

Appendix A: Poso Creek Banking Agreement

**AGREEMENT BETWEEN
POSO CREEK WATER COMPANY, LLC AND
SEMITROPIC WATER STORAGE DISTRICT AND ITS
IMPROVEMENT DISTRICTS FOR PARTICIPATION IN THE STORED WATER
RECOVERY UNIT OF THE
SEMITROPIC WATER BANKING AND EXCHANGE PROGRAM**

THIS AGREEMENT (this "**Agreement**"), dated as of April 23, 2007, is entered into by and between **POSO CREEK WATER COMPANY, LLC** ("Participant") and the **SEMITROPIC WATER STORAGE DISTRICT** and **SEMITROPIC IMPROVEMENT DISTRICT**, **BUTTONWILLOW IMPROVEMENT DISTRICT** and **POND-POSO IMPROVEMENT DISTRICT** of the **SEMITROPIC WATER STORAGE DISTRICT** (collectively called "**Semitropic**"). Participant and Semitropic may be referred to individually as Party or collectively as Parties.

RECITALS

A. Participant is a mutual water company formed pursuant to California law for the purpose of acquiring water supplies and providing them to its members at cost. Participant wishes to acquire water supplies as described in this Agreement to be made available to its members in accordance with Participant's governing documents.

B. Semitropic Water Storage District and its improvement districts are organized under the laws of the State of California under the Water Storage District Law at Division 14 of the California Water Code. As more particularly described below, Semitropic, among other things, supplies imported supplemental surface water to certain of its landowners and water users and has ongoing groundwater banking programs with other entities.

C. Semitropic obtains water from the SWP through its contracts with the Kern County Water Agency ("**Agency**") under the Agency's master contract with DWR, executed on

November 15, 1963, and presently providing for a total contract entitlement of 998,730 acre-feet per year. Semitropic's contracts with the Agency were originally executed December 9, 1976 (Buttonwillow Improvement District), December 9, 1976 (Pond-Poso Improvement District), and January 9, 1969 (Semitropic Water Storage District) and provided for a combined contract entitlement of 158,000 acre-feet per year. This later amount was reduced to 155,000 acre-feet by the contract amendments required to implement the Kern Water Bank exchange under the Monterey Agreement. Semitropic Improvement District was formed in 1991, and its boundaries are coterminous with the boundaries of Buttonwillow Improvement District and Pond Poso Improvement District and, among other things, it serves as agent for Buttonwillow Improvement District and Pond-Poso Improvement District. A total of approximately 136,370 acres of land within Semitropic is irrigated with a total annual demand of approximately 477,000 acre-feet based on current cropping patterns and irrigation practices. Semitropic has entered into contracts with individual landowners comprising 42,328 acres of land which is designated as the Surface Water Service Area ("**SWSA**"). Semitropic has commitments to deliver 145,240 acre-feet per year to the SWSA. Additional lands outside the SWSA, in the amount of approximately 24,500 acres, have also been connected to Semitropic's distribution system so such lands may receive surface water when available. These additional lands are designated as the Temporary Water Service Area ("**TWSA**"), and may sometimes be referred to as the Non-Contract Service Area. Total landowner demand within the SWSA and TWSA for surface water supplies is greater than water available under Semitropic's entitlement for Agency SWP water and other surface water supplies.

D. Consistent with the California Environmental Quality Act ("**CEQA**"), Semitropic, acting as lead agency completed an environmental impact report (the "**EIR**") concerning a water banking and exchange program (the "**Original Banking Program**"). Semitropic's Board of Directors, on July 13, 1994, certified the EIR as being in compliance with CEQA. Semitropic is also responsible for implementing and monitoring the mitigation measures defined in "Findings and Mitigation Monitoring Plan" dated July 1994, adopted as part of the EIR.

E. Semitropic also entered into a Memorandum of Understanding ("**MOU**") with neighboring districts, dated September 14, 1994, to implement in part said monitoring and

mitigation measures, which this Agreement is subject to. The MOU is on file with Semitropic and has been provided to Participant.

