast quarter and the northwest quarter of the southeast quarter of Section 13, the northeast quarter of Section 24, Township 29 South, Range 29 East Mount Diablo Base and Meridian; the southern half of Section 5, Section 6 and Section 8, Township 29 South, Range 30 East Mount Diablo Base and Meridian, as depicted on Exhibit F.

1.14 "State" means the State of California.

1.15 "State Funds" means the funds made available to the Agency by the State from appropriations of funds authorized by Chapter 52, Statutes of 2000.

1.16 "SWP" means the State Water Project.

1.17 "Tupman" means the point of delivery on the California Aqueduct more particularly described as milepoint 238.04 located within Reach 12E of the California Aqueduct.

1.18 "Year" means the twelve (12) month period from January 1st through December 31st, both dates inclusive.

ARTICLE 2. GENERAL PROVISIONS

2.1 The Agency is purchasing and Nickel and Olcese are selling to the Agency their Lower River Water Rights and other rights as described and provided for herein. The Agency shall pay Nickel and Olcese for these rights the various considerations provided for in this Contract, including, but not limited to, providing Nickel with 10,000 acre-feet of Agency Transfer Water annually at Tupman which Nickel intends to sell both within and outside of Kern County. The Agency shall assume all the rights, duties and obligations associated with the Lower River Water Rights and other rights being transferred to it. Nickel, the Agency, and Olcese shall cooperate with each other in the

performance of their respective obligations and in the exercise of their respective rights under this Contract.

ARTICLE 3. TERM OF CONTRACT

3.1 This Contract shall continue in perpetuity. However, if Escrow does not close by the date specified in Article 11.1, this Contract shall terminate on that date.

ARTICLE 4. PURCHASE AND PAYMENT TERMS

4.1 Purchase and Sale: Nickel hereby sells to the Agency and the Agency hereby purchases from Nickel all of Nickel's rights, title and interest to the Lower River Water Rights, including, but not limited to, Nickel's right to store, exchange, substitute and regulate the Lower River water as set forth in Exhibit A. Nickel also quitclaims to the Agency the Castro Ditch Rights and the Johnson Ditch Rights as set forth in Exhibit B. Olcese hereby sells to the Agency and the Agency hereby purchases from Olcese all of Olcese's rights, title and interest to the Lower River Water Rights, including, but not limited to, Olcese's right to store, exchange, substitute and regulate the Lower River Water as set forth in Exhibit A. Nickel and Olcese also hereby substitute the Agency as attorney-in-fact for any powers of attorney they may presently have relating to the Lower River Water Rights sold to the Agency. The purchase and sale of all of these rights shall be consummated through the escrow opened with the Escrow Agent. Any escrow instructions given the Escrow Agent by Nickel, Olcese or the Agency shall be consistent with the terms of this Contract unless otherwise agreed to by all parties in writing.

4.2 Cash Payments: By the Close of Escrow, Agency shall pay to Olcese one million dollars (\$1,000,000) for the purchase of Olcese's Lower River Water Rights. By the Close of Escrow, Agency shall pay to Nickel six million four hundred twenty-two thousand dollars (\$6,422,000) as partial consideration for the purchase of all rights and assets acquired by the Agency from Nickel under this Contract. The Agency shall pay Nickel and Olcese interest at the Agency's Return on Investment Rate on the above sums from the date on which the Agency receives not less than \$10,000,000 of State Funds until the Close of Escrow. This interest shall be payable within five days of the Agency's receipt of the County of Kern's calculation of the first quarter of the Year 2001 quarterly interest rate, provided that the escrow closes, to Nickel and Olcese in proportion to the purchase payments to be paid to them respectively as provided for above.

4.3 Internal Revenue Code Section 1031 Exchange: Agency agrees to cooperate with Nickel in completing an exchange qualifying for nonrecognition of gain under Internal Revenue Code section 1031 and the applicable provisions of the California Revenue and Taxation Code. Nickel reserves the right to convert this transaction to an exchange at any time before the Close of Escrow. Nickel and the Agency agree, however, that consummation of the transaction contemplated by this Contract is not conditioned on completion of such an exchange. Nickel shall have the right to transfer and assign to an intermediary all of Nickel's rights and obligations under this Contract in order to complete the exchange. The Agency shall incur no additional liabilities, expenses or costs as a result of or connected with the exchange.

4.4 Water Exchange: Beginning in 2001 the Agency shall deliver to Nickel, annually during the term of this Contract, ten thousand (10,000) acre-feet of the Agency Transfer Water at Tupman as partial consideration for Nickel's interest in the Lower River Water Rights. The Agency shall provide the Agency Transfer Water at Tupman at no cost to Nickel other than the cost set forth in Article 4.5. The Agency shall use its best efforts to obtain and maintain approvals from the DWR for delivery of any Agency Transfer Water into the California Aqueduct, and if such approvals are not obtained after reasonable efforts the parties shall, in good faith, negotiate alternative mechanisms for delivery of Agency Transfer Water.

4.5 Power Charges: In any Year in which the Agency's allocation of SWP Entitlement Water on May 1st is seventy-five percent (75%) or less than its entitlement for that Year, Nickel shall pay the Agency the following power charge within thirty days after the Agency submits an invoice to Nickel, which invoice shall be submitted on or shortly after May 1. The power charge set forth in the invoice shall be an amount determined by the Agency by multiplying 10,000 acre-feet by the Agency's estimated per acre-foot power costs for pumping water from the Agency's Pioneer Project and delivering it to Tupman. The Agency shall estimate this per acre-foot cost using the method set forth in Exhibit D. There shall be no power charge to Nickel in any Year in which the Agency's allocation of SWP Entitlement Water on May 1 is greater than 75% of its SWP entitlement for that Year.

4.6 Treatment Costs: If the Agency is prevented from delivering non-SWP water into the California Aqueduct to meet the ten thousand (10,000) acre-foot obligation to Nickel required by Article 4.4 due to water quality restrictions unless it is treated, the Agency shall pay the cost of treating that water to the level acceptable for delivery into the California Aqueduct.

4.7 California Aqueduct Capacity: The ten thousand (10,000) acre-feet of Agency Transfer Water provided to Nickel shall be transported within the California Aqueduct to the full extent of the Agency's rights to use Aqueduct.

4.8 Scheduling of Agency Transfer Water: The Agency, in consultation with Nickel, shall schedule all Agency Transfer Water deliveries with the DWR at the same time and in the same manner as the Agency schedules deliveries of SWP Entitlement Water to the Agency's Member Units, as set forth in the Agency's contracts with its Member Units as they presently exist or may be changed from time to time.

4.9 Agency Transfer Water Sales: Any sale of the Agency Transfer Water shall be at the sole discretion and direction of Nickel. Nickel may request Agency's assistance, involvement and expertise in negotiating and consummating any sale. The Agency shall cooperate and assist Nickel, as requested, subject to the Agency's legal powers and duties and the direction of the Agency's Board of Directors. The Agency's involvement may include efforts to market Nickel's Agency Transfer water on behalf of Nickel, entering into contracts for the sale of the Agency Transfer Water and efforts to obtain the approval, cooperation and assistance of DWR and the State Water Contractors in obtaining any necessary approvals from regulatory agencies to effect such sales or transfers.

4.10 Proceeds of Agency Transfer Water Sales: All net proceeds of Agency Transfer Water sales shall be distributed as follows: Ninety percent (90%) to Nickel; ten percent (10%) to the Agency. "Net proceeds of Agency Transfer Water sales" shall mean the amount remaining from the proceeds of a sale after deducting any payments to third parties or other costs incurred by Nickel or the Agency that are necessary in order to complete a sale, such as costs for CEQA compliance, regulatory fees and charges, wheeling charges, power charges for transportation beyond Tupman or pursuant to Article 4.5, etc. Neither Nickel's nor the Agency's administrative costs in affecting an Agency Transfer Water sale shall be deemed to be payments to third parties necessary to complete a sale. All costs shall conform with standard industry practice, and are subject to audit at the requesting parties expense. After incurring such costs, Nickel or the Agency may invoice the other party for its respective share of such costs (Nickel 90%, Agency 10%) and payment thereon shall be made within thirty days of mailing.

4.11 Riparian or Carmel Rights: The Agency shall not challenge or contest directly or indirectly any of the Kern River riparian rights, as defined in the March 18, 1981 "Agency Agreement for Riparian Lands - Olcese Water District", of Nickel or Rio Bravo Ranch. The Agency shall not challenge or contest directly or indirectly any of the Carmel Rights of Olcese, Nickel or Rio Bravo Ranch.

4.12 Discharge of Well Water: The Agency shall not challenge or support any challenge to Olcese's or Rio Bravo Ranch's discharge of well water into the Kern River to meet the demands of the Rio Bravo Ranch or Olcese; provided, that the pumping of such well water does not substantially degrade the Kern River water quality to the injury of the Agency. The Agency acknowledges that Nickel has provided the Agency with an April 2000 study by Kenneth D. Schmidt and Associates regarding the origin of the groundwater pumped by Rio Bravo Ranch and Olcese.

4.13 Additional Consideration: At the Close of Escrow:

(a) The Agency shall convey to Nickel all of the Agency's rights, title and interest in the water inventories, more particularly described in Exhibit E.

(b) Olcese shall convey to the Agency all of Olcese's rights, title and interest in the City of Bakersfield's 2,800 acre recharge facility and to any water banked therein, subject to the City of Bakersfield's agreement to release Olcese from the thirteen (13) year supply requirement to meet the demands within Olcese set forth in Agreement 77-07, as amended by Agreement 78-12, Agreement 81-76, and Agreement 90-05.

(c) The Agency shall quitclaim all its rights, title and interest in the Carmel Rights to Olcese.

(d) Garces Deed: The Agency shall quitclaim to Nickel the rights and property identified in Exhibit G which were included in the rights and property granted to the Agency by the Garces Water Company, Inc. in the September 1, 2000 grant deed from Garces Water Company, Inc. to the Agency.

(e) Nickel and Olcese shall deliver to the Agency all documents, files, legal files, historical records, communications and correspondence related to the Lower River Water Rights and the Johnson and Castro Ditch rights. Nickel and Olcese may, at their cost, make copies of such records. The Agency shall provide Nickel and Olcese access to any documents relating to the Lower River Water Rights in its possession upon request.

(f) Miller and Lux Facilities: Nickel and its related entities, and Olcese, agree to transfer, assign and convey any water or water related rights acquired from Miller & Lux, and its successors in interests, related to the Kern River within Kern County north of Highway 46. These rights may include, but are not limited to, transportation, spreading, storage and water rights.

ARTICLE 5. WATER PIPELINE EASEMENT

5.1 Nickel shall grant the Agency, for fifty thousand dollars (\$50,000), an easement through Nickel's Rio Bravo Ranch for a water pipeline, beginning at the Rio Bravo Hydroelectric Project power plant forebay and roughly paralleling Highway 178. The size, use, location and terms for this easement shall be mutually agreed upon by Nickel and the Agency. If the use of this easement by the Agency causes any damage of facilities, improvements or orchards in the Rio Bravo Ranch, the Agency shall either, at Nickel's election, replace the damaged facilities or compensate Nickel for the fair market value of the damages. Agency's use of the power canal shall be consistent with the Condemnation Settlement Agreement of May 20, 1985. If any Agency facilities in the easement interfere with Nickel's current or future use of the Nickel's property, the Agency, at Nickel's request, shall relocate its facilities at Nickel's expense. Nickel is not obligated to obtain subordination from existing deeds of trust on its property. For the granting of the easement provided for herein, the Agency shall pay all costs to survey and record the easement. Nickel and the Agency shall use their best efforts to record the easement prior to the Close of Escrow; however, if the easement is not recorded within one year from the date of execution of this Contract the Agency's right to the easement will expire, and the \$50,000 payment will be retained by Nickel unless failure to record has been caused by Nickel's failure to cooperate or unreasonable disapproval of proposed alignments. The Agency hereby grants Nickel (a) the right to convey water in the Agency's future water pipeline at the Agency's incremental cost to the extent there is capacity in the water pipeline not being used by the Agency and (b) the right to increase the capacity of the Agency's future water pipeline at the incremental cost.

ARTICLE 6. HYDROPOWER

6.1 Hydropower Interests: Nickel's conveyance of its Lower River Water Rights, and the other described rights to the Agency provided for in this Contract does not include Nickel's rights in the Rio Bravo Hydroelectric Project. The parties agree that Nickel retains its eighty-five percent (85%) interest in the Rio Bravo Hydroelectric Project Agreement dated April 29, 1985 between Catalyst Energy Development Corporation, Catalyst Rio Bravo Corporation and Olcese and the Condemnation Settlement Agreement dated May 20, 1985 between Nickel Enterprises and Olcese.

6.2 Right to Take: Nickel and Olcese shall grant to the Agency the right to take water from the Rio Bravo Hydroelectric Project to serve the Agency's proposed water pipeline referred to in Article 5.1. The Agency's right to take such water shall be subordinate at all times to the extent of Nickel's and Olcese's rights for the Rio Bravo Ranch's current or future irrigation demands.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1 Nickel and Olcese hereby acknowledge, represent and warrant to the Agency that, as of the date of this Agreement and the Close of Escrow:

(a) Recitals and Exhibits: The Recitals and Exhibits to this Contract are true and correct.

(b) Organization: Nickel and Olcese are duly organized and validly exist in good standing under the laws of the State of California. Nickel and Olcese have full power, authority and legal right to execute, deliver and perform this Contract. To the best of Nickel's and Olcese's knowledge (after due diligent investigation and due inquiry), Nickel and Olcese have the unrestricted right and power to own, use and sell their respective interests in the Lower River Water Rights, as set forth in Exhibit A, as provided in and required by this Contract, have complied with all applicable laws and regulations of governmental agencies, officials or authorities, have obtained all necessary permits, licenses and approvals necessary and appropriate to proceed with the conduct of their business in accordance with the requirements of this Contract and have followed all necessary, proper and appropriate procedures in procuring such permits, licenses and approvals.

(c) Authorization: The execution and delivery by Nickel and Olcese of this Contract, and any other agreements or instruments required by this Contract and the performance by Nickel and Olcese of their obligations in connection with this Contract: (1) have been each duly authorized by all necessary boards of directors; and (2) to the best of Nickel's and Olcese's knowledge, after diligent investigation and due inquiry, require no registrations with or approvals of any person not heretofore obtained.

(d) Litigation: To the best of Nickel's and Olcese's knowledge (after diligent investigation and due inquiry), there is no action, suit, claim, cause of action, or proceeding at law or in equity (or by or before any governmental agency, official or authority of any local, State or Federal government) now pending, contemplated by Nickel or Olcese or threatened in writing against or affecting any Lower River Water Rights other than as expressly stated in a writing delivered to Agency at or prior to the Close of Escrow.

(e) No Oral Understandings: In executing this Contract, neither Nickel nor Olcese is relying upon any representation, communication, understanding or expectation (whether express or implied) that is not clearly and expressly stated in this Contract.

(f) Receipt of Information: Nickel and Olcese have received any and all information from the Agency which they desire or expect in connection with the transaction evidenced by this Contract, or any other document related to or required by this Contract. Nickel and Olcese are not relying upon the Agency directly or indirectly to disclose (or to evaluate any other person's disclosure of) any such matters, and Nickel and Olcese excuse and release the Agency from any duty whatsoever to make such disclosures.

(g) No Continuing Obligations: Nickel and Olcese understand and agree that, after the Close of Escrow, the Agency shall have no direct or indirect obligations whatsoever to them except as expressly stated in or required by this Contract.

(h) Separate Obligations: Nickel and Olcese shall be bound by and perform this Contract and each of the other documents related to or required by this Contract to which they are a party, separately and independently from the obligations of any other person or entity and regardless of whether or not any other person or entity performs this Contract or any other documents related to or required by this Contract.

(i) Violations of Applicable Laws: To the best of their knowledge, neither Nickel nor Olcese is in violation of any law, statute, regulation, ordinance or other governmental provisions with respect to any of the Lower River Water Rights to be conveyed to the Agency pursuant to this Contract.

(j) Violations of Other Agreements: The entry into this Contract does not create or result in a breach of any agreements with respect to any of the Lower River Water Rights to which Nickel or Olcese is a party or to which either of them is otherwise subject or bound.

(k) Ownership of Lower River Water Rights: Nickel and Olcese (a) collectively are the sole owners of the remaining of the Lower River Water Rights, as set forth in Exhibit A, being conveyed herein exclusive of any other owner or claimant and (b) have no knowledge and are not aware of any notice or other information concerning any other claims of any kind which would effect Nickel's or Olcese's title or claim to the Lower River Water Rights. The Lower River Water Rights described in Exhibit A constitute a complete description of all water, water storage, exchange entitlements and drainage contracts and other miscellaneous rights of any kind or description relating thereto owned or claimed by Nickel and Olcese. Nickel and Olcese have heretofore supplied the Agency with all documents known to Nickel and Olcese which constitute evidence of any Lower River Water Rights and title and claim thereto by Nickel and Olcese.

