

AGREEMENT AMONG
THE UNITED STATES OF AMERICA, THROUGH THE
DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
THE COLORADO RIVER COMMISSION OF NEVADA,
THE SOUTHERN NEVADA WATER AUTHORITY, AND
THE CENTRAL ARIZONA WATER CONSERVATION DISTRICT,
FOR A PILOT PROJECT FOR OPERATION OF THE
YUMA DESALTING PLANT

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1. PREAMBLE: THIS AGREEMENT made this 29th day of October, 2009, pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), designated the Reclamation Act, and acts amendatory thereof or supplementary thereto; the Act of March 4, 1921, referred to as the Contributed Funds Act (41 Stat. 1404, 43 U.S.C. §395); the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C. §397a); the Act of December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon Project Act; the Act of September 30, 1968 (82 Stat. 885), designated the Colorado River Basin Project Act; the Act of June 24, 1974 (88 Stat. 266), designated the Colorado River Basin Salinity Control Act, as amended; and Section 397 of the Act of December 20, 2006, (120 Stat. 2922); all of which acts are part of the body of law commonly known and referred to as Federal Reclamation law; among the UNITED STATES OF AMERICA, hereinafter referred to as the “United States,” represented by the Secretary of the Interior, hereinafter referred to as the “Secretary,” and acting through the officer executing this Agreement; THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a regional public water district duly organized under California law, hereinafter referred to as “MWD;” the COLORADO RIVER COMMISSION OF NEVADA, an agency of the State of Nevada, hereinafter referred to as “CRCN;” the SOUTHERN NEVADA WATER AUTHORITY, a political subdivision of the State of Nevada, hereinafter referred to as “SNWA;” and the CENTRAL ARIZONA WATER CONSERVATION DISTRICT, a multi-county water conservation district duly organized and

existing under the laws of the State of Arizona, hereinafter referred to as “CAWCD;” each of which is at times referred to individually as “Party” and which are at times collectively referred to as “Parties.”

WITNESSETH THAT:

2. EXPLANATORY RECITALS:

2.1 WHEREAS, for the purposes of controlling floods, improving navigation, regulating the flow of the Colorado River, and providing for storage and the delivery of stored water for the reclamation of public lands and other beneficial uses exclusively within the United States, the Secretary, acting under and pursuant to the provisions of the Colorado River Compact and the Boulder Canyon Project Act, has constructed and is now operating and maintaining in the mainstream of the Colorado River at Black Canyon that certain structure known as and designated Hoover Dam and incidental facilities, creating thereby a reservoir designated Lake Mead;

2.2 WHEREAS, the Boulder Canyon Project Act provides, among other things, that the Secretary is authorized, under such general regulations as he or she may prescribe, to contract for the storage of water in Lake Mead and for the delivery of such water at such points as may be agreed upon for irrigation and domestic uses;

2.3 WHEREAS, the Boulder Canyon Project Act provides further that no person shall have or be entitled to have the use, for any purpose, of the stored water in Lake Mead, except by contract with the Secretary;

2.4 WHEREAS, acting under the authority of the Colorado River Basin Salinity Control Act of 1974, the United States Bureau of Reclamation, hereinafter referred to as “Reclamation,” constructed the Yuma Desalting Plant, hereinafter referred to as “YDP,” which is a brackish-water desalting plant located west of Yuma, Arizona, near the Colorado River, and constructed the Main Outlet Drain Extension (MODE) to carry the YDP reject stream and other drainage waters;

2.5 WHEREAS, MWD, SNWA, and CAWCD under Agreement No. 09-XX-30-W0538 contributed funds toward Reclamation's costs for environmental compliance to provide a basis for Reclamation to determine whether to elect to proceed with a Proposed Pilot Project as described in said Contract, and by which Reclamation provided to MWD, SNWA and CAWCD the first opportunity to enter into this funding agreement;

2.6 WHEREAS, the environmental compliance has been completed and resulted in a Finding of No Significant Impact approved September 30, 2009, and Reclamation, after review and consideration of the environmental compliance, has elected to proceed with a "Pilot Project" as defined in Section 3.20 of this Agreement;

2.7 WHEREAS, MWD, SNWA, and CAWCD are willing and able to contribute capital in the form of monetary contributions and/or in-kind services pursuant to the provisions of the "Interim Guidelines" as defined in Section 3.16 of this Agreement for Reclamation's use in paying the "Eligible Project Costs" of the Pilot Project, as such costs are defined in Section 3.7 of this Agreement, in exchange for any "System Efficiency ICS" credits to be developed as a result of the Pilot Project, as such System Efficiency ICS is defined in Section 3.24 of this Agreement;

2.8 WHEREAS, the Parties desire to set forth their understanding as to the monetary contributions and/or in-kind services that will be provided by MWD, SNWA, and CAWCD, the responsibilities of Reclamation with respect to these contributions and services, and the quantity of System Efficiency ICS credits that each such Contractor shall receive in exchange for such capital contributions;

2.9 WHEREAS, CRCN and SNWA have jointly consulted to acquire supplemental Colorado River water and are in compliance with N.R.S. § 538.186;

2.10 WHEREAS, no operation of the YDP other than the Pilot Project is contemplated or proposed by Reclamation at this time; and

2.11 WHEREAS, any decision to operate the YDP after the completion or termination of the Pilot Project will be made in the future by the United States, subject to and based upon appropriate compliance with Federal law.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

3. DEFINITIONS: For the purpose of this Agreement, the following definitions shall apply:

3.1 Colorado River Compact means the document signed on November 24, 1922, at Santa Fe, New Mexico, pursuant to an act of Congress approved August 19, 1921 (42 Stat. 171). The Colorado River Compact was approved in Section 13(a) of the Boulder Canyon Project Act.