F. The Original Banking Program has a defined total storage capacity of 1,000,000 acre-feet. As part of the Original Banking Program, Semitropic entered into water banking and exchange Agreements with certain parties (the “**Original Banking Partners**”) as amended, under which, when and if fully vested, the Original Banking Partners shall have the amounts and percentages as follows:

Original Banking Partners	Effective Date Of Agreement/Amendment	Amount of Storage (AF)	Percent of Program
Metropolitan Water District of Southern California	December 12, 1994 May 6, 2003	350,000	35
Santa Clara Valley Water District	June 1, 1997 April 24, 2003	350,000	35
Alameda County Water District	July 1, 1997 Sept. 28, 2001 April 24, 2003	50,000 100,000	5 10
Zone 7 Water Agency	January 28, 1998 February 26, 2003 January 12, 2005	65,000	6.5
Vidler Water Co.	October 8, 1998; May 21, 2001; Sept. 28, 2001 February 26, 2003 July 1, 2005	30,000	3
The Newhall Land and Farming Company	May 21, 2001 February 26, 2003	55,000	5.5
TOTAL		1,000,000	100

G. The construction of additional distribution facilities by Semitropic as part of the Original Banking Program allowed Semitropic to take delivery of additional imported water delivered to Semitropic by the Original Banking Partners After the implementation of the Original Banking Program, certain of the Original Banking Partners requested that Semitropic

investigate the possibility of increasing the recovery or withdrawal capacity of the Original Banking Program. Following review of various alternatives, Semitropic concluded that the withdrawal capacity increase could best be accomplished in a reliable and efficient manner by pumping Stored Water (as defined below) directly from groundwater storage into the California Aqueduct. After considering various pumping locations, pipeline alignments, and the need to minimize pumping impacts on existing groundwater users, the area in the northwest part of Semitropic was selected as a potential well field. The identified project, known as the Stored Water Recovery Unit (“SWRU”) and described further below, is based on additional pumpback capacity of up to 200,000 acre-feet per year, 150,000 acre-feet of which is to be pumped from the Well Field (as defined below) and 50,000 acre-feet from other parts of the Semitropic Improvement District.

H. Semitropic prepared a Draft Supplemental Environmental Impact Report (DEIR) on the SWRU. The Final Supplemental EIR was certified on January 19, 2000. Semitropic also prepared Addenda to the Final Supplemental EIR, dated February, 2002, (clarifying the overall storage capacity of the Original Banking Program with the SWRU to be 1,650,000 acre-feet) July, 2004 (regarding the size and configuration of certain SWRU facilities) and March, 2005 (concerning the delivery point of water delivered for banking). Semitropic initially offered the additional recovery capacity of the SWRU to the Original Banking Partners, but they declined to participate, except for Zone 7 Water Agency and Vidler Water Company. As a result of Semitropic’s proposal to undertake the SWRU, Semitropic and the Original Banking Partners did enter into an amendment to the Original Banking Partner agreements to confirm and clarify the rights of the Original Banking Partners established under the Original Banking Partner Agreements. The Original Banking Partner Agreements, as amended, among other provisions, provide Semitropic shall operate the SWRU in a manner designed so that its operation does not cause the Original Banking Program to be impaired in its ability to meet DWR water quality standards for return of Stored Water to the California Aqueduct. (*First Amendment, Section 14.2.3*); provide that the Original Banking Partners shall have no responsibility and/or obligation to compensate or otherwise provide mitigation to Semitropic or SWRU participants as a result of any adverse impacts of the Original Banking Program. (*First Amendment, Section 14.3*) and also otherwise provide the Original Banking Partners specified rights in regard to the unused

capacities of SWRU facilities.

