

**AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
AND SANTA CLARA VALLEY WATER DISTRICT FOR AN OPTION TO PURCHASE A CAPACITY
INTEREST IN THE CALIFORNIA WATERFIX**

THIS OPTION (“Agreement”) is made and effective as of June __, 2018 by and between the Metropolitan Water District of Southern California, a California water district (“MWD”) and the Santa Clara Valley Water District, a California water district (“SCVWD”). MWD and SCVWD may be referred to individually as a party, or collectively as the parties.

- A. The California Department of Water Resources (“DWR”) has approved the construction of the California WaterFix (the “WaterFix”), as described in the Final Environmental Impact Report for the project, State Clearinghouse Number 2008032062, as may be amended or supplemented; and
- B. Approximately 67% of the capacity of the WaterFix is subscribed by [mostly] California State Water Project (“SWP”) contractors and approximately 33% of the capacity of the WaterFix is unsubscribed (the unsubscribed portion of the capacity of the WaterFix being referred to herein as the “Unsubscribed Capacity Interest”); and
- C. DWR and MWD, and, at MWD’s election, the [Financing JPA] designated by MWD (the “Financing JPA”) have entered into a master agreement, attached as Exhibit A (the “Master Agreement”) [TO BE NEGOTIATED AND DEVELOPED], under which the Finance JPA will purchase the Unsubscribed Capacity Interest in exchange for payments that the Finance JPA will make to DWR during the construction of the WaterFix and which DWR will use to construct the WaterFix; and
- D. The Finance JPA will issue one or more series of revenue bonds (the “JPA Bonds”) which it will use to finance the payments it will make under the terms of the Master Agreement; and
- E. The Finance JPA and MWD have entered into an installment purchase agreement or a series of installment purchase agreements (collectively, the “Capacity Interest IPA”) pursuant to which the Finance JPA will transfer the Unsubscribed Capacity Interest to MWD and MWD will make installment payments that will support the payment of the JPA Bonds; and
- F. MWD desires to enter into one or more purchase agreements (the “Capacity Interest Purchase Agreement”) under which other water agencies would agree to purchase or make payments for the purchase of the Unsubscribed Capacity Interest and MWD would transfer to any such water agency all or a portion of the Unsubscribed Capacity Interest; and
- G. The Master Agreement and Capacity Interest Purchase Agreement provide that a purchased capacity interest may be used for the diversion and conveyance of water under SWP’s or the U.S. Bureau of Reclamation’s (“USBR”) water rights, transfer water for use by a capacity interest owner and any other water on a space-available basis pursuant to Water Code section 1810.

H. SCVWD is interested in purchasing a portion of the Unsubscribed Capacity Interest in order to sustain and protect its Central Valley Project (the "CVP") supplies; and

I. In order for SCVWD to sustain its CVP supplies through participation in the WaterFix, a number of approvals and agreements with the U.S. Bureau of Reclamation ("USBR") must be secured; and

J. SCVWD desires to acquire the exclusive right to purchase, without becoming obligated to purchase until the necessary approvals and agreements with USBR are secured and until the option is exercised in accordance with this Option Agreement, up to 200 cubic feet per second ("cfs") of the Unsubscribed Capacity Interest under the terms and conditions set forth in the Capacity Interest Purchase Agreement, attached as Exhibit B [TO BE NEGOTIATED AND DEVELOPED].

NOW THEREFORE, the Parties agree as follows:

1. Recitals. The recitals and facts set forth above are true and correct and are incorporated herein by this reference.

2. Grant of Option. Subject to the terms of the Master Agreement, MWD grants to SCVWD the exclusive right to purchase up to 200 cfs of the Unsubscribed Capacity Interest (the "Optioned Capacity Interest") under the terms and conditions set forth in the Capacity Interest Purchase Agreement [TO BE NEGOTIATED AND DEVELOPED] and to include (1) price, (2) provisions concerning DWR's operation of the capacity and the purchase being subject to the Master Agreement, (3) waiver of any warranty or representation of the condition or title of the capacity other than MWD's, (4) and other provisions that ensure MWD will be released from obligations between MWD and SCVWD].

3. Term. The Agreement shall become effective on the date of execution and shall remain in effect for three years (Option Term). However, if after diligent effort, SCVWD is unable to secure approvals and agreements from USBR that, in SCVWD's sole judgment, meet SCVWD's needs and interests, SCVWD may request and MWD will not unreasonably object to extending the term for up to an additional two years to allow completion for USBR approvals and agreements.