(l) Taxes: To the best of Nickel and Olcese's knowledge (after diligent investigation and due inquiry), Nickel and Olcese have paid (or caused to be paid) all property and other taxes required to be paid (and all assessments of which they have notice or acknowledged) with respect to the Lower River Water Rights to the extent such taxes (or assessments) have become due and payable. If there are any unpaid taxes or assessments as of the Close of Escrow, Nickel and Olcese shall be liable for their payment.

7.2 Agency hereby acknowledges, represents and warrants to Nickel and Olcese that, as of the date of this Contract and the Close of Escrow:

(a) Recitals and Exhibits: The Recitals and Exhibits to this Contract are true and correct.

(b) Organization: The Agency is duly organized and validly exists in good standing under the laws of the State of California. The Agency has full power, authority and legal right to execute, deliver and perform this Contract. To the best of the Agency's knowledge (after due diligent investigation and due inquiry) the Agency has complied with all applicable laws and regulations of governmental agencies, officials or authorities, have obtained all necessary permits, licenses and approvals necessary and appropriate to proceed with the conduct of its business in accordance with the requirements of this Contract and has followed all necessary, proper and appropriate procedures in procuring such permits, licenses and approvals, provided, however, that the approvals which are the subject of Article 4.4 shall be governed by that Article.

(c) Authorization: The execution and delivery by the Agency of this Contract, the consummation of the transactions and contracts required or contemplated by it and the performance by the Agency of its obligations in connection with this Contract: (1) have been each duly authorized by the Agency's board of directors; and (2) to the best of the Agency's knowledge, after diligent investigation and due inquiry, require no registrations with or approvals of any person not heretofore obtained.

(d) No Oral Understandings: In executing this Agreement, the Agency is not relying upon any representation, communication, understanding or expectation (whether express or implied) that is not clearly and expressly stated in this Contract.

(e) Receipt of Information: The Agency has received any and all information from Nickel and Olcese which it desires or expects in connection with the transaction evidenced by this Contract, or any other document related to or required by this Contract. The Agency is not relying upon Nickel or Olcese directly or indirectly to disclose (or to evaluate any other person's disclosure of) any such matters, and the Agency excuses and releases Nickel and Olcese from any duty whatsoever to make such disclosures.

(f) No Continuing Obligations: The Agency understands and agrees that, after the Close of Escrow, neither Nickel nor Olcese shall have any direct or indirect obligations whatsoever to the Agency except as expressly stated in or required by this Contract.

(g) Violations of Applicable Laws: To the best of the Agency's knowledge, the Agency is not in violation of any law, statute, regulation, ordinance or other governmental provisions with respect to any of the funds and the Agency Transfer Water to be conveyed to Nickel pursuant to this Contract:

(h) Violations of Other Agreements: The entry into this Contract does not create or result in the breach of any other agreement to which the Agency is a party or to which the Agency is otherwise subject or bound.

(i) Agency Transfer Water: The Agency has a legal right to the Agency Transfer Water to be provided to Nickel pursuant to this Contract whether from Agency SWP Entitlement Water or other sources, with full authority to exchange such water as provided for herein; and that such water is held free and clear of any liens, encumbrances or rights of any other party, other than the obligation of the Agency to make the payments to the State and other obligations, as required by the Agency's Water Supply Contract, and that the Agency shall maintain such water free and clear of any such claims during the term of this Contract.

(j) Kern River Water: The Agency understands the hydrology of the Kern River and the historical yield of the Lower River Water Rights, which has been on average, approximately fifty thousand (50,000) acre-feet per year. The Agency shall not hold Nickel or Olcese liable for any reduction in the yield of the Lower River Water Rights below this average.

(k) Obligations of the Lower River Water Rights: The Agency understands, agrees and assumes all of the Lower River Water Rights obligations, including, but not limited to, the Tulare Lake Basin Water Storage District annual ten thousand (10,000) acre-foot fee, the Lake Isabella storage costs, the Kern River Watermaster charges and legal fees, and the City of Bakersfield accounting fees and the Kern Property Corporation settlement. The Agency shall assume such obligations at the Close of Escrow, at which time all expenses for such obligations shall be prorated as per Article 9.1.

(l) Litigation: To the best of the Agency's knowledge (after diligent investigation and due inquiry), there is no action, suit, claim, cause of action, or proceeding at law or inequity (or by or before any governmental agency, official or authority of any local, State or Federal government) now pending, contemplated by the Agency or threatened in writing against or affecting any funds the Agency shall receive from the State of California pursuant to the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act or wherein an unfavorable decision, ruling or finding would (i) affect the creation, organization, existence or powers of the Agency or the titles and powers of its Board members and officers to their respective offices; (ii) enjoin or restrain the approval and/or execution of this Contract, or (iii) in any way question or affect any of the rights, powers, duties or obligations of the Agency with respect to implementation of this Contract, other than as expressly stated in a writing delivered to Nickel and Olcese at or prior to the Close of Escrow.

ARTICLE 8. CONDITIONS PRECEDENT

8.1 The obligations of Nickel and Olcese to sell the water rights set forth in Exhibits A and B and the resulting obligation of the Agency to pay and provide additional consideration are conditioned upon the satisfaction or waiver of the following conditions precedent prior to the Close of Escrow:

(a) State Funds: The Agency's receipt of State Funds sufficient to make the payments required of the Agency.

(b) Agency Resolution: The Agency shall provide Nickel a resolution adopted by the Agency's Board of Directors, meeting the requirement of Section 5 of the Kern County Water Agency Act (California Statutes of 1961, Chapter 1003, as amended), containing a finding by the Board that the Agency Transfer Water to be provided to Nickel pursuant to this Contract will not be needed for use within the Agency.

(c) Authorizing Resolutions: Nickel, the Agency and Olcese shall each provide the other parties to this Contract resolutions from their respective Boards of Directors authorizing the execution of this Contract.

(d) Opinion Letter of Counsel: Nickel shall deposit into escrow an opinion letter of counsel, satisfactory to the Agency, providing that the conveyances, transfers and assignments provided in this Contract are sufficient to transfer all right, title and interest of Nickel and Olcese to the rights described herein, except those specifically retained by or quitclaimed to Nickel and/or Olcese.

ARTICLE 9. CLOSE OF ESCROW

9.1 Close of Escrow: Agency shall deposit the sum of \$7,472,000 into Escrow, and Close of Escrow shall occur when (1) the Agency delivers to the Escrow Agent \$7,472,000 as required by Articles 4.2 and 5.1; (2) the Agency delivers to the Escrow Agent its prorated portion of the annual expenses incurred by the Lower River Water Rights; (3) the Agency, Nickel and Olcese have deposited all requisite documents for the transfer of the Lower River Water Rights, and other described rights to be transferred pursuant to this Contract, duly executed, authorized, acknowledged and approved by the parties' respective counsel as sufficient to transfer all purchased rights; and (4) all conditions precedent have occurred. If assignments are not approved, Nickel and Olcese shall in good faith negotiate with the Agency to provide for an operation agreement which will provide the Agency with equivalent rights (in the Agency's judgment) to the failed assignment. All expenses associated with the Lower River Water Rights shall be prorated as of January 1, 2001. The Agency, Nickel and Olcese shall notify by written notice to all parties and the Escrow Agent of the intended date for the Close of Escrow. All closing costs and fees, including without limitation, any transfer taxes, escrow fees, drafting and notary charges and recording fees shall be apportioned equally between the Agency, Olcese and Nickel. Each party shall be responsible for fees and costs of its own counsel.

ARTICLE 10. CONDITIONS SUBSEQUENT

10.1 Completion of All Required Assignments of Rights and/or Obligations: Prior to the Close of Escrow, the parties shall cooperate to achieve all necessary approvals of assignments and transfers of the rights and obligations to the Agency described herein and such approvals shall be deposited into Escrow prior to the Close of Escrow. If such assignments are not approved prior to the Close of Escrow, the parties

shall negotiate a mutually satisfactory amendment, pursuant to Article 12.9, making such approvals a condition subsequent.

ARTICLE 11. ESCROW AGENT'S EXCULPATORY PROVISIONS

11.1 Close of Escrow: Escrow shall be closed as soon as possible, but no later than February 22, 2001 provided that the Escrow may extend beyond February 22, 2001 for six months by written agreement of the parties.

11.2 Neglect, Misconduct: The Escrow Agent will not be liable for any of its acts or omissions unless the same constitutes negligence or willful misconduct.

11.3 Information: The Escrow Agent will have no obligation to inform any party of any other transaction or of facts within the Escrow Agent's knowledge, even though the same concerns water entitlements, provided such matters do not prevent the Escrow Agent's compliance with this Contract.

11.4 Form, Validity, and Authority: The Escrow Agent will not be responsible for (1) the sufficiency or correctness as to form or the validity of any document deposited with the Escrow Agent, (2) the manner of execution of any such deposited document, unless such execution occurs in the Escrow Agent's premises and under its supervision, or (3) the identity, authority, or rights of any person executing any document deposited with the Escrow Agent.

11.5 Conflicting Instructions: Upon receipt of any conflicting instructions, the Escrow Agent shall immediately notify all parties that there is an apparent conflict in the instructions. The Escrow Agent will have the right to take no further action until otherwise directed, either by the parties' mutual written instructions or a final order or judgment of a court of competent jurisdiction.

11.6 Interpleader: The Escrow Agent will have the absolute right, at its election, to file an action in interpleader requiring the parties to answer and litigate their several claims and rights among themselves, and the Escrow Agent is authorized to deposit with the clerk of the court all documents and funds held in Escrow. If such action is filed, the parties will jointly and severally pay the Escrow Agent's termination charges and costs and reasonable attorney's fees that the Escrow Agent is required to expend or incur in the interpleader action, the amount thereof to be fixed and judgment therefor to be rendered by the court. Upon the filing of such action, the Escrow Agent will be and become fully released and discharged from all obligations to further perform any obligations imposed by this Contract.

ARTICLE 12. MISCELLANEOUS

12.1 Reference: The parties to this Contract agree to waive and give up the right to a jury trial and to submit all disputes, controversies, differences, claims or demands, whether of fact or of law or both, relating to or arising out of this Contract, to be resolved at the request of any party, by a trial on Order of Reference conducted pursuant to the provisions of Code of Civil Procedure section 638 *et seq.* or any

amendment, addition or successor section thereto to hear the case and report a statement of decision thereon. The parties intend this general reference agreement to be specifically enforceable in accordance with said provisions. If the parties are unable to agree upon a referee; one shall be appointed by the Presiding Judge of the Kern County Superior Court. The parties shall share equally, by paying their proportionate amount of the estimated fees and costs of the initial reference.

12.2 Indemnity: Each party shall jointly and severally indemnify the other parties hereto against, and hold each other harmless from, any loss, cost, damage (whether general, compensatory, or otherwise), liability, indebtedness, claim, cause of action, judgment, court costs, and legal or other out-of-pocket expense (including attorneys' fees) which any party may suffer or incur as a direct or indirect consequence of (a) any breach by another party of any representation or warranty made in connection with this Contract; (b) any failure of any party to perform any obligation under this Contract which may affect another party.

12.3 Notices: All Notices given hereunder shall be transmitted in writing to the addresses below or to such other address in the State of California as a party may designate by written notice to the other parties:

If to Nickel:

Mr. James Nickel, President
Nickel Family, LLC
P.O. Box 60679
Bakersfield, California 93386-0679
Facsimile: (661) 872-7141

If to Olcese:

Board of Directors
Olcese Water District
P.O. Box 651
Bakersfield, California 93302
Facsimile: (661) 872-9956

If to Agency:

Mr. Thomas N. Clark, General
Manager
Kern County Water Agency
P.O. Box 58
Bakersfield, California 93302
Facsimile: (661) 634-1428

All such notices shall be deemed to have been given at the first to occur of time of actual delivery, or, if mailed, forty-eight (48) hours after deposited in certified or registered United States mail, postage prepaid. In case of notice transmitted by an overnight delivery service (which obtains a written receipt upon delivery), notice shall be deemed to be given when delivered by any such service, charges prepaid and the receipt is signed. If any party transmits information to any other party orally or by a means not authorized herein, the party receiving such information shall be entitled to assume that the party giving such information will nevertheless comply with its written notice obligations, and...

no notice shall be deemed to have been given until the party receiving the information receives written notice as required herein.

12.4 Cumulative Remedies: Except as otherwise expressly provided herein, all rights and remedies provided for in this Contract are cumulative and shall be in addition to any and all other rights, powers, privileges and remedies provided by law.

12.5 No Third Parties Benefited: This Contract is made and entered into for the sole protection and benefit of the parties hereto, their successors and assigns, and no other person shall be a direct or indirect beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Contract.

12.6 Time: Time is of the essence in this Contract.

12.7 Governing Law: This Contract shall be governed by and be construed according to the law of the State of California.

12.8 Counterparts: This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

12.9 Amendments: This Contract contains the entire and exclusive agreement of the parties hereto. This Contract may only be modified or amended by a written contract executed by Nickel and the Agency. This Contract supersedes all prior drafts and communications with respect thereto. Neither such principles of interpretation nor the express language herein shall be impaired or adversely affected by the language of any prior discussion form or draft of this Contract or any other documents. Furthermore, this Contract has been the subject of negotiations by the parties, and this Contract shall not be construed against any party merely because of that party's involvement in their preparation.

12.10 Force Majeure: If the performance by any party to this Contract of any of its obligations or undertakings under this Contract is interrupted or delayed by any occurrence not occasioned by the conduct of any party to this Contract, whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake, or other natural forces, or by the acts of anyone not party to this Contract, then that party shall be excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence.

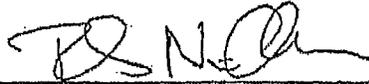
12.11 Post-Escrow Cooperation: Following Close of Escrow, Nickel, Olcese, and Agency shall in good faith cooperate to ensure the complete transfer of all assets as specified in this Contract including, but not limited to, the execution and delivery of documents, deeds, assignments, and other instruments required to achieve the asset transfers specified in this Contract. The parties currently believe George W. Nickel Jr., Adele R. Nickel, and La Hacienda, Inc. do not possess an independent interest in the assets specified in the Contract, but if such interest is discovered they will cooperate to achieve the asset transfers specified in this Contract.

12.12 List of Exhibits: The following shall constitute all of the Exhibits to this Contract and by this reference are fully incorporated herein:

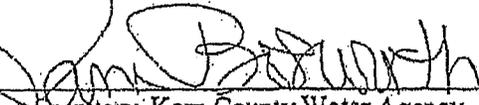
- Exhibit A Lower River Water Rights
- Exhibit B Johnson Ditch Rights and Castro Ditch Rights
- Exhibit C Carmel Water Rights
- Exhibit D Power Charges for Agency Transfer Water
- Exhibit E Water Inventories
- Exhibit F Map of Rio Bravo Ranch
- Exhibit G Garces Property Description

Dated: January 23, 2001

Kern County Water Agency

By 
General Manager

Attested:

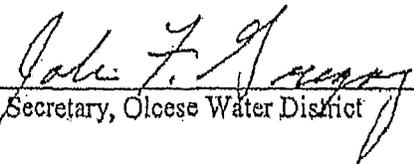
16 By 
Secretary, Kern County Water Agency

Dated: January 23, 2001

Olcese Water District

By 
President, Board of Directors

Attested:

By 
Secretary, Olcese Water District

Dated: January 23, 2001

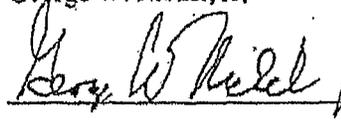
Nickel Family, LLC



President, Board of Directors

Dated: January 23, 2001

George W. Nickel, Jr.



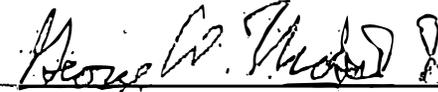
Dated: January 23, 2001

Adele R. Nickel



Dated: January 23, 2001

La Hacienda, Inc.

By 

President

EXHIBIT "B"
NICKEL-DMB AGREEMENT

OPTION AND WATER PURCHASE AGREEMENT

THIS AGREEMENT is made and effective as of May 1, 2007 (the "Effective Date") by and between Nickel Family, LLC, a California limited liability company ("Nickel"), and DMB Communities II, LLC, an Arizona limited liability company ("DMB"), with reference to the following facts:

RECITALS

A. Nickel previously held rights to water from the Kern River. Nickel conveyed those rights to the Kern County Water Agency ("KCWA" or "Agency") in exchange for a perpetual right to 10,000 acre-feet per year of certain other water (the "Agency Transfer Water") to be made available by the Agency for the benefit of Nickel pursuant to the terms of that certain Contract to Transfer the Kern River Lower River Water Rights between Nickel, the Olcese Water District and the Agency dated January 23, 2001 (the "Agency Agreement"). A copy of the Agency Agreement is attached hereto as Exhibit A and incorporated herein by this reference.