I. The facilities planned to be constructed for the SWRU ("**SWRU Facilities**") generally include a well field with approximately 65 wells with a planned capacity to pump 150,000 acre-feet per year ("**Well Field**") (in which Participant will only have secondary rights, as herein provided), a collection system for transporting Stored Water to a reservoir and pumping plant, a pipeline (estimated 108" diameter) and/or canal to a second reservoir that will be constructed adjacent to the Pond Poso Canal (with appropriate interconnections), and a second pumping plant and 420 cfs of two-way conveyance capacity in a 120 inch diameter pipeline to the California Aqueduct. These facilities provide a dual-purpose, bi-directional, connection from the Well Field and the Semitropic distribution system to the California Aqueduct. The SWRU Facilities also include well connections and conveyance facility improvements to increase the existing Semitropic pumpback capacity to the Aqueduct by an additional 50,000 acre-feet per year (which, as described below, will be the principal source of recovery for Participant). The SWRU will also require auxiliary features including power distribution lines and operation and maintenance roads. Costs to mitigate impacts may be included with the SWRU Facilities as herein provided. The parties recognize that water quality standards may result in a requirement that water from the SWRU, and in particular the Well Field, be treated before being returned to the California Aqueduct. The general location of projected SWRU Facilities is shown as Area B on Exhibit A hereto.

J. Semitropic as part of the Original Banking Program has constructed facilities to provide Program Delivery Capacity consisting of 23,000 acres of In-Lieu Service Area providing, in combination with delivering capabilities in the SWSA and TWSA, approximately 90,500 acre-feet per year of delivery capacity within a portion of Area A on Exhibit A. Since initiating the Original Banking Program Semitropic has also increased its recharge capabilities beyond that required by the Original Banking Program through construction of additional In-Lieu Service areas, participation in the Kern Water Bank and additional direct recharge facilities within the District. These additional facilities including proposed future improvements are generally shown on Exhibit A. An additional In-Lieu Service Area as shown within Area B of

Exhibit A (shown as "In-Lieu Recharge and Recovery Area") will also be constructed as part of the SWRU Facilities. This In-Lieu Service Area and additional facilities within Area B will increase the "put" capacity of the SWRU and may also be used to mitigate potential pumping impacts on landowners adjoining the Well Field.

K. Participant and Semitropic find that it will be mutually advantageous to enter into a groundwater banking and exchange program utilizing the SWRU whereby Semitropic will hold in trust for Participant the water deposited by Participant hereunder (or its equivalent), together with (i) an easement and right to withdraw from lands owned or controlled by Semitropic an amount of water equal to Participant's Stored Water on deposit with Semitropic, and (ii) an easement and right to transport such water from the Semitropic Basin to the California Aqueduct for delivery to Participant, all in accordance with the terms of this Agreement. This Agreement will provide groundwater storage for Participant resulting in better utilization of its water supplies, and will provide improved reliability of supplies and overall higher groundwater levels for Semitropic.

L. This Agreement is consistent with the goal of making optimum use of water and facilities and is consistent with conservation objectives of Participant, Semitropic, Agency and DWR.

M. As a part of this Agreement, Semitropic, as trustee, will hold in trust for Participant, in accordance with the terms of this Agreement, the water deposited by Participant (or its equivalent), together with the right to withdraw it and to deliver it to the California Aqueduct or other mutually agreeable facility by direct delivery or by exchange. The Parties create this trust relationship for the purpose of protecting Participant's ability to recover Stored Water, and Semitropic's fiduciary duty is limited to Semitropic's responsibilities as set forth in this Agreement. In addition, Semitropic, in a non-fiduciary capacity, will provide such water resource management services as are necessary to implement and operate the Program. Semitropic's non-fiduciary obligations include taking such actions, including the construction of facilities, securing agreements and entering into operational arrangements, as are necessary to receive from Participant water delivered by Participant for storage hereunder and to return

equivalent water to Participant in accordance with the terms of the Agreement. The Program, as implemented with respect to Participant by this Agreement, when combined with other necessary actions undertaken by Participant will thus allow the delivery of Stored Water to Participant. These actions will include obtaining any necessary agreements between agencies responsible for transferring water to and from Semitropic California Aqueduct Turnouts (Delivery Agreement as provided in Article 9). When such services are provided by Semitropic, Participant will make payments to Semitropic, as provided for in this Agreement, to compensate Semitropic for its services and expenses.