3.2 Colorado River System shall have the same meaning as defined in the Colorado River Compact.

3.3 Conserved Water means the quantity of water that would have been released from Colorado River system storage but for the release of the Pilot Project's YDP-desalted water to the Colorado River and untreated MODE water to the Gila River Pilot Channel to supply delivery requirements under the Mexican Water Treaty of February 3, 1944, and includes water conserved through avoided conveyance losses between Parker Dam and the Northerly International Boundary otherwise incurred by the release of water from Colorado River system storage for delivery to Mexico.

3.4 Consolidated Decree means the Consolidated Decree of the Supreme Court of the United States in the case of *Arizona v. California* entered March 27, 2006, 126 S. Ct. 1543, 547 U.S. 150 (2006).

3.5 Contracting Officer means the Secretary, a duly appointed successor, or a duly authorized representative acting pursuant to this Agreement or applicable Reclamation law or regulation. Unless otherwise directed by the Secretary, the Regional Director, Bureau of Reclamation, Boulder City, Nevada, and her designees shall be the Contracting Officer.

3.6 Contractor means an entity holding an entitlement to Mainstream water under a water delivery contract with the United States through the Secretary.

3.7 Eligible Project Costs means costs for which Reclamation may expend appropriated or contributed funds or receive in-kind services under the Pilot Project.

3.8 Exhibit A is an estimate of Eligible Project Costs, Yuma Desalting Plant Pilot Project, categorized as Plant Preparation Costs beginning on the first day of the pilot run preparation phase and OMR&R Costs, for three hundred sixty-five (365) days of YDP operation.

3.9 Exhibit B is the Schedule for Project Completion, Yuma Desalting Plant Pilot Project.

3.10 Exhibit C sets forth the anticipated Funding Periods.

3.11 Forbearance Agreement means the Lower Colorado River Basin Intentionally Created Surplus Forbearance Agreement dated December 13, 2007, entered into among the Arizona Department of Water Resources, the Palo Verde Irrigation District, the Imperial Irrigation District, the City of Needles, the Coachella Valley Water District, MWD, SNWA, and the CRCN, as amended to incorporate an Exhibit P which extends the parties' forbearance to the System Efficiency ICS developed under the Pilot Project.

3.12 Funding Committee means the Funding Committee established pursuant to Section 5.3 hereof.

3.13 Funding Committee Representative means each Party's representative on the Funding Committee pursuant to Section 5.3.1 hereof.

3.14 Funding Period means the particular period identified by the Contracting Officer in a request for capital contributions. Anticipated Funding Periods are set forth in Exhibit C to this Agreement.

3.15 ICS Account means the separate ICS Accounts established under Section 3.D.3 of the Interim Guidelines and in accordance with the YDP Pilot Project Delivery Agreements for MWD, SNWA, and CAWCD required under Section 3.C.1 of the Interim Guidelines and

accounted for by the Secretary in the Colorado River Accounting and Water Use Report prepared annually containing the compilation of records in accordance with Article V of the Consolidated Decree.

3.16 Interim Guidelines means the guidelines adopted by the Secretary on December 13, 2007, in a Record of Decision, Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations of Lake Powell and Lake Mead.

3.17 Intentionally Created Surplus, heretofore and hereinafter referred to as “ICS,” means surplus Colorado River System water available for use under the terms and conditions of a YDP Pilot Project Delivery Agreement, the Forbearance Agreement, and the Interim Guidelines.

3.18 Mainstream shall have the same meaning as defined in the Consolidated Decree.

3.19 OMR&R Costs means those costs necessary, as determined solely by the Contracting Officer following consultation with the Funding Committee, for the operation, maintenance, repair and replacement of the YDP during the Pilot Project. Estimated OMR&R Costs are set forth in Exhibit A.

3.20 Pilot Project means plant preparation and not more than three hundred sixty-five (365) days of YDP operation by Reclamation for at least twelve (12) hours within a day, ramping up to not more than thirty-three percent (33%) of YDP capacity, and discharging the desalted water for release to the Colorado River and untreated water from the MODE for release to the Gila River Pilot Channel in an amount which, if the YDP is operated as anticipated for this period, will discharge approximately 29,000 acre-feet of water to the Colorado River for delivery to Mexico under the Mexican Water Treaty of 1944. The three hundred sixty-five (365) days of YDP operation may be non-continuous, but in no event shall Reclamation continue Pilot Project operation beyond the date that is eighteen months from the first date of YDP operation under the Pilot Project as established by the notice referenced in Section 7.5. Plant preparation activities shall be excluded from the calculation of days of YDP operation under the Pilot Project.

3.21 Pilot Project Augmentation Water is YDP product water discharged to the Colorado River, plus the water discharged from the MODE into the Gila River Pilot Channel via the MODE 1 Diversion/Return facility and then flowing into the Colorado River, as a result of the operation of the YDP under the Pilot Project to meet delivery requirements under the Mexican Water Treaty of 1944. Pilot Project Augmentation Water is a portion of Conserved Water and will result in System Efficiency ICS.

3.22 Pilot Project Costs means actual Plant Preparation Costs and actual OMR&R Costs expended by Reclamation for the Pilot Project.

3.23 Plant Preparation Costs means those costs necessary, as determined solely by the Contracting Officer following consultation with the Funding Committee, to prepare the YDP for operation during the Pilot Project. Estimated Plant Preparation Costs are set forth in Exhibit A.

