

**LANDOWNER AGREEMENT  
FOR FALLOWING IN THE  
PALO VERDE IRRIGATION DISTRICT**

**(“LANDOWNER AGREEMENT”)**

**BETWEEN**

**THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA**

**AND**

**PALO VERDE IRRIGATION DISTRICT**

**AND**

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**LANDOWNER AGREEMENT  
FOR FALLOWING IN THE  
PALO VERDE IRRIGATION DISTRICT**

THIS LANDOWNER AGREEMENT FOR FALLOWING IN THE PALO VERDE IRRIGATION DISTRICT (“Landowner Agreement”) is made and entered into as of \_\_\_\_\_, 2004 (“Effective Date”) by and between The Metropolitan Water District of Southern California (“Metropolitan”), organized and existing under the Metropolitan Water District Act (West’s Water Code Appendix, Chapter 109), and the Palo Verde Irrigation District (“PVID”), formed pursuant to the Palo Verde Irrigation District Act (West’s Water Code Appendix, Chapter 33), and \_\_\_\_\_, a \_\_\_\_\_ (“Landowner”), each of which is at times referred to individually as “Party” and all of which are at times collectively referred to as “Parties”.

**RECITALS**

**A.** Metropolitan and PVID have entered into that certain Forbearance and Fallowing Program Agreement (“Program Agreement”) that provides for implementation of a program for the fallowing of certain lands in the PVID (“Program”). The Program Agreement further provides that Metropolitan shall make monetary payments to Participating Landowners in consideration of the Saved Water developed by the Fallowing that will be available for Metropolitan’s use.

**B.** Landowner is owner of certain real property located in the PVID that is Program Qualified Land as defined in the Program Agreement and is more particularly identified on Exhibit “A” attached hereto (“Landowner’s Program Qualified Land and Maximum Fallowing Commitment”), totaling \_\_\_\_ water toll acres.

**C.** PVID has solicited an offer from Landowner for participation in the Program as provided in the Program Agreement. Landowner has received and reviewed a copy of the Program Agreement and desires to participate in the Program with regards to certain of the Landowner’s Program Qualified Land, subject to the terms and conditions of this Landowner Agreement.

**D.** Landowner has timely submitted a Landowner Participation Offer to PVID and Metropolitan as required under the Program Agreement specifying (1) the maximum amount of Program Qualified Land that Landowner proposes to fallow pursuant to the terms and conditions of this Landowner Agreement (“Maximum Fallowing Commitment”) and (2) the Landowner’s Program Qualified Land, as described on Exhibit B attached hereto (“Landowner’s Program Encumbered Land), that Landowner proposes to encumber in connection with this Landowner Agreement with a Fallowing Easement as prescribed in the Program Agreement and this Landowner Agreement (“Landowner’s Program Encumbered Land”). Landowner’s Maximum Fallowing Commitment comprises \_\_\_\_% of Landowner’s Program Qualified Land, and totals \_\_\_\_ water toll acres.

**E.** Metropolitan has, by written notice to Landowner, provisionally approved the proposed Landowner's Program Encumbered Land. PVID and Metropolitan have verified the eligibility for and receipt of delivery of Priority 1 Water, and ownership by Landowner of, the Landowner's Program Qualified Land and have accepted the Maximum Fallowing Commitment, subject to the acceptance requirements, conditions and limitations provided in the Program Agreement.

**F.** Metropolitan, PVID and Landowner now desire to enter into an agreement for the fallowing of Program Qualified Lands subject to the terms and conditions of this Landowner Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations set forth herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

### **1. Definitions**

As used in this Landowner Agreement, the following terms shall have the following meanings:

**1.1** "AFY" means acre-feet per year.

**1.2** "Annual Payment" means that payment to be made by Metropolitan to Landowner pursuant to subsection 8.3 (Annual Payments).

**1.3** "Base Amount" means the amount of Program Qualified Land that Landowner shall Fallow in every Contract Year under this Landowner Agreement as further defined in subsection 5.1 (Base Amount Fallowing).

**1.4** "Commencement Date" means the date on which the Parties obligations to Fallow and make payments under this Landowner Agreement begin, and is the Closing Date of Escrow.

**1.5** "Contract Year" means the twelve (12) month period from August 1 through the following July 31 of the following year, the first Contract Year commencing the August 1 following satisfaction or waiver of the conditions precedent pursuant to section 6 (Conditions Precedent) of the Program Agreement. In the event that the Operative Date does not fall on August 1, the period following the Operative Date and preceding August 1 shall be referred to herein as a partial Contract Year and shall not be counted as a full Contract Year.

**1.6** "Effective Date" is the date set forth in the introductory paragraph of this Landowner Agreement on which this Landowner Agreement becomes effective.

**1.7** "Encumbrance" means any mortgage, deed of trust, or other monetary encumbrance or security device that is a lien on the Landowner's Program Encumbered Land.

**1.8** “Encumbrance Subordination Agreement” means those agreements to be provided by Landowner subordinating any Encumbrance on the Landowner’s Program Encumbered Land to the Following Easement as provided in subsection 4.5.2 (Encumbrance Subordination Agreement).

**1.9** “Escrow” means that account held by a title company selected by Metropolitan pursuant to subsection 3.2 (Escrow) for the purpose of consummating the transactions described in section 3 (Conditions Precedent and Escrow) and section 4 (Program Encumbered Land).

**1.10** “Escrow Holder” means that title company selected by Metropolitan pursuant to subsection 3.2 (Escrow) for the purpose of holding the Escrow.

**1.11** “Fallow” or “Fallowing” means not undertaking or permitting the activities described in subsection 5.5 (Actions Required for Fallowing).

**1.12** “Fallowed Land” means Program Qualified Land that is owned by or leased to Landowner and is Fallowed pursuant to this Landowner Agreement.