B. Pursuant to the terms of the Agency Agreement, Nickel received the right to the Agency Transfer Water for the purpose of selling, or transferring, Agency Transfer Water to third parties within or outside of Kern County. Also pursuant to the terms of the Agency Agreement, Nickel has the right to the assistance and cooperation of the Agency in consummating sales or transfers of Agency Transfer Water, including entering into contracts for the sale of the Agency Transfer Water and efforts to obtain the approval, cooperation and assistance of the California Department of Water Resources and the State Water Contractors in obtaining any necessary approvals from regulatory agencies to effect such sales or transfers.

C. DMB wishes to acquire an option to purchase the use of 8,393 acre-feet at the California Aqueduct at Tupman (Reach 13B) (the "Acquired Water") of the Agency Transfer Water for the exclusive use by DMB as described herein, each year, for an initial period of thirty-five (35) years (the "Transfer Term") and for a potential extension period of another thirty-five (35) years (the "Extended Transfer Term"), which extension is exercisable solely at the discretion of DMB, as provided in this Agreement. DMB also wishes to acquire Nickel's right to the assistance and cooperation of the Agency in entering into contracts for the sale or transfer of the Acquired Water to third parties for the period of the Transfer Term and any Extended Transfer Term and efforts to obtain the approval, cooperation and assistance of the California Department of Water Resources and the State Water Contractors in obtaining any necessary approvals from regulatory agencies to effect such sales or transfers. Nickel is willing to grant such an option under the terms and conditions set forth in this Agreement.

D. DMB paid \$50,000 to Nickel on or about March 7, 2007, (the "Due Diligence Payment") to initiate a due diligence period expiring at the end of May 7, 2007, (the "Due Diligence Period"), which period DMB and Nickel may agree to extend by thirty (30) days (the "Extended Due Diligence Period") to and including June 6, 2007.

THEREFORE, the Parties hereby agree as follows:

1. Grant of Option. Subject to the terms and conditions set forth in this Agreement, Nickel hereby grants to DMB an option (the "Option") to purchase and acquire the exclusive right to the use of the Acquired Water each year during the Transfer Term. The term of the Option shall start on the Effective Date of this Agreement upon payment of the Initial Option Consideration Payment as set forth in Section 2 below, and expire at the end of December 31, 2007 (the "Initial Option Term"); provided, that DMB may elect to extend the term of the Option by twelve (12) additional calendar months to the end of December 31, 2008, (the "Extended Option Term") by giving written notice of extension to Nickel in the manner set forth in Section 19 and paying the Extended Option Consideration Payment (as defined below) prior to the expiration of the Initial Option Term at the end of December 31, 2007.

2. Option Consideration. As consideration for the grant of the Initial Option Term, DMB shall pay \$300,000 to Nickel on or by the end of May 7, 2007, the Initial Option Consideration Payment; provided that if DMB and Nickel agree to the Extended Due Diligence Period, DMB shall pay the \$300,000 to Nickel on or by the end of June 6, 2007, as the Initial Option Consideration Payment. If DMB elects to take the Extended Option Term and desires the Extended Option Term, in addition to the Initial Option Consideration Payment, DMB shall pay \$881,265 to Nickel on or by the end of December 31, 2007, as the Extended Option Consideration Payment. The Initial Option Consideration Payment and the Extended Option Consideration Payment shall be applied as a credit against the Purchase Price, as defined below. Other than as set forth in this Agreement, the Initial Option Consideration Payment and the Extended Option Consideration Payment shall be non-refundable to DMB.

3. Exercise of Option.

(a) DMB may exercise the Option by giving written notice (the "Option Notice") by sending the Option Notice, in the form of Exhibit B to this Agreement, to Nickel at any time prior to the expiration of the Initial Option Term. Once the Initial Option has been exercised, DMB shall be obligated to purchase, and Nickel shall be obligated to sell, the exclusive use of the Acquired Water each year of the entire Transfer Term in accordance with the terms of this Agreement and upon payment of the Purchase Price. If the Option Notice is delivered on or before the end of September 1, 2007, the Transfer Term shall commence on January 1, 2008.

(b) If DMB has elected to take the Extended Option Term, and has paid the Extended Option Consideration Payment, then DMB may exercise the Option by sending the Option Notice in the form of Exhibit B to this Agreement to Nickel at any time prior to the expiration of the Extended Option Term. Once the Extended Option has been exercised, DMB shall be obligated to purchase, and Nickel shall be obligated to sell, the exclusive use of the Acquired Water each year of the entire Transfer Term in accordance with the terms of this Agreement and upon payment of the Purchase Price.

(c) If the Option Notice is delivered after September 1, 2007, but before September 1, 2008, either through the Initial Option Term or the Extended Option Term, then the Transfer Term shall commence on January 1, 2009.

(d) If the Option Notice is delivered after September 1, 2008, and before the end of December 31, 2008, then the Transfer Term also shall commence on January 1, 2009. In anticipation of such an event, to help ensure that Acquired Water may be delivered to DMB starting January 1, 2009, DMB may submit to Nickel prior to August 15, 2008, a written request and schedule for delivery of Acquired Water at Tupman or elsewhere to start on or after January 1, 2009. Upon receipt, Nickel shall immediately submit DMB's delivery request to the Agency consistent with the requirements of Article 4.8 of the Agency Agreement. DMB may subsequently revise its delivery request to change the amount of Acquired Water to be delivered, the schedule for delivery and the point or points of delivery, and Nickel shall immediately submit such revised delivery request to the Agency. Nickel makes no representation that the aforementioned request will be accepted by the Agency.

(e) The first year of the Transfer Term shall be referred to herein as the "First Water Year."

4. Purchase Price; Payment of Purchase Price.

(a) As of the Effective Date, the annual purchase price (the "Purchase Price") for the use of the Acquired Water shall be \$4,406,325 (8,393 acre-feet of Agency Transfer Water at \$525 per acre-foot) at Tupman; provided that the annual Purchase Price shall be increased on each January 1, commencing on January 1, 2008, by multiplying the Purchase Price on the Effective Date and thereafter in effect on the previous January 1 by the change in the Consumer Price Index (All Urban Consumers—All Items—Los Angeles-Riverside-Orange County) (the "Index") for the unadjusted twelve (12)-month period ending in September of the prior calendar year or by 1.03 (for a 3 percent increase), whichever is greater (the "Escalator").

As an example of the foregoing, on January 1, 2008, the Purchase Price would be adjusted by comparing the Index on September 1, 2006, e.g., 100, to the Index on September 1, 2007, e.g., 104, and multiplying the Purchase Price by the change in the Index, or by 1.03 (three (3) percent), whichever is greater, for an adjusted Purchase Price of \$546 per-acre foot on January 1, 2008, or $104/100(\$525)=546$ versus $1.03(\$525)=540.75$. Thereafter, commencing January 1, 2009, the 2008 Purchase Price of \$546 would be adjusted by comparing the Index on September 1, 2007, e.g., 104, with the Index on September 1, 2008, and multiplying \$546 by the change, or 1.03, whichever is greater, and so on each January 1 of this Agreement.

The annual Purchase Price shall be paid on or before January 15 of each year during the Transfer Term. So long as Nickel can deliver the Acquired Water at Tupman, DMB shall pay the Purchase Price regardless of whether delivery of all Acquired Water is requested.

(b) . Provided the Parties mutually agree, if DMB exercises the Option, either DMB or Nickel may request to negotiate for DMB to pay an up-front cash payment and thereby reduce or eliminate the annual Purchase Price. An escalator and a discount rate may be negotiated and used to establish the present value of the Purchase Price payments to be made during either the Transfer Term or Extended Transfer Term or both. The percentage of the present value to be paid up front also may be negotiated and used. Alternatively, DMB and Nickel may mutually agree to have DMB pay to Nickel an up-front cash payment to reduce or eliminate the Escalator component of the annual Purchase Price. The Parties acknowledge and agree that this Section 4(b) does not create any vested right in or guarantee any agreement respecting an up-front cash payment.

(c) The \$50,000 Due Diligence Payment that DMB made to Nickel, the Initial Option Consideration Payment and any Extended Option Consideration Payment (the "Payment Credit") shall all be credited toward DMB's payment of the Purchase Price. The total Payment Credit shall be divided into five (5) equal payments applied over the first five years in which Purchase Price Payments are made. In the event that DMB and Nickel agree upon an up-front cash payment to reduce or eliminate the annual Purchase Price, the up-front cash payment shall be reduced by the amount of the Payment Credit.

5. Right to Extended Transfer Term.

(a) Subject to Section 21(b), provided this Agreement is in full force and effect and DMB is not in default, DMB shall have the right to extend the initial Transfer Term by an additional thirty-five (35) years by providing Nickel with written notice of DMB's election of an Extended Transfer Term pursuant to this Section 5. Such notice shall be provided to Nickel at least one year prior to the expiration of the initial Transfer Term. The terms and conditions

of this Agreement including, without limitation, the amount of the adjusted Purchase Price as adjusted pursuant to Section 4(a), shall apply to the Extended Transfer Term, and all references in this Agreement to the Transfer Term shall include the Extended Transfer Term, including future adjustments of the Purchase Price pursuant to Section 4(a).

As an example of the foregoing, the Purchase Price on the first January 1 of the Extended Transfer Term shall equal the Purchase Price in effect the last year of the initial Transfer Term, further adjusted as provided in Section 4(a) for a new or adjusted Purchase Price on the first January 1 of the Extended Transfer Term, thereafter adjusted in the same manner each succeeding January 1 of the Extended Transfer Term.

(b) If DMB extends this Agreement under Section 5(a) above, not later than two (2) years prior to the expiration of the Extended Transfer Term, the Parties may enter into diligent good faith negotiations for a new agreement to extend this Agreement for an additional period to be negotiated by the Parties, with such amendments as they may negotiate and mutually agree to. The Parties acknowledge and agree that this Section 5(b) does not create any vested right in or guarantee any further term or agreement.

6. Reversion or Partial Reversion of Acquired Water to Nickel. The use of the Acquired Water and all other rights pursuant to the Agency Agreement shall revert to Nickel at the end of the Transfer Term or, if applicable, the Extended Transfer Term, or upon termination of this Agreement. In the event any of the Acquired Water is Assigned under Section 10 of this Agreement, any use of the Acquired Water and all other rights pursuant to the Agency Agreement that have been assigned shall revert to Nickel at the end of the Transfer Term or, if applicable, the Extended Transfer Term, or upon termination of the Assignment for any reason.

7. Delivery Schedule: Point of Delivery.

(a) Except as provided in Article 4.5 of the Agency Agreement and, subject to Section 21(b), provided this Agreement is in full force and effect and DMB is not in default, at the commencement of the Transfer Term and each year during the Transfer Term Nickel shall, at no cost to DMB, make or cause the Acquired Water to be available to DMB at the Tupman turnout, as defined in Article 1.17 of the Agency Agreement ("Tupman"), as provided in Article 4.4 of the Agency Agreement.

(b) DMB shall annually supply a written delivery schedule to Nickel and Agency consistent with the requirements of Article 4.8 of the Agency Agreement.

(c) The Acquired Water shall be made available to DMB at Tupman, free and clear of all liens, encumbrances, or rights of any other party, at the same time and in the same manner as Agency schedules deliveries of State Water Project ("SWP") Water ("SWP Water") to the Agency's Member Units, as set forth in the Agency's contracts with its Member Units as they presently exist or may be changed from time to time. The shortage provision in Article 18 of the Agency's SWP Water Supply Contract with DWR (the "SWP Contract Shortage Provision") does not apply to the delivery of Acquired Water under this Agreement. Pursuant to the Agency Agreement, the Acquired Water is not subject to the shortages that can affect DWR's delivery of SWP Water to the Agency and other SWP Contractors during average, single dry and multiple dry water years.

(d) Subject to Section 21(b), provided this Agreement is in full force and effect and DMB is not in default, DMB shall succeed to Nickel's right, pursuant to Article 4.7 of the Agency Agreement, to the Agency's commitment to transport Acquired Water within the California Aqueduct to the full extent of the Agency's rights to use the Aqueduct.

8. Additional Charges.

(a) DMB shall be responsible for all costs or expenses, if any, associated with the conveyance and delivery of the Acquired Water delivered to a location other than Tupman, including but not limited to costs imposed by the Agency and DWR for conveyance of the Acquired Water to a location other than Tupman.

(b) Commencing with the Transfer Term and during any Extended Transfer Term, DMB shall pay to Nickel that portion of those power charges attributable to the Acquired Water in any year in which Nickel is obligated to pay to Agency the power charges described in Article 4.5 of the Agency Agreement (the "Power Charges"), which the Parties acknowledge is up to 83.93 percent of the total power charges payable by Nickel to the Agency in any year in which such charges are payable for the full 10,000 acre-feet of Agency Transfer Water under Article 4.5 of the Agency Agreement. DMB shall pay Nickel the Power Charges within thirty (30) days of DMB's receipt of an invoice for the Power Charges from Nickel. Alternatively, DMB may pay such Power Charges directly to the Agency, so long as the Agency and Nickel consent in writing to DMB's direct payment of Power Charges.

9. Agency Actions. Nickel and DMB shall jointly request that Agency enter into one or more long-term "point of delivery" agreements with DWR approving delivery of a portion of Agency's SWP Water, used as exchange water, to up to five (5) long-term transferees, so that the Acquired Water can be delivered by exchange to up to five (5) long-term transferees for the entire Transfer Term and any Extended Transfer Term (the "Point of Delivery

Agreements"). DMB shall succeed to all of Nickel's rights with respect to the Acquired Water, pursuant to Articles 4.4 and 4.9 of the Agency Agreement, including but not limited to the assistance and cooperation of the Agency in entering into contracts for the sale or transfer of the Acquired Water to third parties and efforts to obtain the approval, cooperation and assistance of DWR and the State Water Contractors in obtaining any necessary approvals from regulatory agencies to effect such sales or transfers. DMB shall reimburse Nickel and Agency for all reasonable out-of-pocket expenses incurred in assisting DMB in obtaining any approvals.

10. Assignment. Nickel acknowledges that DMB intends to transfer, or assign, the right to use Acquired Water to up to five (5) public water supply agencies or reliable, solvent private companies for purposes of establishing an adequate long-term water supply for one or more real estate development projects and for other beneficial uses for the Transfer Term or any extended Transfer Term.

(a) DMB may assign this Agreement, in whole or in part, subject to advance written consent by Nickel. The foregoing decision whether to allow an assignment under this Section 10 rests solely with Nickel, subject to the following:

(i) Nickel shall consent to a proposed assignee of a Purchase Price and Power Charge payment obligation, so long as that proposed assignee is a government agency that holds a contract with DWR for SWP water service or a contract with the U.S. Bureau of Reclamation for Central Valley Project water service and so long as the assignee proposed to assume such payment obligations for such Acquired Water has the ability to perform such payment obligations for the Acquired Water proposed for assignment for the Transfer Term or any Extended Transfer Term; or

(ii) Nickel shall consent to other proposed assignees of Purchase Price and Power Charge payment obligations so long as any assignee proposed to assume such obligations for such Acquired Water has the ability to perform such payment obligations for the Acquired Water proposed for assignment for the Transfer Term or any Extended Transfer Term.

(iii) Nickel shall consent to a proposed assignee of a Purchase Price and Power Charge payment obligation proposed for assignment for the Transfer Term or any Extended Transfer Term, so long as DMB agrees to remain responsible for any Purchase Price and Power Charge payments that are due from such assignee but have not been timely paid. DMB agrees to provide a new Representation and Warranty to Nickel that DMB's net worth remains at least \$100 million before Nickel's consent to the proposed assignment shall be given.

(iv) Assignments of all, or a part, of this Agreement among DMB and its Affiliated Entities that do not involve a long-term point of delivery agreement from DWR do not count against the five (5) long-term transfers, or assignments, governed by this Section 10. The term "Affiliated Entity" shall mean DMB, any entity that is a subsidiary of DMB or any entity which is controlled by or under common control of DMB. The term "control" with respect to any entity shall mean: (i) the possession, directly or indirectly, of the power to vote 51 percent or more of the stock, voting trust certificates or other securities having voting power for the election of directors of an entity; or (ii) the status of managing member of a limited liability company. For the Assignment to be effective under this Section 10(a)(iv), an Affiliated Entity must have a net worth of at least \$100 million, or DMB must agree to remain responsible for any Purchase Price and Power Charge payments that are due from such "Affiliated Entity."