3.24 System Efficiency ICS has the same definition as ascribed in Section 3.A.3 of the Interim Guidelines.

3.25 Total Project Cost Summary means a Pilot Project Costs summary documenting the total actual reasonable and necessary costs, as determined solely by the Contracting Officer following consultation with the Funding Committee, incurred in implementing the Pilot Project, including Plant Preparation Costs and OMR&R Costs.

3.26 YDP Pilot Project Delivery Agreement means an agreement entered into between a Contractor and the Secretary, as required by Section 3.C.1 of the Interim Guidelines, which provides for the creation, certification, delivery, and accounting of System Efficiency ICS developed under the Pilot Project, in accordance with the provisions of the Guidelines.

4. GENERAL TERMS AND CONDITIONS:

4.1 This Agreement shall become effective upon the date set forth in Article 1 of this Agreement and shall remain in effect until terminated in accordance with Article 10.

4.2 This Agreement may only be amended or revised in writing and by mutual agreement of the Parties.

5. CAPITAL CONTRIBUTION – ADVANCE FUNDING AND REFUNDS:

5.1 Estimated Plant Preparation Costs and Estimated OMR&R Costs. Reclamation has developed cost estimates relating to the Pilot Project. Estimated Plant Preparation Costs and estimated OMR&R Costs are set forth in Exhibit A to this Agreement and together constitute Eligible Project Costs. MWD, SNWA, and CAWCD acknowledge that the figures set forth in Exhibit A are estimates based on Reclamation's cost forecasts. Reclamation shall use best efforts to minimize Pilot Project Costs. Reclamation does not guarantee that actual Pilot Project Costs will be equal to or less than the cost estimates set forth in Exhibit A.

5.2 Proportionate Contributions. Subject to the withdrawal and early termination provisions of Article 10 herein, MWD, SNWA, and CAWCD shall advance capital in the form of monetary contributions and/or in-kind services to Reclamation for Pilot Project Costs in accordance with the provisions of this Article 5. Except as may otherwise be agreed under the provisions of this Section and Article 10, for each capital contribution required by this Article 5, whether provided in the form of monetary contributions and/or in-kind services, MWD shall provide eighty percent (80%), SNWA shall provide ten percent (10%), and CAWCD shall provide ten percent (10%). Each in-kind service provided by a non-federal Party as part of a capital contribution shall be assigned a monetary value by the Contracting Officer in consultation with the Funding Committee and that value shall reduce the amount of that Party's required capital contribution by an equivalent amount. Notwithstanding the provisions of Article 17, MWD, SNWA, and CAWCD may agree to alter the proportionate shares that each would otherwise be required to pay under this Section 5.2; provided, however that the modified proportionate shares shall total one hundred percent (100%) and further provided that the agreement shall be reduced to writing and provided to the Contracting Officer. Beginning with the first Funding Period after the effective date of such agreement, MWD, SNWA, and CAWCD shall advance capital in accordance with such proportionate shares.

5.3 Establishment of Funding Committee and Capital Contributions. The Parties shall establish a Funding Committee.

5.3.1 MWD, SNWA, and CAWCD shall each identify a Funding Representative to serve as the contact point for Reclamation with respect to the non-federal funding for the Pilot Project by these agencies and shall provide contact information for each Funding Representative.

5.3.2 The Contracting Officer shall request capital contributions from MWD, SNWA, and CAWCD through the Funding Committee Representatives based solely on Pilot Project Costs incurred to date and projected Eligible Project Costs for the upcoming Funding Period, as determined solely by the Contracting Officer following consultation with the Funding Committee. The magnitude of requested capital contribution requests may vary between Funding Periods. The Contracting Officer shall utilize good faith efforts to request “pay as you go” capital contributions. MWD, SNWA, and CAWCD recognize that the Contracting Officer may, either in the interests of economy or as a result of the market, procure goods or services for the entire period of the Pilot Project following consultation with the Funding Committee and not simply for the Funding Period identified in a particular request.

5.3.3 The Contracting Officer shall, in writing, request capital contributions from MWD, SNWA, and CAWCD through the Funding Committee Representatives in advance of each Funding Period during the term of the Pilot Project, to be funded in accordance with Exhibit C to this Agreement which sets forth the anticipated Funding Periods and as provided below. Each such written request shall specify the number of days of YDP operation that have occurred to date under the Pilot Project and the total amount of Pilot Project Augmentation Water.

5.3.4 The Contracting Officer shall provide each request for funding to the Funding Committee Representatives together with a brief written explanation of the basis for the request. Upon request of any of the Funding Committee Representatives, the Contracting

Officer shall meet or otherwise communicate with the Funding Committee Representatives to provide further explanation as to the basis of the request.

5.3.5 Subject to the provisions of Article 10 relating to withdrawal from or termination of this Agreement, within thirty (30) days of the Funding Committee Representative's receipt of a notice of a request for a capital contribution from the Contracting Officer identifying a Funding Period and requesting an advance of funds for the Pilot Project for that Funding Period, MWD, SNWA, and CAWCD shall each make payment as set forth in Section 5.4 for that Funding Period in the proportionate amounts established in Section 5.2, or shall provide in-kind services within the time and as specified in said notice. Any funds in excess of that necessary for Pilot Project Costs within any Funding Period shall be applied to Pilot Project Costs for the next succeeding Funding Period.

5.4 Method of Transfer of Monetary Contributions and Provision of In-Kind Services. All transfers of monetary contributions shall be made electronically in accordance with the instructions of the Contracting Officer. The method of provision of in-kind services shall be determined by the Contracting Officer in consultation with the agency providing such services.