N. The trust relationship between Participant, as settlor and beneficiary, and Semitropic, as trustee, created by this Agreement and described in these Recitals, is entered into by the Parties solely for the purpose of protecting Participant's interest in water delivered by Participant to Semitropic hereunder for storage, and the right of Participant also held in trust by Semitropic for Participant to recover from the Semitropic Basin, water in a quantity sufficient to return to Participant a quantity equal to Participant's Storage Account Balance, such right to be exercised by Semitropic, as trustee, through the lands, facilities, rights and interests of Semitropic, or by its successor in interest in and to the trust property, all in accordance with the terms of this Agreement. Semitropic acknowledges and agrees that all water delivered to it by Participant hereunder will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Semitropic in its capacity as trustee for Participant with respect to such water and the easements and rights relating thereto provided for herein. Participant has herein authorized Semitropic, as trustee, to commingle exchange or otherwise dispose of the water delivered by Participant hereunder. In exchange for those rights and for water delivered hereunder, Semitropic has granted, and does hereby grant, to Participant the right to an equal quantity of water from the lands, facilities, rights and interests of Semitropic (subject, however, to the loss provisions of Article 4), together with such easements and other rights as are necessary to transport the recovered water to the California Aqueduct for delivery to Participant as specified in the Delivery Agreement therein, all upon, and subject to the provisions of, this Agreement (all of which rights and easements may be referred to herein, collectively, as the "**Trust Property**"). Participant has granted, and does hereby grant, to Semitropic said Trust Property, in trust, for the use and benefit of Participant. The trust relationship created by this Agreement is not otherwise

intended to apply to or affect the obligations of Semitropic or Participant hereunder, or the remedies in the event of default; it being expressly understood and agreed that Semitropic's obligations hereunder to, among other things, construct facilities and enter into agreements with others in furtherance of the Program shall not be fiduciary in nature. Notwithstanding creation of a trust under this Agreement, Semitropic may benefit from the Program set forth in this Agreement.

DECLARATION OF TRUST

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

ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used. Further, each provision in this Article or in the Recitals which is stated in declarative form (for example, "will be adjusted") or is otherwise stated as an agreement between the Parties, rather than as a statement of their intent or purpose, shall be construed to be an operative part of this Agreement and shall be enforceable.

1.1 **"Agreement"** means, as of any particular time, this Agreement as amended or supplemented by the Parties through that time.

1.2 **"Banking Partner"** means, as of any particular time, Participant and any other entity which is then a party to a water banking and exchange agreement with Semitropic and shall include Original Banking Partners and SWRU Banking Partners. The term "Banking Partner" does not include a Lower Priority Banking Partner.

1.3 **"In-Lieu Service Area"** means lands which have at least a five year history of cultivation and continuous use of groundwater, the owners of which have executed surface water service contracts with Semitropic acknowledging and agreeing to cooperate with Semitropic in fulfilling its obligation to carry out the Program, that provide for the reasonable and beneficial use of water made available to Semitropic for banking and other purposes on that land in lieu of pumping groundwater, and whose on-farm systems have been connected to Semitropic's surface water distribution system to receive water delivered to Semitropic for storage purposes. These lands also have a contractual responsibility to use existing wells to recover Stored Water.

1.4 **"Lower Priority Banking Partner"** means an entity which enters into an agreement with Semitropic to utilize all or part of the capacity during such time period when not required to be available for use by Semitropic or Banking Partners.

1.5 **"Original Banking Partners"** means the parties to the Original Banking Program which are those listed in Recital F, and which may change from time to time in event of assignments in accordance with Section 14.1 (Successors and Assigns).

1.6 **"Original Banking Program"** means the original one million acre-feet (MAF) banking program developed by Semitropic within the Semitropic Bank, referred to as "Program" in Section 1.8 of the Original Banking Program Agreements.

1.7 **"Original Banking Program Agreements"** means the agreement (or agreements) that each Original Banking Partner has entered into with Semitropic containing rights and obligations related to the Original Banking Program.