(b) Subject to the consent requirement in Section 10(a), should DMB assign this Agreement, or any part, as provided in this Section 10:

(i) Each assignee shall be required to agree, in writing, to be bound by and timely comply with all those terms and provisions of this Agreement that are specifically designated for assignment to the assignee;

(ii) it is recognized that an assignee of the right to use Acquired Water may be an entity different from that which is obligated to pay the Purchase Price and Power Charge for such Acquired Water, in which case this Agreement's terms and provisions governing payment of the Purchase Price and Power Charge would not be applicable to such assignee of the right to use Acquired Water, and this Agreement's terms and provisions governing delivery schedules for the Acquired Water would not be applicable to such assignee of the obligation to pay the Purchase Price and Power Charge for such Acquired Water. Notwithstanding the foregoing, and subject to Section 21(b), for any assignment to be effective, the assignment agreement must contain a provision that Nickel has no obligation to deliver the assigned portion of the Acquired Water, unless the Purchase Price, as adjusted, is paid to Nickel and any Power Charges are paid for the Acquired Water being assigned, and all other obligations of this Agreement applicable to the assignment are met;

(iii) any assignment of part of this Agreement, including the right to use Acquired Water or the obligation to pay the Purchase Price and Power Charge for such Acquired Water, shall specifically designate the rights and obligations being assigned;

(iv) each assignee shall succeed to the specifically designated rights and obligations of DMB under this Agreement with respect to the amount of Acquired Water assigned or the amount of the Purchase Price and Power Charge the assignee is obligated to pay and shall be recognized by Nickel

as possessing all designated rights and obligations, and all applicable references to "DMB" herein shall be deemed to refer to such assignee, except as otherwise expressly provided in this Agreement.

11. Short-term Transfers.

(a) Until such time as DMB exercises its Option and the Transfer Term commences, Nickel may annually market the Acquired Water for temporary transfer to third parties, so long as delivery under the temporary transfer ends prior to commencement of the Transfer Term pursuant Section 3 of this Agreement; provided that DMB shall have the right of first refusal with respect to any temporary transfer to any third party to occur after December 31, 2007.

(b) Subject to Section 21(b), provided this Agreement is in full force and effect and DMB is not in default, if DMB exercises the Option and the Transfer Term commences, DMB may sell, on a yearly basis and on terms and conditions acceptable to DMB, the use of any or all of the Acquired Water DMB purchases in a year to one or more third parties without the consent of Nickel; provided, that DMB expressly acknowledges that Nickel and the Agency are only obligated to make Acquired Water available at Tupman in accordance with this Agreement and the Agency Agreement. Such transfers shall not count against the five (5) long-term transfers or assignments, governed by Section 10 of this Agreement.

12. Maintenance of Acquired Water. While this Agreement is in effect, Nickel shall not take or omit to take any action that would render Nickel unable to fully perform its obligations under this Agreement. Without limiting the foregoing, while this Agreement is in effect, Nickel shall not (i) amend or revise the Agency Agreement, or (ii) encumber, commit, transfer or otherwise dispose of the Acquired Water, if any of those actions would render Nickel unable to fully perform its obligations under this Agreement. Further, Nickel shall take all actions necessary to ensure that it can fully perform its obligations under this Agreement. Notwithstanding the above, and subject to this Agreement, Nickel shall have the right prior to the commencement of the Transfer Term to annually market the water that will be the Acquired Water, so long as the Acquired Water is available to DMB during the Transfer Term.

13. Representations and Warranties of Nickel. Nickel hereby makes the following covenants, representations and warranties as of the Effective Date:

(a) Nickel has the authority to enter into this Agreement, to sell and transfer the use of the Acquired Water to DMB, and to otherwise perform as set forth herein. Nickel is the sole owner of the Acquired Water and has the unrestricted right and power to transfer the use of it to DMB under the terms of this Agreement and to make the Acquired Water available at Tupman for the

benefit of DMB pursuant to the Agency Agreement. The execution and delivery of this Agreement have been validly authorized by all requisite action on the part of Nickel.

(b) Nickel's execution of this Agreement and performance of its obligations hereunder will not violate any agreement, option, covenant, condition, obligation or undertaking of Nickel, nor to the best of Nickel's actual knowledge will it violate any law, ordinance, statute, order or regulation.

(c) To the best of Nickel's actual knowledge, there are no actions, suits or proceedings of any kind or nature, legal or equitable, pending, or threatened, relating to the Agency Agreement or the Acquired Water, or potentially affecting or arising out of Nickel's ownership, management, or ability to sell the Acquired Water, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, agency, or other governmental instrumentality.

(d) To the best of Nickel's actual knowledge, neither the Acquired Water nor any portion thereof, is subject to or affected by (i) any assessments, whether or not presently constituting a lien thereon, or (ii) any threatened or pending condemnation, eminent domain, or similar proceedings that render Nickel unable to fully perform its obligations under this Agreement.

(e) The Acquired Water is free and clear of any liens, encumbrances, or rights of any other party, that would render Nickel unable to fully perform its obligations under this Agreement, and Nickel shall maintain the Acquired Water free and clear of any such liens, encumbrances, or rights imposed against Nickel that render Nickel unable to fully perform its obligations under this Agreement while this Agreement is in effect.

(f) Delivery of Acquired Water under this Agreement is not subject to the Agency's SWP Contract Shortage Provision.

(g) To the best of Nickel's actual knowledge, except for the Agency Agreement and Nickel's obligations to Agency under the Agency Agreement, there are no contracts, licenses, commitments, agreements or undertakings respecting the 8,393 acre-feet of Acquired Water by which Nickel would be obligated or liable to any person.

(h) Except as expressly contemplated by this Agreement, no approval is required from Agency in order for the transactions contemplated by this Agreement to occur, and no approval is required from any other party in order for the Acquired Water to be made available to DMB by Nickel at Tupman.

(i) No proceedings are pending or threatened in which Nickel may be adjudicated as bankrupt or discharged from any and all of its debts or

obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts.

(j) Subject to Section 10 of this Agreement, while this Agreement is in effect, Nickel shall use its best efforts to assist DMB to obtain all necessary approvals, including the cooperation and approval of the Agency and DWR, for delivery of the Acquired Water, including by exchange, to up to five public water supply agencies or water companies at points other than Tupman. However, no assignment, or transfer, of Acquired Water shall extend beyond the Transfer Term and Extended Transfer Term. DMB shall reimburse Nickel for Nickel's reasonable out-of-pocket costs or other expenses incurred in assisting DMB with obtaining cooperation and approval for delivery of the Acquired Water at points other than Tupman.

(k) To the best of Nickel's actual knowledge, there is no action, suit, claim, cause of action, or proceeding at law or in equity (or by or before any governmental agency, official or authority of any local, state or federal government) now pending, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of Nickel or the titles and powers of its officers and the members of its board of directors and their rights to their respective offices; (ii) enjoin or restrain the approval and/or execution of this Agreement, or (iii) in any way question or affect any of Nickel's rights and powers.

(l) Nickel is unaware of any fact or circumstance that would prevent Nickel or the Agency from being able to fully perform its obligations under this Agreement, or that would prevent DMB from acquiring or using the Acquired Water as contemplated by DMB.

14. Representations and Warranties of DMB. DMB hereby makes the following covenants, representations and warranties as of the Effective Date of this Agreement:

(a) DMB has the authority to enter into this Agreement, purchase the Acquired Water, and to otherwise perform as set forth herein. The execution and delivery of the Agreement has been validly authorized by all requisite action on the part of DMB.

(b) DMB's execution of this Agreement and performance of its obligations hereunder will not violate any agreement, option, covenant, condition, obligation or undertaking of DMB, nor to the best of DMB's knowledge will it violate any law, ordinance, statute, order, or regulation.

(c) To the best of DMB's actual knowledge, there is no action, suit, claim, cause of action, or proceeding at law or in equity (or by or before any governmental agency, official or authority of any local, state or federal

government) now pending, wherein an unfavorable decision, ruling or finding would: (i) affect the creation, organization, existence or powers of DMB or the titles and powers of its Board members and officers to their respective offices; (ii) enjoin or restrain the approval and/or execution of this Agreement, or (iii) in any way question or affect any of the rights, powers, duties or obligations of DMB with respect to implementation of this Agreement.

(d) No proceedings are pending or threatened in which DMB may be adjudicated as bankrupt or discharged from any and all of its debts or obligations or granted an extension of time to pay its debts or a reorganization or readjustment of its debts.

(e) DMB has the ability to perform all financial obligations to Nickel under this Agreement. DMB further represents and warrants that as of the Execution Date of this Agreement, it has a present net worth of at least \$100 million, and to the best of DMB's knowledge, it is not aware of any facts or circumstances that would lower its net worth below the \$100 million amount in the foreseeable future.

15. Condition Precedent to Nickel's Obligations to Perform. Subject to Section 21 (b), if DMB exercises the Option, Nickel's obligation to transfer the Acquired Water in any year of the Transfer Term is hereby expressly conditioned on satisfaction or waiver by Nickel of the following condition precedent: DMB shall have timely performed each of the acts to be performed by it hereunder including, without limitation, payment of the annual Purchase Price or of an up-front amount negotiated by DMB and Nickel.

16. Conditions Precedent to DMB's Obligation to Perform. If DMB exercises the Option, DMB's obligation to purchase the Acquired Water in any year of the Transfer Term is hereby expressly conditioned on satisfaction or waiver by DMB of each and every one of the following conditions precedent:

(a) Nickel shall have timely performed each of the acts to be performed by it hereunder; and

(b) The Acquired Water is available and can be made available in accordance with the terms of this Agreement.

17. Costs and Expenses. In addition to all other cost and expense provisions provided herein, DMB shall pay all costs and fees associated with any transfer or assignment of the Acquired Water under this Agreement, including without limitation any transfer taxes associated with the Acquired Water. Each Party to this Agreement shall be responsible for its own attorneys' and other professional fees and internal administrative costs associated with the preparation of this Agreement and the transfer of the Acquired Water from Nickel to DMB.

18. Brokerage Commissions. DMB and Nickel each represents and warrants to the other that it has not engaged the services of any broker, agent or finder, nor done any other act nor made any statement, promise or undertaking which would result in the imposition of liability for the payment of any brokerage commission, finder's fee or otherwise in connection with the transaction described in this Agreement.

(a) In the event that any person or entity perfects a claim for a brokerage commission, finder's fee or otherwise, based upon any agreement, statement or act, the Party through whom such person or entity makes such claim shall be responsible therefor and shall indemnify, defend and hold the other Party and the Acquired Water harmless from and against such claim and all loss, cost and expense associated therewith, including attorneys' fees.

(b) Nickel's obligation to pay the Agency pursuant to Article 4.10 of the Agency Agreement is not a brokerage commission. Nickel shall comply with Article 4.10 and shall be solely responsible for making any and all payments to the Agency that may be due under Article 4.10 of the Agency Agreement, and DMB shall have no obligation to make any such payment to the Agency.

19. Notices. All notices under this Agreement shall be effective upon personal delivery or electronically confirmed facsimile transmission to Nickel or DMB, as the case may be, or three business days after deposit in the United States mail, registered or certified, postage fully prepaid and addressed to the respective Parties as follows:

To Nickel: JamesL. Nickel
President
Nickel Family, LLC
P.O. Box 60679
Bakersfield, California 93386-0679
Facsimile: (661) 872-7141

To DMB: Mark C. Kehke
Senior Vice President
DMB Associates, Inc.
7600 E. Doubletree Ranch Rd., #300
Scottsdale, Arizona 85258-2137
Facsimile: (480) 367-9788

General Counsel
DMB Associates, Inc.
7600 E. Doubletree Ranch Rd., #300
Scottsdale, Arizona 85258-2137
Facsimile: (480) 367-9788

or such other address as the Parties may from time to time designate in writing.

20. No Third Party Beneficiaries. Except for assignees receiving valid approved written assignments made pursuant to Section 10 of this Agreement, Nickel and DMB hereby agree that it is not their intent to create any rights or benefits in any third parties and that no third party beneficiaries shall be created or shall be deemed created by this Agreement.

21. Remedies. The Parties understand and agree that use of the Acquired Water is unique, may not be replaceable in the event it is not transferred and delivered to DMB in accordance with this Agreement, and will be relied upon by DMB through the Transfer Term, including any Extended Transfer Term, in connection with its development activities in California. Likewise, the Parties agree that payment to Nickel of the Purchase Price will be relied upon by Nickel for its daily operations. Therefore, in addition to a claim for damages for a breach or default, and in addition and without prejudice to any other right or remedy available at law or in equity that each Party may have against the other in the event of a threatened or actual breach of this Agreement, the aggrieved Party shall be entitled to injunctive relief, specific performance and other equitable remedies. The Parties acknowledge that in the event of a threatened or actual breach of this Agreement by the other, the aggrieved Party will be irreparably damaged in the event that this Agreement is not specifically enforced and that equitable relief would be appropriate. If either Party breaches, or defaults in the performance of its obligations under this Agreement, the other Party may pursue any remedies available to it at law or in equity for such default or breach.

(a) Notwithstanding the foregoing, if one Party threatens to breach, breaches or defaults in the performance of its obligations under this Agreement (the "defaulting party"), no remedy at law or equity will be sought until written notice is provided to the defaulting Party in accordance with Section 19 and the threat of breach, breach or default exists fifteen (15) days after the defaulting Party's receipt of written notice of such default.

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(b) In the event of a threat to breach or to default or of a breach or default in the performance of an obligation by an assignee of all or part of this Agreement approved under Section 10 (the "defaulting assignee"), such threat or default or breach shall in no way impair the rights and obligations of Nickel, DMB or any non-defaulting assignees under this Agreement. For example, one defaulting assignee's failure to perform payment obligations with respect to an assignment of a portion of the Acquired Water does not excuse Nickel's obligation to deliver the remainder of the Acquired Water to DMB or to other assignees.

(c) Subject to Section 21(a) of this Agreement, and consistent with Section 18(b) of this Agreement, in the event that DMB were voluntarily to elect to cure a default or breach by Nickel in Nickel's payments to KCWA under Articles 4.5 or 4.10 of the Agency Agreement, Nickel shall indemnify DMB for such cure.

22. Entire Agreement. The Recitals of this Agreement are incorporated into this Agreement by reference. This Agreement and items incorporated herein contain all of the agreements of the Parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions hereof may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the Parties.

23. Successors. The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assignees of the respective Parties hereto.

24. Further Action. The Parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Agreement. Without limiting the foregoing, at the request of DMB, Nickel shall assist DMB in obtaining any and all consents or assistance from the Agency necessary or desirable in connection with the transfer of the use of the Acquired Water and with DMB's assignment, or transfer, of the use of Acquired Water to up to five public water supply agencies or water companies including, without limitation, any requests for assistance pursuant to Articles 4.4 and 4.9 of the Agency Agreement.

25. Waiver. A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

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26. Choice of Laws. This Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such law.

27. Headings. Headings at the beginning of each numbered Section of this Agreement are solely for the convenience of the Parties and are not a part of this Agreement.

28. Time. Time is of the essence, it being understood that each date set forth herein and the obligations of the Parties to be satisfied by such dates have been the subject of specific negotiations by the Parties.

29. Counterparts. This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on all Parties.

30. Force Majeure. If the performance by any Party to this Agreement of any of its obligations or undertakings under this Agreement is interrupted or delayed by any occurrence not occasioned by the conduct of a Party to this Agreement, whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake, or other natural forces, or by the acts of anyone not a Party to this Agreement, then the Parties shall be excused from any further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence. The Transfer Term shall be extended by the period of time such performance is so excused.

31. Quitclaim. Upon the expiration of this Agreement for any reason, including the failure to timely exercise the Option in the manner provided herein, DMB shall properly execute, acknowledge and deliver to Nickel a quitclaim in a form suitable to establish the termination of this Agreement.

32. Confidentiality. Nickel and DMB agree not to disclose to any third party the identity of DMB or DMB's potential uses of the Acquired Water, or the potential or final terms of this Agreement (the "Confidential Information"); provided that DMB may authorize or direct disclosure of specific Confidential Information to specific third parties. DMB shall not unreasonably withhold approval of a request by Nickel to disclose Confidential Information. DMB and Nickel acknowledge the need to provide certain Confidential Information to the Agency in connection with execution of this Agreement and the transfer, or assignment, of Acquired Water to third parties. DMB and Nickel acknowledge that the Agency is a public agency subject to disclosure of certain information

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under the California Public Records Act (California Government Code section 6250 et seq.). Any disclosure of Confidential Information by Nickel to Agency requires advance approval by DMB, which DMB will not unreasonably withhold.

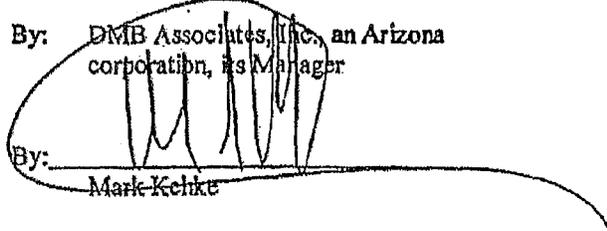
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first hereinabove written.