5.5 Refund of Unexpended Capital Contributions. At the end of the one hundred eighty (180) day period specified in Section 5.6, the Contracting Officer shall issue the Total Project Cost Summary; provided, however, that the Contracting Officer may extend this period as necessary in the judgment of the Contracting Officer for the purpose of addressing comments, if any, provided by MWD, SNWA, and CAWCD on the draft Summary Report in accordance with Article 9 of this Agreement. Any capital contribution funds provided for use by Reclamation for the Pilot Project but determined by the Contracting Officer in the Total Project Cost Summary to be in excess of Pilot Project Costs shall be refunded to MWD, SNWA, and CAWCD in the same respective proportions as the funds were contributed. If a refund is due, the Contracting Officer shall make such refund within ninety (90) days from the date of issuance of the Total Project Cost Summary.

5.6 Funding After Suspension or Completion. In the event the Contracting Officer suspends the Pilot Project under the provisions of Section 7.6 of this Agreement, or the YDP had been operated for three hundred sixty-five (365) days, the Contracting Officer shall continue to have access to funds provided by MWD, SNWA, and CAWCD for a period of one hundred eighty (180) days from the Contracting Officer's determination to suspend or from the completion of three hundred sixty-five (365) days of operation; provided, however, that the Contracting Officer may use those funds solely for Pilot Project purposes as, for example, fulfilling contractual commitments entered into in furtherance of the Pilot Project. MWD, SNWA, and CAWCD shall have no claim to a refund of such funds as expended by the Contracting Officer during such one hundred eighty (180) day period for Pilot Project purposes.

6. DETERMINATIONS RELATING TO ELIGIBILITY, APPROVAL, QUANTITY AND VERIFICATION OF ICS:

6.1 Eligibility. The Secretary, acting through Reclamation, hereby determines the Pilot Project to be an eligible System Efficiency ICS project under the Interim Guidelines.

6.2 Approval. The Secretary, acting through Reclamation, hereby determines that this Agreement constitutes a valid multi-year plan for creation of System Efficiency ICS under Sections 3.A.3 and 3.B.1 of the Interim Guidelines.

6.3 Quantity. The Secretary, acting through Reclamation, hereby determines pursuant to Section 3.A.3. of the Guidelines that, in light of the limited time of operation of the Pilot Project, the capital contributions of MWD, SNWA, and CAWCD to Reclamation for the Pilot Project, the benefit to Reclamation and the non-Federal Parties of an opportunity to secure YDP data and operational knowledge from the Pilot Project that has the potential to result in additional system efficiency opportunities over time, and the risk assumed by these agencies with respect to how much Pilot Project Augmentation Water will actually result from operation of the Pilot Project, that the Pilot Project Augmentation Water shall be the basis for

the amount of System Efficiency ICS credits, to be calculated in acre-feet on a one-for-one basis and made available to MWD, SNWA, and CAWCD under Article 8 of this Agreement.

6.4 Verification. The Secretary, acting through Reclamation, hereby determines that, because the calculation of ICS credits developed from YDP operation during the Pilot Project shall be made by Reclamation from readings of YDP meters and the Yuma Area Water Management System under Reclamation's control as provided in Section 7.8 of this Agreement, this Agreement further constitutes a verified Certification Report under Sections 3.D.1 and 3.D.2 of the Guidelines for System Efficiency ICS in an amount, as determined by Reclamation under Sections 6.2 and 6.3 of this Agreement.

7. RESPONSIBILITIES OF RECLAMATION REGARDING PLANT PREPARATION, OPERATION AND ACCOUNTING:

7.1 Expenditure of Contributed Funds. The Contracting Officer may expend the funds and make use of the in-kind services contributed to Reclamation under Article 5 of this Agreement for Eligible Project Costs, the categories of which are set forth in Exhibit A to this Agreement. The Contracting Officer shall not be bound by the estimates provided within each category of Eligible Project Costs in Exhibit A but shall not expend in excess of a total of Thirteen Million-Six Hundred Seventy Seven Thousand-One Hundred Sixty Two Dollars (\$13,677,162) of contributed funds and in-kind services contributed to Reclamation for such costs unless the unanimous consent of the Funding Representatives is first obtained.

7.2 Plant Preparation. The Contracting Officer shall perform or cause to be performed all plant preparation activities, as described in Exhibit A to this Agreement or as determined exclusively by the Contracting Officer to be otherwise necessary following consultation with the Funding Committee Representatives to ensure YDP readiness to operate for a three hundred sixty-five day (365-day) period during the course of the Pilot Project. The Contracting Officer shall utilize Reclamation's design standards and specifications and acceptable industry practices, all as determined exclusively by the Contracting Officer.

7.3 Schedule for Project Completion. Reclamation's schedule for the Pilot Project is attached hereto as Exhibit B. The schedule shall be periodically reviewed and updated by the Contracting Officer to reflect significant changes. Any revisions to the schedule shall be provided to MWD, SNWA, and CAWCD without the necessity of formal amendment of Exhibit B to this Agreement.

7.4 Operation. Reclamation shall be solely responsible for all decisions relating to, and control of, the operation, maintenance, repair and replacement of the YDP during the Pilot Project, and MWD, SNWA, and CAWCD shall have no responsibility therefor. The Contracting Officer shall use best efforts to operate the YDP during the Pilot Project, including performing maintenance, repair and replacement activities, in a continuous manner for three hundred sixty-five (365) days, to the extent such operation, as determined exclusively by the Contracting Officer, will not jeopardize any future long-term operation of the YDP.

7.5 Notice of First Day of Operation. The Contracting Officer shall provide notice to MWD, SNWA, and CAWCD identifying the date of the first day of operation of the YDP under the Pilot Project.