4. Option Fee. SCVWD will pay the total sum of ten (10) million dollars for and in consideration of the exclusive right and option (Option) to purchase the Optioned Capacity Interest. Five (5) million dollars of the total 10 million dollars will be applied to the purchase of the capacity interest. Within 60 days of execution of this Agreement, SCVWD will pay MWD five (5) million dollars. SCVWD will then pay an additional 2.5 million dollars in each of the remaining two years of the Option Term, to be paid by June 30th of each year.

5. Exercise of Option. SCVWD may exercise its exclusive right to purchase the Optioned Capacity Interest in the WaterFix pursuant to the Option, at any time during the Option Term by giving written notice (the "Notice") to MWD, in accordance with Section 13 herein, and executing the Capacity

Interest Purchase Agreement in the form of Exhibit B. MWD must, within thirty (30) days of receiving SCVWD's Notice, execute and deliver to SCVWD an executed counterpart original of the Capacity Interest Purchase Agreement. In the event that SCVWD does not exercise its exclusive right to purchase a capacity interest during the Option Term, MWD shall be entitled to retain the Option Fee, and this Agreement shall become null and void and neither party shall have any other liability, obligation, or duty under or pursuant to this Agreement.

6. Assignment. SCVWD shall not assign this Agreement, the Option or any of SCVWD's rights or obligations hereunder, in whole or in part, at any time without the prior written consent of MWD. SCVWD shall notify MWD, in writing, of any such proposed assignment and the name of the proposed assignee.

7. Return of Option Fee. [If, during the Option Term or any extension thereof, but before exercise of the Option, if DWR has declared a default under the Master Agreement that could give rise to a termination of the Master Agreement or cause a material impact to SCVWD, SCVWD may seek to receive the return of SCVWD's Option Fee.

8. Authority. MWD and SCVWD each represents and warrants to the other that entering into this Option is within its authority, does not violate any agreement to which it is a party, and does not require the consent of any other person. Furthermore, each person executing this Option Agreement on behalf of MWD and SCVWD represents and warrants that such person is duly and validly authorized to do so.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. All prior agreements with respect to that subject matter, whether verbal, written or implied, are hereby superseded in their entirety by this Agreement and are of no further force or effect. Amendments to this Agreement shall be effective only if in writing, and then only when signed by the authorized representatives of the respective Parties.

10. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be void or unenforceable, that provision shall be deemed automatically reformed to be enforceable to the maximum extent legally permissible, and the balance of this Agreement shall be unaffected.

11. Ambiguities. This Agreement shall be interpreted as if it had been jointly drafted by both parties. Therefore, the normal rule of construction that ambiguities are construed against the drafter is hereby waived.

12. Notices. All notices under this Agreement shall be effective (i) when personally delivered to MWD or SCVWD, as the case may be, (ii) when sent by email on a business day between the hours of 8 a.m. and 5 p.m., or (iii) 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 MWD: Attn: [Name, Title]

[Mailing Address]
[City, State Zip Code]
Telephone No.:
E-mail Address:

To SCVWD: Attn: [Name, Title]
5750 Almaden Expressway
San Jose, CA 95118-3686
Telephone No.: (408) 630-XXXX
E-mail Address:

or such other address or facsimile number as the parties may from time to time designate in writing. As a matter of convenience, however, communications between MWD and SCVWD shall, to the extent feasible, be conducted orally by telephone or in person, and/or through the parties' respective counsel, with such communications to be confirmed and made effective in writing as set forth above; provided, no such oral notice or communication shall be effective unless so confirmed in writing.

13. 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. MWD and SCVWD acknowledge that the actions contemplated by this Agreement will require regular consultation and coordination and the Parties shall in good faith engage in all such consultation and coordination necessary or appropriate to facilitate the arrangements contemplated by this Agreement.

14. Third Party Beneficiaries. This Agreement does not create, and shall not be construed to create, any rights enforceable by any person, partnership, corporation, joint venture, limited liability company or other form of organization or association of any kind that is not a party to this Agreement.

15. Binding Effect. This Agreement is intended to be and shall be binding upon and enforceable against each of the Parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of California and may be signed in any number of counterparts. Facsimile and electronic signatures shall be binding.

16. Waiver. Any waiver of the provisions of this Agreement by the Party entitled to the benefits thereof as to any instance must be in writing and shall in no event be deemed a waiver of the same provision with respect to any other instance or a waiver of any other provision of this Agreement.

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

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: [NAME]
[TITLE]
Date: _____

SANTA CLARA VALLEY WATER DISTRICT

By: [NAME]
[TITLE]
Date: _____

PAGE INTENTIONALLY LEFT BLANK