NICKEL FAMILY, LLC

By: 
James L. Nickel, President

DMB COMMUNITIES II, LLC, an Arizona
limited liability company

By: DMB Associates, LLC, an Arizona
corporation, its Manager

By: 
Mark Kehke

Its: Senior Vice President

EXHIBIT "C"
CV OPTION AGREEMENT

**OPTION AND PARTIAL ASSIGNMENT OF DMB INTEREST
IN 2007 OPTION AND WATER PURCHASE AGREEMENT
TO CV COMMUNITIES**

This Agreement (this "Agreement") is made as of July 10, 2013 (the "Effective Date"), by and between, on the one hand, DMB Pacific LLC, a Delaware limited liability company ("DMB"), and, on the other hand, CV Communities, LLC, a Delaware limited liability company ("CV"). The foregoing entities are all collectively referenced herein as the "Parties," or at times, individually, as a "Party."

RECITALS

- A. CV is engaged in certain land development projects proposed for California's Antelope Valley region. CV seeks to obtain a reliable water supply for the benefit of one or more such projects.
- B. DMB Communities II LLC, an Arizona limited liability company ("DMBCII"), and Nickel Family, LLC, a California limited liability company ("Nickel"), executed an Option and Water Purchase Agreement, dated May 1, 2007 ("Nickel-DMB Agreement"). All terms in the Nickel-DMB Agreement shall have their same meaning in this Agreement, unless otherwise defined herein. Pursuant to the Nickel-DMB Agreement, DMBCII acquired an option to purchase the right to eight thousand three hundred and ninety three (8,393) acre-feet per year ("AFY") of water ("Nickel Water"), which option was exercised by DMBCII. In 2009, Nickel approved DMBCII's assignment of the Nickel-DMB Agreement to DMB. As the successor in interest to DMBCII, DMB now holds the right to the eight thousand three hundred and ninety three (8,393) AFY of Nickel Water. A copy of the Nickel-DMB Agreement is attached hereto as Exhibit A and is incorporated herein by this reference.
- C. Nickel previously held rights to water from the Kern River. Nickel conveyed those water rights to the Kern County Water Agency ("KCWA") in exchange for a perpetual right to ten thousand (10,000) AFY of water ("Agency Transfer Water") to be made available by KCWA for the benefit of Nickel pursuant to the terms of that certain Contract to Transfer the Kern River Lower River Water Rights between Nickel, the Olcese Water District and KCWA dated January 23, 2001 ("KCWA-Nickel Agreement"). A copy of the KCWA-Nickel Agreement is attached hereto as Exhibit B and is incorporated herein by this reference. Pursuant to the terms of the KCWA-Nickel Agreement, Nickel received the right to the Agency Transfer Water for the purpose of sale, or transfer, to third parties within or outside of Kern County.
- D. Nickel assigned eight thousand three hundred and ninety three (8,393) AFY of its Agency Transfer Water to DMB pursuant to the 2007 Nickel-DMB Agreement. That eight thousand three hundred and ninety three (8,393) AFY of Agency Transfer Water is the Nickel Water now controlled by DMB under the Nickel-DMB Agreement.

- E. The KCWA-Nickel Agreement provides that Nickel is entitled to delivery of the Agency Transfer Water at a point called Tupman, located at milepost 238.04 within Reach 12E of the State Water Project's California Aqueduct, in Kern County (the "Point of Delivery").
- F. Section 10 of the Nickel-DMB Agreement allows DMB to assign Nickel Water, under certain conditions, to third parties upon the consent of Nickel.
- G. CV seeks to purchase an assignment of one-thousand seven-hundred (1,700) AFY of Nickel Water, and DMB is willing to make such an assignment to CV, under the terms and conditions set forth in this Agreement (the 1,700 AFY of Nickel Water and all contractual rights and obligations associated therewith held by DMB under the Nickel-DMB Agreement are hereby collectively referenced herein as the "Assignment Water").
- H. CV intends to assign the Assignment Water to the Antelope Valley-East Kern Water Agency ("AVEK") or to Los Angeles County Waterworks District 40 (those agencies are hereinafter referred to as the "Subsequent Assignees").
- I. CV seeks to structure its acquisition of the Assignment Water as an option agreement, on the terms stated herein, with successive payments to keep the option term in effect until an outside date of March 31, 2016. After 2013, so long as the option term remains in effect by and only after CV's payments of the Second Option Payment and Final Option Payment, as respectively defined below, and prior to Option (defined below) exercise, CV will be allowed to use the 1,700 AFY of Nickel Water with no direct obligations to Nickel, but with DMB retaining all contractual rights and obligations under the Nickel-DMB Agreement. The water for CV's use in this interim period which predates its exercise of the Option detailed herein, and in which DMB retains all obligations to Nickel under the Nickel-DMB Agreement, are considered short term transfers and are subject to all conditions in Section 11 (b) of the Nickel-DMB Agreement. This water is called the "Interim Assignment Water." Notwithstanding the foregoing, CV recognizes and will comply with timing and logistics provisions of the Nickel-DMB Agreement regarding scheduling of delivery of the Interim Assignment Water.

THEREFORE, the Parties hereby agree as follows:

1. Recitals. The foregoing Recitals are hereby made a part of this Agreement.
2. Grant of Option, Nickel Consent, Option Payment and Option Term, and Assignment. Subject to the terms and conditions set forth in this Agreement, DMB hereby grants an exclusive option to CV for the assignment to CV of DMB's entire interest in the Assignment Water, including all rights, title and obligations associated therewith (the "Option"). The term of the Option shall commence on the date that Nickel executes and delivers the Nickel Consent (as defined below) and, subject to the terms of this Agreement, shall expire on March 31, 2016, if not exercised. The Option shall have no effect on DMB's right, title and interest in its remaining six thousand six hundred and ninety three (6,693) AFY of Nickel Water. With the exception of control of the 2013 Nickel Water, the Option granted herein to CV is exclusive, and once this Agreement is executed DMB shall not grant to, nor make any commitment to grant to, any persons any rights, by option or otherwise, in any of the Assignment Water until and unless

CV fails to timely make a payment required by this Agreement and all requisite notice and cure periods have expired. All option payments and other payments described herein or elsewhere in this Agreement are subject to the notice and cure provisions stated in Section 8, and no payment described herein shall be considered unpaid unless the requisite payment is not made after being provided notice and a chance to cure as stated in Section 8.

(a) So long as CV has made all required prerequisite option payments described below to keep the Option in effect, at any point in time from the date of the Nickel Consent (as defined below) through March 31, 2016, CV may exercise the Option by submitting an executed option notice to DMB (the "Option Notice"; and CV shall send a courtesy copy to Nickel) in the form attached hereto as Exhibit C, and within five (5) days thereafter paying five million one hundred thousand dollars (\$5,100,000) to DMB (the "Option Exercise Price") by wire transfer in accordance with instructions from DMB. Effective upon and subject to CV's timely exercise of the Option and payment of the Option Exercise Price, DMB hereby assigns to CV and CV hereby assumes all of DMB's rights, title, interest and obligations for the Assignment Water under the Nickel-DMB Agreement, and DMB shall have no further rights or obligations as to the Assignment Water under the Nickel-DMB Agreement. No documents other than this Agreement are necessary to effectuate such assignment.

(b) If CV has not exercised the Option within ten (10) days after the date of this Agreement, CV shall pay to DMB six hundred and eighty thousand dollars (\$680,000) ("Initial Option Payment"), by wire transfer in accordance with instructions delivered by DMB, no later than ten (10) days after the Effective Date and receipt of such wire transfer instructions. Failure by CV to timely make the Initial Option Payment (subject to the notice and cure provisions of Section 8) means that this Agreement and the Option shall automatically terminate as of the date payment was due, with CV losing any rights to any Option. CV's making the Initial Option Payment does not grant CV any rights to the Assignment Water in 2013. Rather, it simply operates to extend CV's Option term until March 31, 2014, and, following CV's payment of the Second Option Payment and Final Option Payment, as respectively defined below, allows CV to use the Interim Assignment Water. Effective upon and subject to DMB's timely receipt of CV's Initial Option Payment, DMB hereby assigns all rights, title, and interest (but not obligations) to and in the Interim Assignment Water to CV through March 31, 2014, and upon DMB's receipt of the Second Option Payment, as defined below, CV may temporarily transfer such water, for that period only, as a short term transfer to any temporary transferee as allowed under Section 11 (b) of the DMB-Nickel Agreement. The Initial Option Payment shall be fully-earned when paid, non-refundable, except as set forth in Section 2(c), and is not applicable to the Option Exercise Price. Notwithstanding the foregoing, CV recognizes and will comply with timing and logistics provisions of the Nickel-DMB Agreement regarding scheduling of delivery of the Interim Assignment Water.

(c) DMB shall use commercially reasonable efforts to acquire Nickel's written consent to this Agreement in the form attached hereto (the "Nickel Consent"), and to provide CV with a copy of such executed Nickel Consent no later than August 15, 2013. In seeking the Nickel Consent, DMB is entitled to CV's cooperation in timely providing any reasonable information requested by Nickel. If DMB does not timely provide the Nickel Consent to CV, then the full Initial Option Payment shall be immediately returned by DMB to CV, and this Agreement shall automatically terminate and be of no further force or effect as of 11:59 p.m. on

August 15, 2013. Any further references in this Agreement to additional payments beyond the Initial Option Payment by CV presume the Nickel Consent was timely acquired by DMB and supplied to CV. Such timely Nickel Consent is an express condition precedent to CV's exercise of any rights under this Agreement and to any further payments to DMB of any kind.

(d) If CV has not exercised the Option by March 31, 2014, to keep the Option in effect, CV shall make a second option payment of one million two hundred thirty three thousand dollars (\$1,233,000) to DMB, by wire transfer in accordance with instructions delivered by DMB, on or before March 31, 2014 ("Second Option Payment"). If CV has not exercised the Option by March 31, 2014, then failure by CV to timely make the Second Option Payment (subject to the notice and cure provisions of Section 8) means that this Agreement and the Option shall automatically terminate as of the date payment was due, with CV losing any rights to any Option. The Second Option Payment shall be fully-earned when paid, non-refundable, except as set forth in Section 2(d)(ii), and is not applicable to the Option Exercise Price.

(i) Effective upon and subject to DMB's timely receipt of CV's Second Option Payment, DMB hereby assigns all rights, title, and interest (but not obligations) to and in the Interim Assignment Water to CV for 2014 only, and CV may temporarily transfer such water, for that period only, as a short term transfer to any temporary transferee as allowed under Section 11 (b) of the DMB-Nickel Agreement. Notwithstanding the foregoing, CV recognizes and will comply with timing and logistics provisions of the Nickel-DMB Agreement regarding scheduling of delivery of the Interim Assignment Water.

(ii) The amount of the Second Option Payment is an estimate of the cost that DMB would incur in 2014 to maintain control of the Assignment Water. DMB's actual cost to maintain its right title and interest, or control, in the Assignment Water in 2014 may be greater or lesser than one million two hundred thirty three thousand dollars (\$1,233,000), depending on whether and how KCWA applies certain variable costs to the Assignment Water. DMB's 2014 cost to maintain control of the Assignment Water includes the 2014 "Purchase Price" that DMB is obligated to pay Nickel under Section 4 of the Nickel-DMB Agreement. Depending on the SWP Table A water allocation announced by DWR as of May 1, 2014, DMB's 2014 cost could also include the POWER CHARGE that DMB pays to KCWA under Section 8(b) of the Nickel-DMB Agreement which the Parties now estimate to be sixty five dollars (\$65) per acre-foot ("AF") for purposes of calculating the Second Option Payment. DMB's 2014 cost further includes any "Wheeling Fee" and any other fees or charges that KCWA collects for administering the Agency Transfer Water which the Parties understand to presently be five dollars (\$5) per AF. Once the actual total cost incurred by DMB to maintain control of the Assignment Water in 2014 is known, DMB will compare that cost to the Second Option Payment. If DMB's actual cost is greater than the Second Option Payment, DMB will send an invoice and backup materials supporting such invoice to CV for the difference, and CV shall pay the invoice amount to DMB within thirty (30) days after the invoice issuance date. If DMB's actual cost is less than the Second Option Payment, DMB will pay the difference to CV within thirty (30) days of final confirmation of all of DMB's actual costs actually paid to Nickel for the Assignment Water for 2014.

(e) If CV has not exercised the Option by March 31, 2015, to keep the Option effective, CV shall make a final option payment of one million two hundred sixty seven thousand dollars (\$1,267,000) to DMB on or before March 31, 2015 ("Final Option Payment"). If CV has not exercised the Option by March 31, 2015, then failure by CV to timely make the Final Option Payment (subject to the notice and cure provisions of Section 8) means that this Agreement and the Option shall automatically terminate as of the date payment was due, with CV losing any rights to any Option. The Final Option Payment shall be fully-earned when paid, non-refundable, except as set forth in Section 2(e)(ii), and is not applicable to the Option Exercise Price.

(i) Effective upon and subject to DMB's timely receipt of CV's Final Option Payment, DMB hereby assigns and CV assumes all rights, title, and interest (but not obligations) to and in the Interim Assignment Water to CV for 2015, only, and CV may temporarily transfer such water, for that period only, as a short term transfer to any temporary transferee as allowed under Section 11 (b) of the DMB-Nickel Agreement. Notwithstanding the foregoing, CV recognizes and will comply with timing and logistics provisions of the Nickel-DMB Agreement regarding scheduling of delivery of the Interim Assignment Water.

(ii) DMB shall compare the amount of the Final Option Payment to DMB's actual cost to maintain control of the 2015 Assignment Water, following the method set forth in Section 2(d)(ii) of this Agreement. If DMB's actual cost is greater than the Final Option Payment, DMB will send an invoice to CV for the difference, and CV shall pay the invoice amount to DMB within thirty (30) days after the invoice issuance date. If DMB's actual cost is less than the Final Option Payment, DMB will pay the difference to CV within thirty (30) days of final confirmation of all of DMB's actual costs actually paid to Nickel for the Assignment Water in 2015.

(f) Scope of Rights and Obligations Assigned to CV On Option Exercise. With respect to the Assignment Water, if the Option is timely exercised and the Option Exercise Price timely paid, DMB's assignment herein to CV, and CV's assumption, is to and of all of DMB's right, title, interest and obligations in the Assignment Water and shall be a third party beneficiary under the Nickel-DMB Agreement as provided in Section 20 of the Nickel-DMB Agreement. CV, as assignee, shall have all rights and obligations which DMB had under the Nickel-DMB Agreement as to the Assignment Water. All applicable references to "DMB" in the Nickel-DMB Agreement shall be deemed to refer to CV as to the Assignment Water, as provided in section 10(b)(iv) of the Nickel-DMB Agreement.

3. CV Bound by Terms of Nickel-DMB Agreement. As provided in Section 10(b) of the Nickel-DMB Agreement, if the Option is exercised CV agrees to be bound by, and to timely comply with, all terms and conditions of the Nickel-DMB Agreement that impose duties to be performed with respect to the one thousand seven hundred (1,700) AFY of Nickel Water (*i.e.*, the Assignment Water). CV agrees that after Option exercise it has no right to delivery of the Assignment Water, unless the "Purchase Price" for the Assignment Water is paid to Nickel and any "Power Charge" is paid to KCWA or Nickel, and all other obligations of the Nickel-DMB Agreement are met with respect to the one thousand seven hundred (1,700) AFY of Nickel Water (*i.e.*, the Assignment Water). Notwithstanding any provision of this Agreement or any other contract to the contrary, in no event will (i) CV's rights as assignee to DMB, or its

rights and obligations under the Nickel-DMB Agreement after Option exercise, be affected or altered by any action or failure to act by DMB or any of its affiliates with respect to the remaining portion of the Nickel-DMB Agreement that has not been assigned to CV, or (ii) DMB's rights with respect to the remaining portion of the Nickel-DMB Agreement that has not been assigned to CV be affected or altered by any action or failure to act by CV or any of its affiliates, successors or assigns.

4. **Costs and Expenses.** In addition to all other cost and expense provisions provided herein, CV shall pay all costs, expenses and fees associated with any further transfer or assignment of Assignment Water under this Agreement, including, but not limited to, any transfer taxes associated with the Assignment Water (which shall not be construed as taxes on DMB for receipt of any payments under this Agreement). DMB and CV shall each be responsible for its own attorneys' and other professional fees and internal administrative costs associated with the preparation of this Agreement and the assignment of rights and obligations under the Nickel-DMB Agreement from DMB to CV. For any reasonable costs related to Nickel's due diligence investigation of the proposed assignment to CV, CV shall bear all such costs. For any reasonable costs related to Nickel's due diligence investigation of any Subsequent Assignee proposed by CV, CV shall bear all such costs.