7.6 Suspension of Operation. The Parties anticipate that during the course of the Pilot Project there may be periods in which the YDP is not operated due to necessary maintenance, repairs and replacements. The Contracting Officer may, in his or her sole discretion, suspend operation of the YDP during the Pilot Project due to safety or other operational concerns. The Contracting Officer shall consider suspension of the YDP Run upon receipt of a joint written request to do so by CAWCD, MWD, and SNWA.

7.7 Time Limitation on YDP Operation. To the extent the Contracting Officer suspends operation of the YDP for any reason set forth in Section 7.6, the Contracting Officer, with the consent of MWD, SNWA, and CAWCD if the suspension was at the request of these agencies, shall use his or her best efforts to restart the YDP to achieve three hundred sixty-five (365) days of YDP operation during the Pilot Project. In no event shall the Contracting

Officer operate the YDP under the Pilot Project beyond the date that is eighteen months from the date of first operation of the YDP under the Pilot Project.

7.8 Accounting for Pilot Project Augmentation Water. The Contracting Officer shall determine the quantity of Pilot Project Augmentation Water resulting from the operation of the YDP during the Pilot Project from the sum of the readings from the meter permanently installed in the YDP product water pipe plus readings from the Yuma Area Water Management System associated with water discharged from the MODE into the Gila River Pilot Channel via the MODE 1 Diversion/Return facility. The Contracting Officer shall ensure through regular inspection and calibration that data from these sources is accurate. The Contracting Officer shall determine the quantity of Pilot Project Augmentation Water resulting from the operation of the YDP during the Pilot Project on a monthly basis, within five (5) business days after the last day of each month during which the YDP is operational.

7.9 The Contracting Officer shall have no responsibility to perform under this Article 7 except to the extent capital contributions have been advanced to and remain available for use by Reclamation in accordance with the terms of Article 5, and to the extent the Contracting Officer in his or her sole discretion determines new or existing appropriations are to be applied to this purpose in addition to the Reclamation contribution identified in Exhibit A of this Agreement.

8. QUANTITY AND AVAILABILITY OF SYSTEM EFFICIENCY ICS TO MWD, SNWA, AND CAWCD:

8.1 Quantity of System Efficiency ICS Credited to MWD, SNWA, and CAWCD for capital contribution. The Pilot Project is anticipated to result in 29,000 acre-feet of Pilot Project Augmentation Water, which is a portion of the Conserved Water anticipated to result from the Pilot Project. The Contracting Officer shall calculate System Efficiency ICS credits on the basis of the actual amount of Pilot Project Augmentation Water produced by the Pilot Project, whether greater or lesser than 29,000 acre-feet, as follows. The Contracting Officer shall within five (5) business days after each determination of Pilot Project Augmentation

Water under Section 7.8 above, calculate the amount of System Efficiency ICS credits developed on the basis of one acre-foot of System Efficiency ICS per one acre-foot of Pilot Project Augmentation Water. The Contracting Officer shall credit MWD, SNWA, and CAWCD's individual ICS Accounts with each such Contractor's proportionate share of the available ICS credits determined in accordance with each such Contractor's proportionate share of the capital contribution for the applicable Funding Period.

8.2 Deliveries of System Efficiency ICS to MWD, SNWA, and CAWCD. The schedule for deliveries of System Efficiency ICS credited to MWD, SNWA, and CAWCD's individual ICS Account and thereafter available to each Contractor shall be as set forth in Exhibit P to the Forbearance Agreement and the YDP Pilot Project Delivery Agreements. All System Efficiency ICS available to MWD, SNWA, or CAWCD pursuant to this Agreement shall be delivered to each such Contractor under the terms and conditions of each such Contractor's respective YDP Pilot Project Delivery Agreement; provided, however, that System Efficiency ICS developed under the Pilot Project shall not be delivered to CAWCD prior to 2016.

9. SUMMARY REPORT: Upon completion or termination of the Pilot Project or notice of withdrawal of all non-federal Parties from this Agreement, the Contracting Officer shall prepare a summary report of the Pilot Project, hereinafter referred to as "Summary Report." Such Summary Report shall include, but is not limited to, a Total Project Cost Summary, including actual Plant Preparation Costs, OMR&R Costs, and other Federal costs, a summary of the performance of the YDP during the Pilot Project, and the total quantity of Pilot Project Augmentation Water. The Summary Report shall be made available to MWD, SNWA, and CAWCD for review as a draft. Following the issuance of the draft Summary Report, the Parties shall meet and consult regarding the cost of the Pilot Project, the performance of the YDP during the Pilot Project and the quantity of Pilot Project Augmentation Water. The Contracting Officer shall thereafter prepare the final Summary Report addressing the comments, if any, received from MWD, SNWA, and CAWCD on the draft Summary Report,

which final Summary Report shall be made available to MWD, SNWA, and CAWCD. The Contracting Officer shall have no responsibility under this Article 9 except to the extent capital contributions have been provided to and remain available for use by Reclamation in accordance with the terms of Article 5.

10. TERMINATION OF AGREEMENT:

10.1 Termination Date. This Agreement shall terminate on the earlier of: (i) the issuance of the Summary Report; or (ii) the date otherwise agreed upon in writing by all Parties.

10.2 Withdrawal and Early Termination. The Parties recognize that during implementation of the Pilot Project, the Contracting Officer may encounter unanticipated costs in addition to the estimated costs set forth in Exhibit A.