1.8 **“Original Banking Program Facilities”** means the water facilities, consisting of canals, pipelines, associated pumping plants and recovery wells all as required to recharge a minimum of 90,500 acre feet per year, to recover a minimum of 90,000 acre feet per year at a maximum instantaneous flow rate of 300 cfs (Program Pumpback Capacity), and to recover up to 133,000 acre-feet per year to return water under Program Entitlement Exchange Rights provisions, the locations and description of which are shown on Exhibit A within Area A.

1.9 **“Participant’s Delivery Capacity”** means the capability granted to Participant under this Agreement to deliver water for storage, consistent with Article 7 hereof. Participant’s Delivery Capacity shall be provided to Participant from the following facilities, as Semitropic shall determine: (a) direct recharge facilities within Semitropic not part of the Original Banking Program, (b) recharge on the Kern Water Bank, (c) unused SWRU Delivery Capacity and (d) unused capacity of the Original Banking Program. Participant’s Delivery Capacity shall be 20,000 acre-feet annually.

1.10 **“Program” or “Semitropic Bank”** means the entire groundwater-banking program developed, operated, and maintained by Semitropic, including both the Original Banking Program and the SWRU. The Semitropic Bank is to be expanded to a 1.65 million acre-feet (MAF) banking program, consisting of the existing one MAF Original Banking Program and the additional 650,000 AF Stored Water Recovery Unit.

1.11 **“Program Entitlement Exchange Rights”** means the rights of Banking Partners to exchange an amount of Stored Water through entitlement exchange for an equal amount of Semitropic’s allocation of Agency’s SWP Entitlement Water (also referred to as Table A Amounts) from the California Aqueduct pursuant to this Agreement or other similar agreements between Semitropic and other Banking Partners, which right shall be first available to the Original Banking Partners as provided further in Article 7. The total amount of Program Entitlement Exchange Rights available to Banking Partners each year will be equal to Semitropic’s SWP Entitlement allocation less the first 22,000 acre-feet (was 25,000 acre-feet prior to the implementation of Monterey Amendments). If the nature or description of

Semitropic's allocation of the Agency's SWP Entitlement Water is modified, such alternative supply from the SWP shall to such extent be substituted for Semitropic's allocation of Agency's SWP Entitlement Water. Alternative supplies shall include water purchases by the SWP or from sources generally available to State water contractors, as well as water from facilities in which participation is generally made available to State water contractors. Nothing in the preceding sentence shall obligate Semitropic to participate in such programs. The maximum Program Entitlement Exchange Rights of all the Banking Partners at any time will be 133,000 acre-feet per year (derived from 158,000 acre-feet minus 25,000 acre-feet or after implementation of the Monterey Amendments derived from 155,000 acre-feet minus 22,000 acre-feet)

1.12 **"Original Program Pumpback Capacity"** means the capacity, measured in acre-feet per year and CFS, to return Stored Water to the California Aqueduct via the 78" pumpback pipeline constructed for the Original Banking Program, which capacity is first available to the Original Banking Partners as provided further in Article 7. The minimum annual Original Program Pumpback Capacity shall be 90,000 acre-feet per year at a maximum instantaneous flow rate of 300 CFS.

1.13 **"Share of SWRU"** means the percentage of the annual SWRU Pumpback Capacity assigned to a SWRU Banking Partner. Semitropic shall assign a Share of SWRU to each SWRU Banking Partner. Participant is acquiring 20,000 acre-feet of annual SWRU Pumpback Capacity, and Participant therefore has a 10% Share of annual SWRU Pumpback Capacity.

1.14 **"Storage Account Balance"** means, with respect to a particular Banking Partner, that Banking Partner's accumulated total Stored Water less the accumulated withdrawals of Stored Water by that Banking Partner. Records of these accounts shall be maintained by Semitropic and they shall be subject to audit, review and approval by the Banking Partners, at the expense of the auditing or reviewing Banking Partner, on an annual basis.