5. **Representations, Warranties. And Compliance With Nickel-DMB Agreement.** DMB hereby represents, warrants and covenants that DMB holds all rights and interests in the Assignment Water, that all necessary acts to use such water have been taken by DMB, that to DMB's knowledge all rights to such water are free and clear of any liens, claims or other encumbrances, that no other options, commitments or similar rights have been granted by DMB to any person for such water, that DMB is as of the date of this Agreement in full compliance with the Nickel-DMB Agreement and that DMB is free to assign such water to CV subject only to the terms of the Nickel-DMB Agreement. DMB agrees and covenants to remain in full compliance with the Nickel-DMB Agreement through the time of the payment of the Option Exercise Price, and to promptly provide to CV any notices received by DMB under or pursuant to the Nickel-DMB Agreement. DMB additionally hereby represents, warrants and covenants that:

(a) **Organization and Authority.** DMB: (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware; and (ii) has all necessary limited liability company power to enter into and perform this Agreement.

(b) **Authority Relating to this Agreement; No Violation of Other Instruments.** The execution and delivery of this Agreement and the performance hereunder by DMB have been duly authorized by all necessary limited liability company action on the part of DMB and, assuming execution of this Agreement by CV, this Agreement will constitute a legal, valid and binding obligation of DMB, enforceable against DMB in accordance with its terms, subject as to enforcement: (i) to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws of general applicability relating to or affecting creditors' rights; and (ii) to general principles of equity, whether such enforcement is considered in a proceeding in equity or at law.

(c) **Ownership and Delivery of Assets.** DMB is the true and lawful holder of all rights to the Assignment Water created and conveyed pursuant to the Nickel-DMB Agreement and has all necessary power and authority to assign to CV pursuant to the terms of this Agreement the Assignment Water free and clear, to DMB's knowledge, of all liens, charges, easements, security interests, mortgages, conditional sale contracts, equities, rights of way, covenants, restrictions, title defects, objections, claims or other encumbrances ("Liens") and upon exercise of the Option in accordance with the terms of this Agreement, CV will hereby acquire good and valid title to the Assignment Water free and clear of all Liens.

CV hereby represents, warrants and covenants to DMB that:

(a) **Organization and Authority.** CV: (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware; and (ii) has all necessary limited liability company power to enter into and perform this Agreement.

(b) **Authority Relating to this Agreement; No Violation of Other Instruments.** The execution and delivery of this Agreement and the performance hereunder by CV have been duly authorized by all necessary limited liability company action on the part of CV and, assuming execution of this Agreement by CV, this Agreement will constitute a legal, valid and binding obligation of CV, enforceable against CV in accordance with its terms, subject as to enforcement: (i) to bankruptcy, insolvency, reorganization, arrangement, moratorium and other laws of general applicability relating to or affecting creditors' rights; and (ii) to general principles of equity, whether such enforcement is considered in a proceeding in equity or at law.

6. **KCWA.** Because KCWA is an agency which will be dealing with the Assignment Water, once this Agreement is fully executed, and the Nickel Consent is received by CV, the Parties agree that CV shall send a copy of this Agreement and the Nickel Consent to KCWA.

7. **Notices And Cure Periods.** All notices under this Agreement shall be effective upon personal delivery, delivery by a nationally-recognized overnight courier, or electronically confirmed facsimile transmission to DMB or CV, as the case may be, or three business days after deposit in the United States Mail, registered or certified, postage fully prepaid and addressed to the respective Parties as follows:

To DMB:

Mark C. Kehke
President and Chief Operating Officer
DMB Pacific Ventures LLC
801 Montgomery Avenue, Suite 200
San Francisco, CA 94133
Facsimile: (415) 576-9205

David C. Smith, Esq.
Senior Vice President
DMB Pacific Ventures LLC
18800 Von Karman Avenue
Irvine, CA 92612
Facsimile: (949) 955-9429

To CV: August Belmont
President
CV Communities, LLC
1900 Quail Street
Newport Beach, CA 92660
Facsimile: 949-200-8070

Mark J. Hattam, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, CA 92101-3541
Facsimile: 619-233-1158

or such other address as the Parties may from time to time designate in writing.

(a) If any payments due hereunder (including any option payments) are not made by the stated deadline, or if for any reason any Party believes another Party is not complying with this Agreement, there is no default, no loss of any rights, and no remedy at law or in equity until written notice is provided to the defaulting Party and that Party's non-payment or alleged breach exists for ten (10) days after that Party's receipt of written notice. If there are exigent circumstances wherein quicker legal action is necessary to protect rights from being lost or materially impaired, such action may be filed as a protection of rights, but there is still no actual non-payment or breach until this notice and cure provision expires.

8. No Third Party Beneficiaries. Except for Nickel and Subsequent Assignees approved by Nickel under the Nickel Consent, DMB and CV hereby agree that it is not their intent to create any rights or benefits in any third parties and that no third party beneficiaries shall be created or shall be deemed created by this Agreement.

9. Remedies. After CV's exercise of the Option and payment of the Option Purchase Price, any and all remedies for any dispute between CV and Nickel will be governed by the Remedies provision of the Nickel-DMB Agreement because the Assignment Water will have been fully assigned to CV. However, during any period prior to CV's exercise of the Option and payment of the Option Purchase Price, and also for any disputes between CV and DMB, the following provisions will apply:

(a) The Parties understand and agree that the Interim Assignment Water and the Assignment Water are unique, may not be replaceable in the event they are not made available to CV in accordance with this Agreement, and will be relied upon by CV in connection with its development activities in California. Likewise, the Parties agree that payment to DMB of the Second and Final Option Payments will be relied upon by DMB to offset its costs to maintain control of the Interim Assignment Water and the Assignment Water under the Nickel-DMB Agreement for the applicable years of such payments. Therefore, in addition to any and all claims for damages for a breach or default, and in addition and without prejudice to any other right or remedy available at law or in equity that each Party may have against the other in the event of a threatened or actual breach of this Agreement, the aggrieved Party shall be entitled to injunctive relief, specific performance and other equitable remedies without the necessity of posting a bond or providing other security. The Parties acknowledge that in the event of a threatened or actual breach of this Agreement by the other, the aggrieved Party will be irreparably damaged in the event that this Agreement is not specifically enforced and that equitable relief would be appropriate. If either Party breaches, or defaults in the performance of its obligations under this Agreement, the other Party may pursue any remedies available to it at law or in equity for such default or breach.

(b) Notwithstanding and without any limitation on the breadth of the foregoing and the broad remedies available to the Parties, CV is not obligated to make any of the option payments specified herein except to the extent it wants to protect its rights to the Interim Assignment Water and the Assignment Water. Should CV fail to make option payments when timely required to preserve its periodic option rights, it merely loses its further option rights in the Interim Assignment Water and the Assignment Water. Should CV deliver the Option Notice but then fail to timely pay the Option Exercise Price, CV's exercise of the Option shall be null and void as if never exercised, and DMB shall have no other recourse against CV for that nonpayment.

10. Entire Agreement. This Agreement and items incorporated herein contain all of the agreements and understandings of the Parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions hereof may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the Parties.

11. Successors. The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assignees of the respective Parties hereto.

12. Waiver. A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

13. Choice of Laws. This Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such law.

14. **Headings and Joint Drafting.** Headings at the beginning of each numbered Section of this Agreement are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall be construed as having been drafted by all Parties, and no drafting presumptions shall be applied against any Party.

15. **Time.** Time is of the essence, it being understood that each date set forth herein and the obligations of the Parties to be satisfied by such dates have been the subject of specific negotiations by the Parties.

16. **Counterparts.** This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on all Parties.

17. **Termination Agreement.** Upon the termination of this Agreement for any reason, including the failure to timely exercise the Option in the manner provided herein, upon written request by DMB CV shall properly execute, acknowledge and deliver to DMB a form suitable to establish the termination of this Agreement.

18. **Further Assurances.** DMB agrees that it will, at CV's request and without further consideration, execute and deliver such other instruments of conveyance, assignment and transfer and take such other actions as CV may reasonably request in order to more effectively convey, assign, transfer to and vest in CV the Assignment Water as set forth herein, provided that any such instrument is consistent with the terms of this Agreement. Additionally, all Parties to this Agreement agree to take all necessary actions to effectuate the terms of this Agreement.

19. **Attorney's Fees & Costs.** Should there be any legal action to construe or apply this Agreement, the prevailing party in such action shall recover all their incurred fees and costs, including but not limited to those by attorneys and experts. Fees, costs and necessary disbursements incurred by the prevailing party in enforcing a judgment, award or decree in its favor shall be recoverable separately from and in addition to any other amount included in such judgment, award or decree. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first hereinabove written.

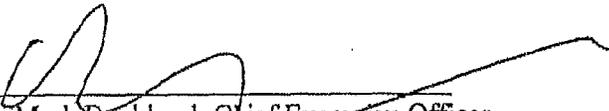
DMB Pacific LLC

By: DMB Pacific Ventures LLC
A Delaware limited liability company, its manager

By: _____
Mark C. Kehke, President and Chief Operating Officer

CV Communities, LLC

By:  _____
August Belmont, President

By:  _____
Mark Buckland, Chief Executive Officer

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first hereinabove written.

DMB Pacific LLC

By:  DMB Pacific Ventures LLC
A Delaware limited liability company, its manager

By: _____
Mark C. Kehke, President and Chief Operating Officer

CV Communities, LLC

By: _____
August Belmont, President

By: _____
Mark Buckland, Chief Executive Officer

EXHIBIT "D"
AVEK ASSIGNMENT

C-14-12 5/24/14

**ASSIGNMENT OF CV COMMUNITIES, LLC'S
INTEREST IN 2007 OPTION AND WATER PURCHASE AGREEMENT
TO ANTELOPE VALLEY EAST-KERN WATER AGENCY**

This Agreement ("Agreement") is made as of June 6, 2016 (the "Effective Date"), by and between CV Communities, LLC, a Delaware limited liability company ("CV"), and Antelope Valley East-Kern Water Agency ("AVEK"). The foregoing entities are collectively referenced herein as the "Parties."

RECITALS

- A. DMB Communities II LLC, an Arizona limited liability company ("DMBCII"), and Nickel Family, LLC, a California limited liability company ("Nickel"), executed an Option and Water Purchase Agreement, dated May 1, 2007 ("Nickel-DMB Agreement"). All identified terms in the Nickel-DMB Agreement shall have their same meaning in this Agreement, unless otherwise defined herein. Pursuant to the Nickel-DMB Agreement, DMBCII acquired an option to purchase the right to eight thousand three hundred and ninety three (8,393) acre-feet per year ("AFY") of water ("Nickel Water"), which option was exercised by DMBCII in 2008. In 2009, Nickel approved DMBCII's assignment of the Nickel-DMB Agreement to DMB. As the successor in interest to DMBCII, DMB held the right to the eight thousand three hundred and ninety three (8,393) AFY of Nickel Water. A copy of the Nickel-DMB Agreement is attached hereto as Exhibit "A" and is incorporated herein by this reference.
- B. Nickel previously held rights to water from the Kern River. Nickel conveyed those water rights to the Kern County Water Agency ("KCWA") in exchange for a perpetual right to ten thousand (10,000) AFY of water ("Agency Transfer Water") to be made available by KCWA for the benefit of Nickel pursuant to the terms of that certain Contract to Transfer the Kern River Lower River Water Rights between Nickel, the Olcese Water District and KCWA dated January 23, 2001 ("KCWA-Nickel Agreement"). A copy of the KCWA-Nickel Agreement is attached hereto as Exhibit "B" and is incorporated herein by this reference. Pursuant to the terms of the KCWA-Nickel Agreement, Nickel received the right to the Agency Transfer Water for the purpose of sale, or transfer, to third parties within or outside of Kern County.
- C. Nickel assigned eight thousand three hundred and ninety three (8,393) AFY of its Agency Transfer Water to DMB pursuant to the 2007 Nickel-DMB Agreement. That eight thousand three hundred and ninety three (8,393) AFY of Agency Transfer Water is the Nickel Water controlled by DMB under the Nickel-DMB Agreement.
- D. The KCWA-Nickel Agreement provides that Nickel is entitled to delivery of the Agency Transfer Water at a point called Tupman, located at milepost 238.04 within Reach 12E of the State Water Project's California Aqueduct, in Kern County (the "Point of Delivery").
- E. Section 10 of the Nickel-DMB Agreement allows DMB to assign Nickel Water, under certain conditions, to third parties upon the consent of Nickel.

- F. In 2013 CV, with the written consent of Nickel, was given the option by DMB to purchase an assignment of one-thousand seven-hundred (1,700) AFY of Nickel Water. The documents for such option and assignment, the Option and Partial Assignment of DMB Interest In 2007 Option And Water Purchase Agreement To CV Communities dated July 10, 2013 (the "CV Option Agreement") and the Nickel Consent thereto (the "Nickel Consent"), are attached hereto as Exhibits "C" and "D," respectively. CV exercised the option on March 31, 2016, as evidenced in Exhibit "E" attached hereto. The 1,700 AFY of Nickel Water and all contractual rights and obligations associated therewith held by CV as a result of its exercise of the option are referenced herein as the "Assignment Water."
- G. As stated in this Agreement and effective January 1, 2017, CV desires to assign all of the Assignment Water to AVEK. As of January 1, 2017, AVEK desires to unconditionally assume all of the obligations under the Nickel-DMB Agreement as to the Assignment Water. By way of the Nickel Consent, such assignment to, and assumption by, AVEK are already approved by Nickel, KCWA and DMB.
- H. THEREFORE, the Parties hereby agree as follows:
1. Recitals. The foregoing Recitals are hereby made a part of this Agreement.
 2. Assignment To AVEK. And Assumption By AVEK. Subject to CV timely and lawfully exercising its option for the Assignment Water as specified in the Exhibit "C" CV Option Agreement (the "Option Exercise"), and conditioned thereon, the Parties agree as follows:
 - (a) Effective as of January 1, 2017, all of CV's interests in the Assignment Water are hereby assigned and transferred to AVEK, and AVEK unconditionally assumes all obligations related to the Assignment Water under the Nickel-DMB Agreement and as detailed herein. CV's assignment herein to AVEK, and AVEK's assumption, are to and of all of CV's right, title, interest and obligations in the Assignment Water from January 1, 2017, forward, and AVEK shall be a third party beneficiary under the Nickel-DMB Agreement as provided in Section 20 of the Nickel-DMB Agreement and Nickel shall be a third-party beneficiary under this Agreement. AVEK, as assignee, shall have all rights and obligations which DMB had under the Nickel-DMB Agreement as to the Assignment Water. All applicable references to "DMB" in the Nickel-DMB Agreement shall be deemed to refer to AVEK as to the Assignment Water, as provided in section 10(b)(iv) of the Nickel-DMB Agreement.
 - (b) As provided in Section 10(b) of the Nickel-DMB Agreement and as of January 1, 2017, AVEK agrees to be bound by, and to timely comply with, all terms and conditions of the Nickel-DMB Agreement that impose duties to be performed with respect to the Assignment Water. AVEK agrees that it has no right to delivery of the Assignment Water unless AVEK pays the "Purchase Price" for the Assignment Water to Nickel and any "Power Charge" is paid to KCWA or Nickel, and all other obligations of the Nickel-DMB Agreement are met by AVEK with respect to the Assignment Water (collectively, the "AVEK Obligations"). AVEK promises to, and covenants with, CV that it will timely perform all the AVEK Obligations on and after January 1, 2017.

(c) CV and AVEK acknowledge that the Assignment Water was optioned by DMB on December 16, 2008 and thus the Nickel-DMB Agreement's 35-year term ("Transfer Term") began on January 1, 2009 and ends on December 31, 2043, unless extended as described below. The Nickel-DMB Agreement authorizes extension of the agreement for an additional 35-year term to 2078 at AVEK's sole discretion, in accordance with Section 5 of the Nickel-DMB Agreement, and further authorizes AVEK and Nickel to enter into good faith negotiations to extend the agreement past 2078 upon mutual consent of the parties (collectively, "Extended Transfer Term"). CV and AVEK also acknowledge that in accordance with Section 6 of the Nickel-DMB Agreement, the use of the Assignment Water and all other rights pursuant to the Agency Agreement shall revert to Nickel at the end of the Transfer Term or, if applicable, the Extended Transfer Term, or upon termination of this Agreement.

3. Application Of Assignment Water. CV is developing certain projects in the AVEK service area, within the boundaries of Los Angeles County Waterworks District No. 40 ("District 40") which receives imported water on a wholesale basis from AVEK. One project is the approximately 237-acre Avanti North planned development in Lancaster, California ("Avanti North"), while the other is the approximately 794-acre Joshua Ranch planned development in Palmdale, California ("Joshua Ranch"). Effective January 1, 2017 upon the assignment to, and assumption by, AVEK as to the Assignment Water as stated in section 2(a) above, AVEK agrees to make water available to District 40 (or another retail water provider, as noted below with respect to subsection (b) water) for the purposes of supplying the Joshua Ranch and Avanti North projects as follows:

(a) 567 AFY for the Joshua Ranch project.