10.2.1 Upon notification by the Contracting Officer of any request for capital contributions as provided in Section 5.3, MWD, SNWA, and CAWCD may decide, individually or collectively, to withdraw from this Agreement by giving notice, in writing, to all other Parties of withdrawal from provision of further capital contributions to the Pilot Project. Withdrawal from the provision of further capital contributions to the Pilot Project shall not affect the quantity of System Efficiency ICS credited or to be credited to any withdrawing Party's ICS Account as a result of Pilot Project Augmentation Water developed prior to the date of withdrawal. Notice of withdrawal shall be given within fifteen (15) days of receipt of a notice of request for capital contribution. Withdrawal of all non-federal Parties from this Agreement shall terminate this Agreement following issuance of the final Summary Report.

10.2.2 In the event of a notice of withdrawal, the remaining non-federal Parties shall meet and may agree to alter the proportionate shares of capital that each would otherwise be required to advance in accordance with the provisions of Section 5.2 of this Agreement; provided, however that the modified proportionate shares shall total one hundred percent (100%) and further provided that the agreement shall be reduced to writing and provided to Reclamation. The remaining non-federal Parties shall thereafter advance capital contributions

in accordance with such proportionate shares. System Efficiency ICS to be credited to the remaining Parties' individual ICS Accounts as a result of Pilot Project Augmentation Water developed through the expenditure of the additional capital contributions shall reflect the modified proportionate shares. In the event of a notice of withdrawal of all but one non-federal Party, the remaining non-federal Party may agree to advance one hundred percent (100%) of the additional capital contributions. If agreement is not reached within sixty (60) days after the notice of request for capital contributions, the Contracting Officer may suspend YDP operations and, subject to the provisions of Section 5.6 of this Agreement, this Agreement shall terminate following issuance of the final Summary Report.

11. NON-WAIVER: No Party to this Agreement shall be considered to have waived any right hereunder except when such waiver of the right is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or a relinquishment of any such rights for the future, but such provisions and rights shall continue and remain in full force and effect.

12. OWNERSHIP OF PROJECT FACILITIES: Title to the YDP, its appurtenant works, and all works constructed under this Agreement shall remain in and be held by the United States.

13. UNCONTROLLABLE FORCES: No Party shall be considered to be in default in the performance of any of its obligations under this Agreement when a failure of performance shall be due to any cause beyond the control of the Party affected, including but not limited to, facilities failure, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority which by exercise of due diligence and foresight such Party could not have reasonably expected to avoid. A Party rendered unable to fulfill any of its obligations under this Agreement by reason of an Uncontrollable Force shall give prompt written notice of such act to the other Parties and shall exercise due diligence to remove such inability with all reasonable dispatch.

14. REPRESENTATIONS AND WARRANTIES:

14.1 Each Party has all legal power and authority to enter into this Agreement and to perform its obligations hereunder on the terms set forth in this Agreement, and the execution and delivery hereof by each Party and the performance by each Party of its obligations hereunder shall not violate or constitute an event of default under the terms or provisions of any agreement, document, or instrument to which each of the Parties is a Party or by which each Party is bound.

14.2 Each Party warrants and represents that the individual executing this Agreement on behalf of the Party has the full power and authority to bind the Party he or she represents to the terms of this Agreement.

14.3 This Agreement constitutes a valid and binding agreement of each Party, enforceable against each Party in accordance with its terms.

15. GOVERNING LAW: This Agreement shall be interpreted, governed by, and construed under any applicable Federal law. To the extent permissible under the Federal Rules of Civil Procedure and other applicable Federal authority, venue for adjudication of any disputes under this Agreement shall be in an appropriate Federal court.

16. BINDING EFFECT AND LIMITED ASSIGNMENT: The provisions of this Agreement shall apply to and bind the successors and assigns of the Parties upon receipt of written agreement to the terms of this Agreement, but no assignment or transfer of this Agreement or any right or interest therein shall be valid until approved in writing by all Parties. This Agreement is and shall be binding upon and shall inure to the benefit of the Parties and, upon dissolution, the legal successors and assigns of their assets and liabilities.

17. AMENDMENT, MODIFICATION, AND/OR SUPPLEMENT: This Agreement may be amended, modified, or supplemented only by the written agreement of the Parties. No amendment, modification, or supplement shall be binding unless it is in writing and signed by all Parties.

18. DRAFTING CONSIDERATIONS: Each Party and its counsel have participated fully in the drafting, review and revision of this Agreement, each of whom is sophisticated in the matters to which this Agreement pertains, and no one Party shall be considered to have drafted this Agreement.

19. NOTICES:

19.1 All notices, requests, demands, or other communications under this Agreement must be in writing and sent to the addresses of each Party set forth below. Notice shall be sufficiently given for all purposes as follows:

19.2 Personal Delivery. When delivered to the recipient, notice is effective upon delivery.

19.3 Certified Mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if a return receipt confirms delivery.

19.4 Overnight Delivery. When delivered by an overnight delivery service such as Federal Express, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.

19.5 Facsimile Transmission. Notice is effective on receipt, provided that the facsimile machine provides the sender a notice that indicates the transmission was successful and that a copy is mailed by first-class mail on the facsimile transmission date.