1.15 **"Stored Water"** means, with respect to any particular Banking Partner, water delivered for storage by that Banking Partner as measured at Semitropic's turnouts in Reach 10A of the California Aqueduct or at other locations approved by the Delivery Agreement referred to in

Article 9, less losses deducted in accordance with Article 4, which losses shall be accounted for concurrently with the delivery of water to Semitropic for storage. Participant acknowledges that Participant's Stored Water may be commingled with other water. At all times during the term of this Agreement, an amount of water available to Semitropic in the Semitropic Basin equal to the amount of the Participant's Storage Account Balance shall be deemed to be Participant's Stored Water. So long as water in the amount of Participant's Storage Account Balance remains in the Semitropic Basin, Semitropic, as trustee, shall be deemed to remove Participant's Stored Water from storage only as and when requested by Participant pursuant to the terms of this Agreement and any other removal of water by Semitropic from the Semitropic Basin shall be deemed to be the removal of water that is not Participant's Stored Water. If at any time the amount of water in the Semitropic Basin is less than the sum of the Storage Account Balances of the Banking Partners (an event which the parties believe is extremely unlikely), any additional water subsequently available to Semitropic from the Semitropic Basin without interfering with the rights of landowners or other public agencies, shall be shared by the Banking Partners in proportion to their respective Storage Account Balances, until such time as the amount of water so available to Semitropic from the Semitropic Basin equals or exceeds the total of the Storage Account Balances of the Banking Partners.

1.16 **"Stored Water Recovery Unit"** (or "SWRU") means the program within the Semitropic Bank, developed by Semitropic to create, in addition to the Original Banking Program, an additional 650,000 acre-feet of storage as further described at Recital I and elsewhere in this Agreement.

1.17 **"Stored Water Recovery Unit Facilities"** (or "SWRU Facilities") means the proposed facilities shown and described on Exhibit A within Area B and recovery facilities for up to 50,000 acre-feet per year within Area A and additional well connections and conveyance facility improvements not part of the Original Banking Program Facilities.

1.18 **"SWP Entitlement Water"** means entitlement water (also known as Table A Amounts) as provided for in the state water contracts, as well as the alternative supplies provided for in the definition of Program Entitlement Exchange Rights.

1.19 **"SWRU Banking Partners"** means, as of any particular time, Participant and any other entity which is party to a water banking and exchange agreement with Semitropic to participate in the Stored Water Recovery Unit.

1.20 **"SWRU Delivery Capacity"** means the capability to deliver water for storage made available as a result of the construction of SWRU Facilities. The program delivery capability of the proposed In-Lieu Service Area is estimated to be 50,000 acre-feet per year, based on current cropping patterns and irrigation efficiencies on an irrigation schedule, generally shown on Exhibit B. Additional delivery capacity may be available from time to time, consistent with Article 7 hereof.

1.21 **"SWRU Pumpback Capacity"** means the annual, first priority capacity, measured in acre-feet per year and CFS, to return Stored Water to the California Aqueduct under the SWRU element of the Program. Upon completion of all necessary SWRU Facilities, the annual SWRU Pumpback Capacity shall be 200,000 acre-feet per year, comprised of (i) 150,000 acre-feet per year at an instantaneous flow rate of approximately 250 CFS for a period of approximately 10 months from the Well Field and from within the additional in-lieu service area described in Recital J shall be available to other SWRU Banking Partners on a first priority basis (**"150,000 AF SWRU Pumpback Capacity"**) and (ii) 50,000 acre-feet per year at an instantaneous flow rate of 170 CFS for a period of approximately 5 months during the off-peak irrigation season from recovery facilities within Area A shown on the attached Exhibit A and utilizing additional well connections and conveyance facility improvements not part of the Original Banking Program Facilities (**"50,000 AF SWRU Pumpback Capacity"**). The 50,000 AF SWRU Pumpback Capacity is distinct from and over and above the 90,000 acre-feet of pumpback capacity allocated to the Original Banking Partners through the Original Banking Program. As described in Section 2.1, 20,000 acre feet of the 50,000 AF SWRU Pumpback Capacity shall be available to Participant on a first priority basis. The 50,000 AF SWRU Pumpback Capacity is available as of the effective date of this Agreement. Semitropic shall not commit more than 50,000 acre feet of the 50,000 AF portion of the SWRU Pumpback Capacity to Banking Partners on a first priority basis.