(b) 620 AFY for the Avanti North project or, at CV's discretion, for the benefit of any CV projects within AVEK's service area and within areas actually served by AVEK as needed by CV. For purposes of this subsection 3(b), "CV" and "CV projects" shall include any projects within District 40 or other areas actually served by AVEK in which CV or any of its affiliated entities, successors, or assignees hold a legal interest, thus allowing this 620 AFY interest to be transferred by CV. Beginning January 1, 2017, and for a five-year period ending on December 31, 2021, CV agrees to directly reimburse AVEK for any and all actual costs incurred by AVEK to obtain and deliver this 620 AFY, including costs under the Nickel-DMB Agreement. To secure payment to AVEK for any and all actual costs incurred by AVEK to obtain and deliver this 620 acre feet prior to December 31 2021, CV shall, no later than December 31, 2016, provide a financial security in an amount equivalent to the anticipated annual costs, as determined by AVEK, in the form of a letter of credit similar to or of equal scope as the form attached hereto as Exhibit "F".

If by December 31, 2021, CV has not established a reliable payment mechanism acceptable to AVEK (whose approval shall not be unreasonably withheld) to facilitate reimbursement of AVEK annually for the actual costs AVEK is required to pay for such water under the agreements attached as exhibits hereto, AVEK agrees to pay CV \$3,000 per AF and AVEK shall have no further obligation to deliver water to the Avanti North project or as otherwise directed by CV. AVEK agrees that upon request by CV it will cooperate with and undertake all necessary actions to assist CV in establishing a payment mechanism that provides AVEK

at least as much certainty of repayment as provided by the reimbursement mechanism established for the Joshua Ranch project, as reasonably determined by AVEK. Such actions by AVEK may include, but are not limited to, execution of joint community facilities district (CFD) agreements and participation in a CFD with the City of Lancaster or other applicable public agencies.

4. Capacity Charge Prepayment. AVEK charges a “Water Supply Capacity Charge” for each new water connection to the retail system of a water purveyor that has a connection to AVEK’s wholesale delivery system (a “Capacity Charge”). Currently, the Capacity Charge for the area in which the Joshua Ranch project is located (District 40) is \$6,468 per EDU, though such charges can change over time and vary based on size of connections. As to the 528 lots of the Joshua Ranch project, subject to and conditioned upon the assignment to AVEK detailed in this Agreement having occurred as of January 1, 2017, AVEK agrees to credit CV with payment of AVEK Capacity Charges for 528 EDUs (even if the amount of the charge per EDU is increased over time) so that CV will have to make no payment of AVEK Capacity Charges for 528 EDUs in that project (the “Capacity Charge Prepayment”). To the extent requested in writing by CV or its successors, AVEK shall inform District 40 of the Capacity Charge Prepayment for the Joshua Ranch project. This provision shall have a ten year term that if not exercised by January 1, 2027 it shall terminate.

5. District 40. Within 10 days of the complete execution of this Agreement, AVEK shall send to District 40 a letter in the form attached hereto as Exhibit “G” for the Joshua Ranch project. Additionally, within 10 days after AVEK’s reasonable determination that CV Communities has established a secure reimbursement mechanism for the Avanti North or a substitute project as provided in Subsection 4(b) of this Agreement, AVEK shall send to District 40 (or other applicable retail water provider) a similar letter for that project.

6. Costs and Expenses. CV and AVEK shall each be responsible for their own attorneys’ and other professional fees and internal administrative costs associated with the preparation of this Agreement.

7. CV Representations, Warranties, And Compliance With Nickel-DMB Agreement. CV hereby represents, warrants and covenants that CV holds all rights and interests in the CV Option Agreement, that all necessary acts to use such water have been taken by CV, that to CV’s knowledge all rights to such water are free and clear of any liens, claims or other encumbrances, other than as detailed herein and in the attached exhibits, that no other options, commitments or similar rights have been granted by DMB or CV to any person for such water, that DMB and CV are as of the date of this Agreement in full compliance with the Nickel-DMB Agreement, and that CV is free to assign such water to AVEK subject only to the terms of the Nickel-DMB Agreement, the CV Option Agreement, and the Nickel Consent. CV additionally hereby represents, warrants and covenants that:

(a) Organization and Authority. CV: (i) is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware; and (ii) has all necessary limited liability company power to enter into and perform this Agreement.

(b) Authority Relating to this Agreement; No Violation of Other Instruments. The execution and delivery of this Agreement and the performance hereunder by CV have been

duly authorized by all necessary limited liability company action on the part of CV and, assuming execution of this Agreement by the Parties, this Agreement will constitute a legal, valid and binding obligation of CV, enforceable against CV in accordance with its terms.

8. AVEK Representations, Warranties and Covenants. AVEK hereby represents, warrants and covenants to CV that:

(a) Organization and Authority. AVEK: (i) is a public agency duly formed, validly existing and in good standing under the laws of the State of California; and (ii) has all necessary power to enter into and perform this Agreement; and (iii) there has been lawful approval by AVEK's Board of Directors of this Agreement.

(b) Authority Relating to this Agreement; No Violation of Other Instruments. The execution and delivery of this Agreement and the performance hereunder by AVEK have been duly authorized by all necessary limited liability company action on the part of AVEK and, assuming execution of this Agreement by the Parties, this Agreement will constitute a legal, valid and binding obligation of AVEK, enforceable against AVEK in accordance with its terms.

9. KCWA. Because KCWA is an agency which will be dealing with the Assignment Water, upon the complete execution of this Agreement CV shall within 30 days send to KCWA a complete copy of this Agreement.

10. Governmental Review. To the extent CEQA or any other laws require any public agency review, analysis, and/or approval of this Agreement or its effects, AVEK shall be fully responsible for all such matters at its own expense.

11. Notices. All notices under this Agreement shall be effective upon personal delivery, delivery by a nationally-recognized overnight courier, or electronically confirmed facsimile transmission to CV or AVEK, as the case may be, or three business days after deposit in the United States Mail, registered or certified, postage fully prepaid and addressed to the respective Parties as follows:

To AVEK:

General Manager
Antelope Valley-East Kern Water Agency
6500 W. Avenue N
Palmdale, CA 92351

To CV:

August Belmont
President
CV Communities, LLC
1900 Quail Street
Newport Beach, CA 92660
Facsimile: (949) 200-8070

Barry H. Epstein, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center
San Francisco, CA 94111-4074
Facsimile: (415) 837-1516

or such other address as the Parties may from time to time designate in writing.

12. AVEK/Nickel Remedies. Any and all remedies for any dispute between AVEK and Nickel will be governed by the Remedies provision of the Nickel-DMB Agreement because the Assignment Water will have been fully assigned to AVEK. Additionally, AVEK agrees that, per section 6 of the Exhibit "D" Nickel Consent, should AVEK cause a monetary default under the Nickel-DMB Agreement as to the Assignment Water, then Nickel has the right to a permanent return of all rights and interest in the Assignment Water, all as stated in section 6 of the Exhibit "D" Nickel Consent.

13. Entire Agreement. This Agreement and items incorporated herein contain all of the agreements and understandings of the Parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions hereof may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the Parties.

14. Successors. The terms, covenants and conditions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assignees of the respective Parties hereto. CV and AVEK acknowledge that AVEK will not be able to assign the Assignment Water or any Agreement related to the Assignment Water without the express consent of Nickel.

15. Waiver. A waiver of any breach of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

16. Choice of Laws. This Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such law.

17. Headings and Joint Drafting. Headings at the beginning of each numbered Section of this Agreement are solely for the convenience of the Parties and are not a part of this Agreement. This Agreement shall be construed as having been drafted by all Parties, and no drafting presumptions shall be applied against any Party.

18. Time. Time is of the essence, it being understood that each date set forth herein and the obligations of the Parties to be satisfied by such dates have been the subject of specific negotiations by the Parties.

19. Counterparts. This Agreement may be signed by the Parties in different counterparts and the signature pages combined as a document binding on all Parties.

20. Further Assurances. The Parties agree to take all necessary actions to effectuate the terms of this Agreement.

21. Attorney's Fees & Costs. Should there be any legal action to construe or apply this Agreement, the prevailing party in such action shall recover all their incurred fees and costs, including but not limited to those by attorneys and experts. Fees, costs and necessary disbursements incurred by the prevailing party in enforcing a judgment, award or decree in its favor shall be recoverable separately from and in addition to any other amount included in such judgment, award or decree. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first hereinabove written.

Antelope Valley East-Kern Water Agency

By: Antelope Valley East-Kern Water Agency

By: 

Dwayne Chisam, General Manager

CV Communities, LLC

By: _____
August Belmont, President

By: _____
Mark Buckland, Chief Executive Officer

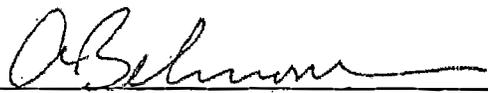
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first hereinabove written.

Antelope Valley East-Kern Water Agency

By: Antelope Valley East-Kern Water Agency

By: _____
Dwayne Chisam, General Manager

CV Communities, LLC

By: 
August Belmont, President

By: 
Mark Buckland, Chief Executive Officer

EXHIBIT "E"
POWER CHARGES

Exhibit D

$$\text{Power Charge} = \text{\$/KWH} \times \text{Avg. KWH/AF} \times 10,000 \text{ AF}$$

1. $\text{\$/KWH}$ is calculated by using the PG&E, AG 5b rate or future equivalent determined prior to May 1 of each year. Currently AG 5b includes demand charges and electric energy charges for on peak, off peak, and partial peak and California Energy Commission taxes. The 10,000 af is assumed to be pumped at a rate of 1,000 AF per month from March 1 to December 31. The average daily rate is 33 AF. Pumping is assumed to occur throughout the entire 24 hour period for each day of the month.
2. The following table will be used to determine the KWH/AF. Average Depth to Groundwater is a value calculated from the measurements of wells in the Pioneer Project during the spring of each year. This data is compiled for the Kem Fan Monitoring Committee.

Spring Average Depth to Groundwater on the Pioneer Project ¹	Average KWH/AF
10	194
20	211
30	229
40	246
50	264
60	281
70	299
80	317
90	334
100	352
110	369
120	387
130	405
140	422
150	440
160	457
170	475
180	493
190	510
200	528
210	545
220	563
230	581
240	598
250	616
260	633
270	651
280	668
290	686
300	704

Example: If groundwater levels are 102 feet.

$$\$224,005 = \$0.0631/\text{KWH} \times 355 \text{ KWH/AF} \times 10,000 \text{ AF}$$

¹If average depth to groundwater drops below 300 feet the KWH/AF will be recalculated.

**Summary of Power Costs
Nickel 10,000 AF
2001**

Month	AF	KWH	Amount	\$/KWH
March	1,000	355,000	\$16,972.54	0.05
April	1,000	355,000	16,913.30	0.05
May	1,000	355,000	26,145.30	0.07
June	1,000	355,000	25,853.10	0.07
July	1,000	355,000	26,145.30	0.07
August	1,000	355,000	26,145.30	0.07
September	1,000	355,000	25,853.10	0.07
October	1,000	355,000	26,145.30	0.07
November	1,000	355,000	16,913.30	0.05
December	1,000	355,000	16,972.54	0.05
Total	10,000	3,550,000	\$224,059.08	

Average \$/KWH..... \$0.06

POWER BILLING CALCULATION

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	B
FACILITY:	Pioneer Project	MONTH of	Mar 2001	CODE	3

	<i>Usage</i>	<i>Rate</i>	<i>TOTAL \$</i>
CUSTOMER CHARGE:			0.00

SEWER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	<i>KW</i>	<i>\$/KW</i>	
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	0	0.00	0.00
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	4.40	2,442.00

ELECTRIC ENERGY CHARGES:	<i>Multiplier</i>	<i>KWH</i>	<i>\$/KWH</i>	<i>Amount \$</i>
Total KWH		355,000		
Base Energy Charges:				
On Peak	0.0%	0	0.00000	0.00
(From PG&E) Partial Peak	38.4%	136,465	0.04661	6,360.63
Off Peak	61.6%	218,535	0.03706	8,098.91

TOTAL ELECTRIC ENERGY CHARGES:			14,459.54
		Sub Total	\$16,901.54

TAXES	<i>KWH</i>	<i>\$/KWH</i>	
California Energy Commission	355,000	0.00020	71.00
	TOTAL BILLING		\$16,972.54

TOTAL NET BILLING	\$16,972.54
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**KERN COUNTY WATER AGENCY
POWER BILLING CALCULATION**

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	B
FACILITY:	Pioneer Project	MONTH of	Apr 2001	CODE	4

	<i>Usage</i>	<i>Rate</i>	<i>TOTAL \$</i>
CUSTOMER CHARGE:			0.00

METER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	<i>KW</i>	<i>\$/KW</i>	
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	0	0.00	0.00
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	4.40	2,442.00

ELECTRIC ENERGY CHARGES:

	<i>Multiplier</i>	<i>KWH</i>	<i>\$/KWH</i>	<i>Amount \$</i>
Total KWH		355,000		
Base Energy Charges:				
On Peak	0.0%	0	0.00000	0.00
(From PG&E) Partial Peak	36.7%	130,262	0.04661	6,071.51
Off Peak	63.3%	224,738	0.03706	8,328.79

TOTAL ELECTRIC ENERGY CHARGES:	14,400.30
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Sub Total	\$16,842.30
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ES	<i>KWH</i>	<i>\$/KWH</i>	
California Energy Commission	355,000	0.00020	71.00
	TOTAL BILLING		\$16,913.30

TOTAL NET BILLING	\$16,913.30
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KERN COUNTY WATER AGENCY

POWER BILLING CALCULATION

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	A
FACILITY:	Pioneer Project	MONTH of	May 2001	CODE	5

	Usage	Rate	TOTAL \$
CUSTOMER CHARGE:			0.00

METER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	KW	\$/KW	
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	555	2.70	1,498.50
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	6.55	3,635.25

ELECTRIC ENERGY CHARGES:				
	Multiplier	KWH	\$/KWH	Amount \$
Total KWH		355,000		
Base Energy Charges:				
On Peak	17.7%	62,984	0.14294	9,002.93
(From PG&E) Partial Peak	0.0%	0	0.00000	0.00
Off Peak	82.3%	292,016	0.04088	11,937.61

TOTAL ELECTRIC ENERGY CHARGES:	20,940.55
Sub Total	\$26,074.30

California Energy Commission	KWH	\$/KWH	
	355,000	0.00020	71.00
TOTAL BILLING			\$26,145.30

TOTAL NET BILLING	\$26,145.30
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**KERN COUNTY WATER AGENCY
POWER BILLING CALCULATION**

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	A
FACILITY:	Pioneer Project	MONTH of	Jun 2001	CODE	6

	<u>Usage</u>	<u>Rate</u>	<u>TOTAL \$</u>
CUSTOMER CHARGE:			0.00

WATER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	<u>KW</u>	<u>\$/KW</u>	
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	555	2.70	1,498.50
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	6.55	3,635.25

ELECTRIC ENERGY CHARGES:

	<u>Multiplier</u>	<u>KWH</u>	<u>\$/KWH</u>	<u>Amount \$</u>
Total KWH		355,000		
Base Energy Charges:				
On Peak	16.9%	60,121	0.14294	8,593.70
(From PG&E) Partial Peak	0.0%	0	0.00000	0.00
Off Peak	83.1%	294,879	0.04088	12,054.65

TOTAL ELECTRIC ENERGY CHARGES: 20,648.35

Sub Total \$25,782.10

California Energy Commission

<u>KWH</u>	<u>\$/KWH</u>	
355,000	0.00020	71.00
TOTAL BILLING		\$25,853.10

TOTAL NET BILLING **\$25,853.10**

KERN COUNTY WATER AGENCY

POWER BILLING CALCULATION

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	A
FACILITY:	Pioneer Project	MONTH of	Jul 2001	CODE	7

	<u>Usage</u>	<u>Rate</u>	<u>TOTAL \$</u>
CUSTOMER CHARGE:			0.00

WATER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	<u>KW</u>	<u>\$/KW</u>	
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	555	2.70	1,498.50
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	6.55	3,635.25

ELECTRIC ENERGY CHARGES:	<u>Multiplier</u>	<u>KWH</u>	<u>\$/KWH</u>	<u>Amount \$</u>
Total KWH		355,000		
Base Energy Charges:				
On Peak	17.7%	62,984	0.14294	9,002.93
(From PG&E) Partial Peak	0.0%	0	0.00000	0.00
Off Peak	82.3%	292,016	0.04088	11,937.61

TOTAL ELECTRIC ENERGY CHARGES:	20,940.55
Sub Total	\$26,074.30

REGS California Energy Commission	<u>KWH</u>	<u>\$/KWH</u>	71.00
	355,000	0.00020	
	TOTAL BILLING		\$26,145.30
	TOTAL NET BILLING		\$26,145.30

**KERN COUNTY WATER AGENCY
POWER BILLING CALCULATION**

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	A
FACILITY:	Pioneer Project	MONTH of	Aug 2001	CODE	8