19.6 Addresses for purpose of giving notice are as follows:

If to Reclamation by personal service, overnight delivery, or by U.S. mail:	U.S. Bureau of Reclamation Yuma Area Office Attention: Area Manager 7301 Calle Agua Salada Yuma, Arizona 85364
cc:	Regional Director Lower Colorado Region Attention: LC-1000
by overnight delivery:	500 Fir Street Boulder City, NV 89005
by U.S. mail:	P. O. Box 61470 Boulder City, NV 89006-1470

<p>If to MWD by personal service, overnight delivery,</p> <p>or by U.S. mail:</p>	<p>Metropolitan Water District of Southern California Attention: General Manager 700 North Alameda Street Los Angeles, CA 90012-3353 P.O. Box 54153 Los Angeles, CA 90054-0153</p>
<p>If to SNWA by personal service, overnight delivery</p> <p>or by U.S. mail:</p>	<p>Southern Nevada Water Authority Attention: General Manager 100 City Parkway Las Vegas, NV 89106-4610 P.O. Box 99956 Las Vegas, NV 89193-9956</p>
<p>If to CRCN by personal service, overnight delivery, or by U.S. mail:</p>	<p>Colorado River Commission of Nevada Attention: Executive Director 555 East Washington Avenue, Suite 3100 Las Vegas, NV 89101</p>
<p>If to CAWCD by personal service, overnight delivery,</p> <p>or by U.S. mail:</p>	<p>Central Arizona Water Conservation District Attention: General Manager 23636 North 7th Street Phoenix, AZ 85024-3801 P.O. Box 43020 Phoenix, AZ 85080-3020</p>

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

19.8 A Party may change its address by giving the other Parties notice of the change in any manner permitted by this Agreement.

20. JUDICIAL REMEDIES NOT FORECLOSED: Nothing herein shall be construed (i) as in any manner abridging, limiting, or depriving any Party of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof, or of any other remedy which it would otherwise have, or (ii) as depriving any Party of any defense thereto which would otherwise be available.

21. AVAILABILITY OF INFORMATION: Subject to applicable Federal laws and regulations, each Party to this Agreement shall have the right during office hours to examine and make copies of the other Party's books and records relating to matters covered by this Agreement.
22. FEDERAL OBLIGATIONS CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FEDERAL FUNDS: The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement, including the Reclamation contribution identified in Exhibit A to this Agreement, shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States in case funds are not appropriated or allotted.
23. OFFICIALS NOT TO BENEFIT: No Member of or Delegate to the Congress, or Resident Commissioner, or official of MWD, SNWA, CRCN, CAWCD shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners.
24. EQUAL OPPORTUNITY: Each Party shall comply with all applicable Federal and state laws relating to equal opportunity and non-discrimination.
25. EXHIBITS MADE PART OF THIS AGREEMENT: Exhibits A, B, and C are attached hereto and made a part hereof.
26. LIABILITY: Actions taken to prepare the YDP for the Pilot Project and to perform the OMR&R of the YDP under the Pilot Project are solely the responsibility of Reclamation. The liability of the United States for any claims arising out of the Pilot Project is limited to Reclamation's and the Contracting Officer's actions under this Agreement, and such coverage as may be provided under the Federal Tort Claims Act.
27. NO THIRD-PARTY BENEFICIARIES: This Agreement and any agreements made or actions taken pursuant hereto are made solely for the benefit of the Parties. No Party to this Agreement intends for this Agreement to confer any benefit upon any person or entity not a signatory upon a theory of third-party beneficiary or otherwise.

28. COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute only one Agreement.

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement No. 09-XX-30-W0541 on the day and year first written above.

Approved as to legal sufficiency:

By: Katherine Ott Verburg
Field Solicitor

THE UNITED STATES OF AMERICA

By: Lorri Gray-Lee
Lorri Gray-Lee, Regional Director
Bureau of Reclamation

Approved as to form:

By: _____
Karen L. Tachiki
General Counsel

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: _____
Jeffrey Kightlinger
General Manager

Approved as to form:

By: _____
John J. Entsminger
Deputy General Counsel

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
Patricia Mulroy
General Manager

Approved as to form:

By: _____
Jennifer T. Crandell
Senior Deputy Attorney General

**COLORADO RIVER COMMISSION
OF NEVADA**

By: _____
George M. Caan, P.E.
Executive Director

Approved as to form:

By: _____
Secretary

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____
President

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Approved as to legal sufficiency:

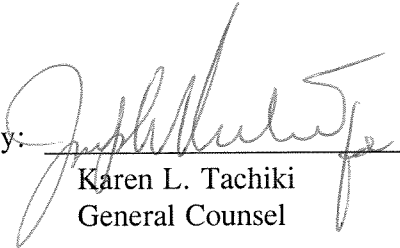
THE UNITED STATES OF AMERICA

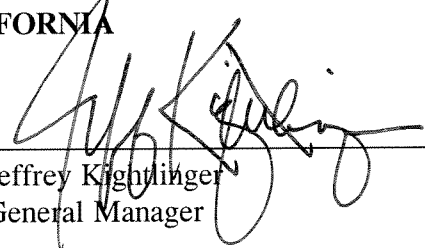
By: _____
Field Solicitor

By: _____
Lorri Gray-Lee, Regional Director
Bureau of Reclamation

Approved as to form:

**THE METROPOLITAN WATER
DISTRICT OF SOUTHERN
CALIFORNIA**

By: 
Karen L. Tachiki
General Counsel

By: 
Jeffrey Knightlinger
General Manager

Approved as to form:

**SOUTHERN NEVADA WATER
AUTHORITY**

By: _____
John J. Entsminger
Deputy General Counsel

By: _____
Patricia Mulroy
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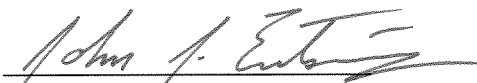
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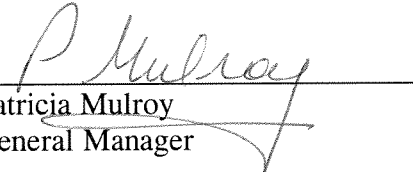
By: _____
Karen L. Tachiki
General Counsel

By: _____
Jeffrey Kightlinger
General Manager

Approved as to form:

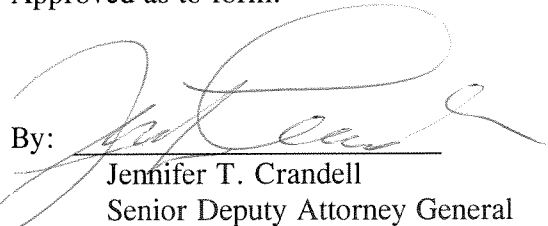
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Deputy General Counsel

By: 
Patricia Mulroy
General Manager

Approved as to form:

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OF NEVADA**

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Senior Deputy Attorney General

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George M. Caan, P.E.
Executive Director

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**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: _____
Secretary

By: _____
President

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THE UNITED STATES OF AMERICA

By: _____
Field Solicitor

By: _____
Lorri Gray-Lee, Regional Director
Bureau of Reclamation

Approved as to form:

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DISTRICT OF SOUTHERN
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By: _____
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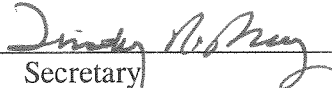
**COLORADO RIVER COMMISSION
OF NEVADA**

By: _____
Jennifer T. Crandell
Senior Deputy Attorney General

By: _____
George M. Caan, P.E.
Executive Director

Approved as to form:

**CENTRAL ARIZONA WATER
CONSERVATION DISTRICT**

By: 
Secretary

By: 
President

ESTIMATE OF ELIGIBLE PROJECT COSTS
YUMA DESALTING PLANT PILOT PROJECT

1. This Exhibit A, made this 29th day of October, 2009, to be effective under and as a part of Agreement No. 09-XX-30-W0541, hereinafter called "Agreement," shall become effective on the date of the Agreement's execution and shall remain in effect until amended as provided for in Section 4.2 of the Agreement; Provided, that this Exhibit A or any amended Exhibit A shall terminate with termination of the Agreement.

2. Following is the Estimate of Eligible Project Costs:

<u>Category</u>	<u>Estimated Cost</u>
Plant Preparation	
- One time construction projects	2,605,000
- Reclamation labor	2,751,853
- Contract labor and services	814,584
- Materials, supplies, and parts	<u>130,500</u>
Subtotal	\$ 6,301,937
Operation, Maintenance, Repair, and Replacement	
- Reclamation labor	3,411,492
- Contract labor and services	2,662,752
- Power	3,304,516
- Chemicals	6,415,610
- Materials	349,200
- Contingency	<u>414,500</u>
Subtotal	\$ 16,558,070
 Total	 \$ 22,860,007
 Reclamation contribution (projects, labor, contingency)	 \$ 9,182,845
Parties funding	\$ 13,677,162

SCHEDULE FOR PROJECT COMPLETION
YUMA DESALTING PLANT PILOT PROJECT

1. This Exhibit B, made this 29th day of October, 2009, to be effective under and as a part of Agreement No. 09-XX-30-W0541, hereinafter called "Agreement," shall become effective on the date of the Agreement's execution and shall remain in effect until amended as provided for in Section 4.2 of the Agreement; Provided, that this Exhibit B or any amended Exhibit B shall terminate with termination of the Agreement.
2. Following is the Schedule for Project Completion:

<u>Milestone</u>	<u>Begins</u>
Pilot Project Preparation Phase	August, 2008
- Design and acquisition	
- Construction and equipment preparation	
- Regulatory requirements	
Add supplemental contractor labor	October, 2009
Start Yuma Desalting Plant and stabilize pretreatment for ~ 1 month	March, 2010
Begin 11% capacity operations for ~ 2 weeks	April, 2010
Begin 22% capacity operations for ~ 2 weeks	April, 2010
Begin 33% capacity operations for 10 months or more	May, 2010
Pilot Project concludes	

Pilot Project will conclude upon delivery of ~29,000 acre feet (combination of YDP product water to the Colorado River and untreated MODE water to the Gila River Pilot Channel). Total estimated duration of the pilot is 12 to 18 months.

FUNDING PERIODS
YUMA DESALTING PLANT PILOT PROJECT

1. This Exhibit C, made this 29th day of October, 2009, to be effective under and as a part of Agreement No. 09-XX-30-W0541, hereinafter called "Agreement," shall become effective on the date of the Agreement's execution and shall remain in effect until amended as provided for in Section 4.2 of the Agreement; Provided, that this Exhibit C or any amended Exhibit C shall terminate with termination of the Agreement.
2. Following are the anticipated Funding Periods:

Funding Periods

		Necessary non-Federal funding	Estimated Participant Share		
			MWD	SNWA	CAWCD
Pilot Preparation	Jul-09				
	Aug-09				
	Sep-09	\$ 4,128,102	\$ 3,302,482	\$ 412,810	\$ 412,810
	Oct-09				
	Nov-09				
Pilot Project Operations	Dec-09				
	Jan-10	\$ 3,183,020	\$ 2,546,416	\$ 318,302	\$ 318,302
	Feb-10				
	Mar-10				
	Apr-10				
	May-10	\$ 3,183,020	\$ 2,546,416	\$ 318,302	\$ 318,302
	Jun-10				
	Jul-10				
	Aug-10				
	Sep-10				
	Oct-10	\$ 3,183,020	\$ 2,546,416	\$ 318,302	\$ 318,302
Nov-10					
Dec-10					
Jan-11					
Total	\$ 13,677,162	\$ 10,941,730	\$ 1,367,716	\$ 1,367,716	

The purpose of this schedule is to provide the Pilot Project funding entities with Reclamation's best available estimate of the costs and timing of payments associated with the Pilot Project. This estimate including timing and amounts are subject to change and should only be used for informational purposes. This is also subject to the final terms and conditions set forth in the funding agreement.