1.22 **"SWRU Storage Capacity"** means the storage capability of the Program which have been allocated to the SWRU, totaling 650,000 acre-feet.

1.23 **"Technical Advisory Committee"** means the Committee established pursuant to Section 7.4 hereof.

1.24 **"Unused Program Entitlement Exchange Rights"** means those exchange rights referenced at Section 1.10 of this Agreement that are not used by the Original Banking Partners.

1.25 **"Unused Original Program Pumpback Capacity"** refers to that minimum pumpback capacity referenced at Section 1.11 that is not used by Semitropic or by the Original Banking Partners.

1.26 **"Unused Semitropic Delivery Capacity "** means in any year, Semitropic total in District delivery capability, currently about 400,000 acre-feet per year (which ultimately could be equal to its total irrigation demand of about 475,000 acre-feet per year) plus direct recharge capability which is not used for delivery of Semitropic's SWP Entitlement Water, Agency Pool Water, Shafter-Wasco Irrigation District deliveries pursuant to Section 5.8 or other water available to be used by Semitropic for non-banking purposes and the Original Banking Partners and SWRU Banking Partners under their respective first priority delivery capabilities.

ARTICLE 2.

ALLOCATION AMONG BANKING PARTNERS

2.1 Under terms and conditions of this Agreement, Participant shall have the first priority to Participant's Delivery Capacity, 20,000 acre-feet of the 50,000 AF SWRU Pumpback Capacity, 60,000 acre-feet of SWRU Storage Capacity and any available unused capacities as herein provided (herein collectively called "Participant's Rights"). SWRU Banking Partners, including Participant, in all cases shall also have the first priority to use any SWRU Delivery Capacity, and SWRU Pumpback Capacity not used by other SWRU Banking Partners as provided in Sections 3.3 and 5.2.2.1. Semitropic shall notify each SWRU Banking Partner not

using its respective share of said SWRU capability, capacity or right, when other entities including Banking Partners desire to utilize it and of any use made of it.

2.2 Semitropic shall not enter into any other water banking programs or other agreements which would interfere with the Program benefits and rights of Participant or the other SWRU Banking Partners.

2.3 Then existing SWRU Banking Partners will be given an opportunity to review the terms and conditions of proposed agreements with potential Banking Partners and Lower Priority Banking Partners and to review Semitropic's records regarding administration of the Program. Such Lower Priority Banking Partners' agreements and activities shall not adversely impact any Banking Partners' ability to utilize any benefits under their respective agreements with Semitropic. If Semitropic or one or more then existing SWRU Banking Partners believe that other potential Banking Partners' proposed agreements or potential Lower Priority Banking Partners' proposed agreements violate any of the provisions of this Agreement or other such Agreement, any Party may seek dispute resolution pursuant to Article 10 concerning such matter. In this event, Semitropic shall only enter into agreements in conformity with the result of the dispute resolution.

ARTICLE 3.

DELIVERY OF WATER BY BANKING PARTNERS TO SEMITROPIC

3.1 Under the terms of the Delivery Agreement referred to in Article 9, Participant, at its sole cost and expense, may deliver water to Semitropic at the location in the California Aqueduct specified in the Delivery Agreement or to other agreed upon locations provided, however, such water shall not place institutional burdens on Semitropic beyond that applicable under Delivery Agreements and Point of Delivery Agreements with other Banking Partners. Participant shall notify Semitropic of its intent as early in the year as possible, preferably no later than April 15. Such water will be scheduled and delivered to Semitropic at times and rates of delivery reasonably acceptable to Semitropic, the Agency and Participant, and shall not exceed the sum of (i) Participant's Delivery Capacity and (ii) any Unused Semitropic Delivery Capacity