	<i>Usage</i>	<i>Rate</i>	<i>TOTAL \$</i>
CUSTOMER CHARGE:			0.00

METER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	<i>KW</i>	<i>\$/KW</i>	
			<i>TOTAL \$</i>
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	555	2.70	1,498.50
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	6.55	3,635.25

ELECTRIC ENERGY CHARGES:

	<i>Multiplier</i>		<i>KWH</i>	<i>\$/KWH</i>	<i>Amount \$</i>
total KWH			355,000		
Base Energy Charges:					
On Peak	17.7%	62,984	0.14294	9,002.93	
From PG&E) Partial Peak	0.0%	0	0.00000	0.00	
Off Peak	82.3%	292,016	0.04088	11,937.61	

TOTAL ELECTRIC ENERGY CHARGES:	20,940.55
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Sub Total **\$26,074.30**

California Energy Commission

	<i>KWH</i>	<i>\$/KWH</i>	
	355,000	0.00020	71.00
TOTAL BILLING			\$26,145.30

TOTAL NET BILLING \$26,145.30

**KERN COUNTY WATER AGENCY
POWER BILLING CALCULATION**

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	A
FACILITY:	Pioneer Project	MONTH of	Sep 2001	CODE	9

	Usage	Rate	TOTAL \$
CUSTOMER CHARGE:			0.00

METER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	KW	\$/KW	
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	555	2.70	1,498.50
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	6.55	3,635.25

ELECTRIC ENERGY CHARGES:					
	Multiplier	KWH	\$/KWH	Amount \$	
Total KWH		355,000			
Base Energy Charges:					
On Peak	16.9%	60,121	0.14294	8,593.70	
(From PG&E) Partial Peak	0.0%	0	0.00000	0.00	
Off Peak	83.1%	294,879	0.04088	12,054.65	

TOTAL ELECTRIC ENERGY CHARGES:				20,648.35
			Sub Total	\$25,782.10

California Energy Commission	KWH	\$/KWH	
	355,000	0.00020	71.00
	TOTAL BILLING		\$25,853.10

TOTAL NET BILLING	\$25,853.10
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**KERN COUNTY WATER AGENCY
POWER BILLING CALCULATION**

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	A
FACILITY:	Pioneer Project	MONTH of	Oct 2001	CODE	10

	Usage	Rate	TOTAL \$
CUSTOMER CHARGE:			0.00

METER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	KW	\$/KW	TOTAL \$
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	555	2.70	1,498.50
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	6.55	3,635.25

ELECTRIC ENERGY CHARGES:	Multiplier	KWH	\$/KWH	Amount \$
Total KWH		355,000		
Base Energy Charges:				
On Peak	17.7%	62,984	0.14294	9,002.93
(From PG&E) Partial Peak	0.0%	0	0.00000	0.00
Off Peak	82.3%	292,016	0.04088	11,937.61

TOTAL ELECTRIC ENERGY CHARGES:	20,940.55
Sub Total	\$26,074.30

California Energy Commission	KWH	\$/KWH	
	355,000	0.00020	71.00
TOTAL BILLING			\$26,145.30

TOTAL NET BILLING	\$26,145.30
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KERN COUNTY WATER AGENCY

POWER BILLING CALCULATION

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	B
FACILITY:	Pioneer Project	MONTH of	Nov 2001	CODE	11

	Usage	Rate	TOTAL \$
CUSTOMER CHARGE:			0.00

METER CHARGE:			0.00
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	KW	\$/KW	
DEMAND CHARGES PER (KW) :			
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	0	0.00	0.00
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	4.40	2,442.00

ELECTRIC ENERGY CHARGES:

	Multiplier	KWH	\$/KWH	Amount \$
Total KWH		355,000		
Base Energy Charges:				
On Peak	0.0%	0	0.00000	0.00
From PG&E Partial Peak	36.7%	130,262	0.04661	6,071.51
Off Peak	63.3%	224,738	0.03706	8,328.79

TOTAL ELECTRIC ENERGY CHARGES:	14,400.30
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Sub Total	\$16,842.30
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California Energy Commission

KWH	\$/KWH	
355,000	0.00020	71.00
TOTAL BILLING		\$16,913.30

TOTAL NET BILLING

\$16,913.30

**KERN COUNTY WATER AGENCY
POWER BILLING CALCULATION**

LOCATION:	Nickel 10,000 AF	PG&E SCHEDULE No.	AG-5B	PERIOD	B
FACILITY:	Pioneer Project	MONTH of	Dec 2001	CODE	12

	Usage	Rate	TOTAL \$
CUSTOMER CHARGE:			0.00

WATER CHARGE:			0.00
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DEMAND CHARGES PER (KW) :	KW	\$/KW	
per KW of maximum-peak-period demand	564	0.00	0.00
(From PG&E) per KW of maximum-part-peak-period demand	0	0.00	0.00
per KW of off-peak-period seasonal billing demand			
(3 wells - 250 HP @ .74 KW/hp = maximum demand of 555 K	555	4.40	2,442.00

ELECTRIC ENERGY CHARGES:	Multiplier	KWH	\$/KWH	Amount \$
Total KWH		355,000		
Base Energy Charges:				
On Peak	0.0%	0	0.00000	0.00
(From PG&E) Partial Peak	38.4%	136,465	0.04661	6,360.63
Off Peak	61.6%	218,535	0.03706	8,098.91

TOTAL ELECTRIC ENERGY CHARGES:				14,459.54
			Sub Total	\$16,901.54

California Energy Commission	KWH	\$/KWH	
	355,000	0.00020	71.00
	TOTAL BILLING		\$16,972.54

TOTAL NET BILLING **\$16,972.54**

MEMORANDUM

TO: Board of Directors

FROM: General Manager

RE: Exchange Agreement with Crestline Lake Arrowhead Water Agency

DATE: June 19, 2017

Summary:

At last Monday's Engineering workshop, the Board discussed a proposed unbalanced transfer between the Agency and the Crestline Lake Arrowhead Water Agency (CLAWA) for 2000 acre-feet this year, with 1000 acre-feet to be returned to CLAWA over the next ten years. The purpose of this proposed Board action is to determine if the Board wishes to approve this proposed exchange.

Background:

The Agency has approved three previous exchanges with CLAWA. They are summarized below:

- 2010—One-for-one exchange, 1000 AF to Agency, 500 AF returned, 500 AF owed back to CLAWA by 2020.
- 2013—Three-for-two exchange, 2000 AF to Agency, 1300 AF owed back to CLAWA by 2023.
- 2016—Two-for-one exchange, 1200 AF to Agency, 600 owed back to CLAWA by 2026.

CLAWA is a very good partner for the Agency. Both partners are relatively small and have complementary assets. CLAWA serves only treated, direct delivery water, while the Agency serves water primarily for replenishment. Both partners are on the East Branch and both have BB&K as General Counsel.

Detailed Report:

CLAWA lost several thousand acre-feet of water this year from San Luis Reservoir so its storage is down. It requires storage so that in a

very dry year it can meet its customers' demands. Therefore, it seeks an additional exchange agreement with the Agency in order to beef up its storage and the amount of water that it can call upon if needed in a future dry year. In order to obtain this additional storage, it is willing to do an unbalanced exchange, in which the Agency gets 2000 acre-feet this year but only has to return 1000 acre-feet over the next ten years, but no more than 500 in any given year.

This exchange will enable the Agency to continue deliveries at maximum capacity throughout the rest of this calendar year and the first several months of next year, possibly including delivering water to the Agency's planned Fiesta recharge facility. This is an excellent example of managing water for its best use among State Water Contractors. Such unbalanced exchanges are not uncommon among State Water Contractors.

This agreement is exempt from CEQA since it is a temporary, one-year exchange. The Department of Water Resources will need to approve the agreement prior to delivering the water to the Agency this year. Agency staff and CLAWA staff will work with the Department to accomplish this and to schedule the water for delivery.

Fiscal Impact:

The only cost associated with the agreement is the cost to pump the water to the Agency's service area. This water will be sold to customers at the current water rate so it will have no more impact than any other deliveries would have. The Agency's current water rate covers the cost of pumping the water to the region, though it does not cover much more than that.

Recommendation:

Staff recommends that the Board approve the agreement with CLAWA and direct staff to sign it, file a Notice of Exemption regarding the California Environmental Quality Act, and work with the Department of Water Resources to sign a separate agreement and to schedule delivery of the 2000 acre-feet this year.

SAN GORGONIO PASS WATER AGENCY
CRESTLINE-LAKE ARROWHEAD WATER AGENCY
WATER EXCHANGE AGREEMENT

RECITALS

- A. San Gorgonio Pass Water Agency (“SGPWA”) is a public agency organized in accordance with the San Gorgonio Pass Water Agency Law (Water Code Appendix Sections 101-1 et seq.) with broad powers to acquire and sell water. SGPWA has a Water Supply Contract with the Department of Water Resources (“DWR”) that provides it with a Table A Amount of 17,300 acre-feet of water per year from the State Water Project.
- B. Crestline-Lake Arrowhead Water Agency (“CLAWA”) is a public agency organized in accordance with the Crestline-Lake Arrowhead Water Agency Law (Water Code Appendix Section 104-1 et seq.) with broad powers to acquire and sell water. CLAWA has a Water Supply Contract with DWR that provides it with a Table A Amount of 5,800 acre-feet of water per year from the State Water Project.
- C. SGPWA and CLAWA intend by this Agreement to implement an exchange of water from their respective Table A Amounts for the benefit of their respective service areas, with CLAWA delivering 2,000 acre-feet of its Table A Amount to SGPWA in Calendar Year 2017, and with SGPWA returning a total of 1,000 acre-feet of water to CLAWA no later than the end of Calendar Year 2027, provided that such delivery of Exchange Water to CLAWA shall not exceed 500 acre-feet in any single year unless authorized by SGPWA.

IN CONSIDERATION OF THE MUTUAL PROMISES of the Parties as set forth herein, it is agreed as follows:

1. Description of the Exchange and Procedures.

Within 15 days after the date of execution of this Agreement by both parties, CLAWA will in writing request the California Department of Water Resources (“DWR”) to deliver 2,000 acre-feet of State Water Project water from CLAWA’s 2017 Table A Amount to SGPWA according to a delivery schedule that SGPWA will submit to DWR. A copy of CLAWA’s written request to DWR shall also be delivered to SGPWA. After written confirmation to CLAWA from SGPWA that such water has been delivered to SGPWA, in a subsequent year or years DWR shall deliver a total of 1,000 acre-feet of State Water Project water from

SGPWA's Table A Amount ("Exchange Water") to CLAWA according to a delivery schedule that CLAWA will submit to DWR, provided that such delivery of Exchange Water to CLAWA shall not exceed 500 acre-feet in any single year unless authorized by SGPWA. SGPWA and CLAWA shall meet and confer in advance of scheduling delivery of the Exchange Water to CLAWA. Delivery of the Exchange Water shall be completed no later than December 31, 2027. If CLAWA requests delivery of Exchange Water in a year which DWR has declared to be critically dry, SGPWA and CLAWA agree to confer in good faith to adjust the quantity of Exchange Water to be delivered in that year so as to minimize adverse impacts on the ability of both Parties to satisfy the needs of their respective customers. Each Party's obligation for the delivery of water to the other Party pursuant to this Agreement shall be subject to the availability of water from the State Water Project.

2. **Points of Delivery and Measurement.**

(a) **SGPWA.** The point of delivery and measurement of the 2,000 acre-feet of water from CLAWA's Table A Amount to SGPWA in 2017 shall be at SGPWA's designated point of delivery.

(b) **CLAWA.** The point of delivery and measurement of the Exchange Water from SGPWA to CLAWA shall be at CLAWA's designated point of delivery.

3. **Charges.**

Neither SGPWA nor CLAWA shall charge any costs to the other for use of either Party's facilities to the point of delivery. Each Party shall be responsible for all costs of, and entitled to all power credits generated by, the delivery of water to that Party as if it had come from that Party's own Table A Amount in the year of delivery.

4. **Conditions Precedent and Covenants.**

(a) **DWR Approval.** No provisions of this Agreement requiring DWR approval shall become operative until DWR approves of those provisions. SGPWA and CLAWA shall use their best efforts to promptly obtain such approvals.

(b) **State Water Contractors.** SGPWA and CLAWA agree that they will each, with due diligence and in good faith, seek to obtain the support and approval of this Agreement by the State Water Contractors and request DWR to approve the exchange of water as set forth herein.

5. **Notices.**

All written notices required to be given pursuant to the terms of this

Agreement shall be either (i) personally delivered, (ii) deposited in the United States express mail or first-class mail, (iii) delivered by overnight courier service or (iv) delivered by facsimile transmission, provided that the original of such notice is sent by certified United States mail, postage prepaid, no later than one (1) business day following such facsimile transmission. All such notices shall be deemed delivered upon actual receipt, or upon first attempt at delivery pursuant to the methods specified herein if the intended recipient refuses to accept delivery. All such notices shall be delivered to the following addresses or to such other address as the receiving party may from time to time specify by written notice to the other party:

SGPWA:

San Gorgonio Pass Water Agency
1210 Beaumont Ave.
Beaumont, CA 92223

Attention: General Manager
Telephone: (951) 845-2577
Facsimile: (951) 845-0281

CLAWA:

Crestline-Lake Arrowhead Water Agency
24116 Crest Forest Drive
P.O. Box 3880
Crestline, CA 92325-3880

Attention: General Manager
Telephone: (909) 338-1779
Facsimile: (909) 338-3686

6. **Miscellaneous.**

(a) **No Assignment.** No party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party.

(b) **Successors and Permitted Assigns.** All covenants and agreements contained in this Agreement by or on behalf of any of the parties shall bind and inure to the benefit of their respective successors and permitted assigns, whether so expressed or not.

(c) **No Modification of Existing Contracts.** This Agreement shall not be interpreted to modify the terms or conditions of the water supply contracts between the DWR and CLAWA, and between DWR and

SGPWA, or to modify the terms or conditions of any other water purchase or exchange agreements between CLAWA and SGPWA.

Governing Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any actions brought regarding this Agreement shall be in the County of Riverside.

(d) **Ministerial Actions.** Due to increasing State-wide demands for water, water exchanges, water storage, banking and recovery, and various water quality issues throughout the State, the parties agree that this project is unique and cannot be duplicated and there is not a plain, speedy, and adequate remedy at law for CLAWA or SGPWA should either refuse or fail to perform their respective obligations as set forth in this Agreement. Consequently, CLAWA and SGPWA agree that the terms of this Agreement are enforceable by a writ of mandate and specific performance.

(e) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same instrument. Signatures sent by facsimile shall be deemed originals and treated in all respects as originals.

(f) **Further Action.** The parties agree to and shall take such further action and execute such additional documents as may be reasonably required to effectuate the terms and conditions of this Agreement and to the extent consistent with the terms thereof.

(g) **Interpretation.** This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as whole according to its fair meaning and without regard to or aid of Civil Code Section 1654 or similar judicial rules of construction. Each party acknowledges that it has had the opportunity to seek the advice of experts and legal counsel prior to executing this Agreement and that it is fully aware of and understands all of the terms and the legal consequences thereof. The headings used in this Agreement are for reference only and shall not affect the construction of this Agreement.

SAN GORGONIO PASS WATER AGENCY

By: _____
General Manager

Date: _____

CRESTLINE-LAKE ARROWHEAD WATER
AGENCY

By: _____
General Manager

Date: _____

RESOLUTION NO. 2017-10

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE SAN GORGONIO PASS WATER AGENCY
PLACING IN NOMINATION DAVID CASTALDO
AS A MEMBER OF THE ASSOCIATION OF CALIFORNIA
WATER AGENCIES REGION 9 BOARD MEMBER**

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN GORGONIO PASS WATER AGENCY AS FOLLOWS:

A. Recitals

- (i) The Board of Directors (Board) of the San Gorgonio Pass Water Agency does encourage and support the participation of its members in the affairs of the Association of California Water Agencies (ACWA).
- (ii) David Castaldo has indicated a desire to serve as a Board Member of ACWA Region 9.

B. Resolves

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF THE SAN GORGONIO PASS WATER AGENCY,

- (i) Does place its full and unreserved support in the nomination of David Castaldo for the Board Member position of ACWA Region 9.
- (ii) Does hereby determine that the expenses attendant with the service of David Castaldo in ACWA Region 9 shall be borne by the San Gorgonio Pass Water Agency.

Adopted and approved this 19th day of June, 2017.

David Castaldo
San Gorgonio Pass Water Agency

(SEAL)

ATTEST

Jeffrey W. Davis, Secretary

I, Jeffrey W. Davis, Secretary to the Board of Directors of San Geronio Pass Water Agency, hereby certify that the foregoing Resolution was introduced at a regular meeting of the Board of Directors of said District, held on the 4th day of February 2013, and was adopted at that meeting by the following roll call vote:

AYES:

NOES:

ABSENT:

ATTEST:

Jeffrey W. Davis, Secretary to the
Board of Directors of
San Geronio Pass Water Agency