**1.13** “Fallowing Calls” means the calls by Metropolitan pursuant to this Landowner Agreement for Fallowing of Program Qualified Land in addition to the Base Amount as provided in subsection 5.2 (Calls by Metropolitan for Additional Fallowing).

**1.14** “Fallowing Easement” means the easement that Landowner will convey to PVID and Metropolitan pursuant to subsection 4.2 (Fallowing Easement) for the purpose of ensuring that Program Qualified Land is Fallowed as specified in this Landowner Agreement.

**1.15** “Landowner’s Program Encumbered Land” means that land owned by the Landowner that will be subject to the Fallowing Easement under this Landowner Agreement and is more particularly described on Exhibit “B” (Landowner’s Program Encumbered Land) as the same may be amended as provided in this Landowner Agreement.

**1.16** “Landowner’s Program Qualified Land” means those Program Qualified Lands that are owned by Landowner as of the Effective Date and are more particularly described on Exhibit “A” (Landowner’s Program Qualified Land and Maximum Fallowing Commitment).

**1.17** “Maximum Fallowing Commitment” means the maximum amount of Program Qualified Land that Landowner agrees, subject to the limitations in section 5 (Landowner’s Fallowing Obligation), to Fallow (Base Amount Fallowing plus Fallowing Call) in any Contract Year under this Landowner Agreement.

**1.18** “Metropolitan” means The Metropolitan Water District of Southern California.

**1.19** “Metropolitan Agreement Administrator” means that person designated by Metropolitan pursuant to section 12 (Agreement Administrator) for purposes of coordinating with Landowner and monitoring and enforcing this Landowner Agreement.

**1.20** “Participating Landowners” means all of the landowners that are participating in the Program through landowner agreements.

**1.21** “Participation Waiver” has the meaning set forth in subsection 3.5.5 of the Program Agreement.

**1.22** “Party” means Landowner, Metropolitan or PVID; and when used in the plural, it means all of them.

**1.23** “Priority 1 Water” means the water delivered to PVID pursuant to section 1 of Article (6) of the Federal Water Delivery Contract between the United States and PVID dated February 7, 1933.

**1.24** “Priority 1 Lands” means those lands described in section 1 of Article (6) of the Federal Water Delivery Contract between the United States and PVID dated February 7, 1933.

**1.25** “Program Agreement” means that agreement entered into by and between PVID and Metropolitan for the PVID/Metropolitan Forbearance and Fallowing Program.

**1.26** “Program Encumbered Land” means Program Qualified Land owned by Landowner that is subject to a Fallowing Easement pursuant to subsection 4.2 (Fallowing Easement).

**1.27** “Program Qualified Land” means land that (1) is eligible to and can receive delivery of Priority 1 Water from PVID, and (2) has produced irrigated crops in two of the five Contract Years (or the August 1 to July 31 periods prior to the Effective Date) immediately prior to the year in which the Landowner (i) makes a Landowner Participation Offer pursuant to subsection 3.2.2 of the Program Agreement, (ii) proposes the land for substitution as Program Encumbered Land pursuant to subsection 4.3 (Substitution of Program Encumbered Land) of this Landowner Agreement, or (iii) designates the land for fallowing pursuant to subsection 5.4 (Designation of Fallowed Land) of this Landowner Agreement.

**1.28** “PVID” means the Palo Verde Irrigation District.

**1.29** “Saved Water” means water that is developed by Fallowing pursuant to the Program Agreement and this Landowner Agreement.

**1.30** “Tenant Subordination Agreement” means those agreements to be provided by Landowner subordinating any Tenant Lease on the Landowner’s Program Encumbered Land to the Fallowing Easement and this Landowner Agreement as provided in subsection 4.5.1 (Tenant Subordination Agreement).

**1.31** “Termination Date” means the date this Landowner Agreement terminates as more particularly specified in subsection 2.3 (Termination Date) and subsection 2.4 (Early Termination).

## **2. Term of Agreement**

### **2.1 Effective Date**

This Landowner Agreement shall be effective upon the date of mutual execution by Metropolitan, PVID and Landowner as shown above.

## **2.2 Commencement Date**

The Landowner's participation in the Program shall commence ("Commencement Date"), and the obligation to Fallow and make payments hereunder shall begin, on the Closing Date of Escrow as defined in subsection 3.2 (Escrow), below.

## **2.3 Termination Date**

This Landowner Agreement shall expire on July 31 of the thirty-fifth (35<sup>th</sup>) full Contract Year unless earlier terminated as provided in subsection 2.4 (Early Termination) below.

## **2.4 Early Termination**

This Landowner Agreement shall terminate prior to July 31 of the thirty-fifth (35<sup>th</sup>) full Contract Year in the event of the following:

**2.4.1** Upon failure of Escrow to close within the period specified in subsection 3.2 (Escrow), below.

**2.4.2** Upon election by Metropolitan to terminate in the event of Landowner's Default under this Landowner Agreement as provided in subsection 11.1.1.4 (Termination), below.

**2.4.3** Upon election by Metropolitan to rescind in the event of Landowner's Default under this Landowner Agreement as provided in subsection 11.1.1.5 (Rescission and Reimbursement), below.

**2.4.4** Upon the expiration or earlier termination of the Program Agreement for any reason including, but not limited to, the termination of the Program Agreement on December 31, 2004 as a result of Metropolitan's or PVID's giving notice on or before that date that the conditions precedent described in section 6 (Conditions Precedent) of the Program Agreement will not be timely satisfied or waived.

## **2.5 Continuing Obligations**

The obligations and rights of the Parties under the following provisions shall survive the termination of this Landowner Agreement: section 1 (Definitions); subsection 4.4 (Re-conveyance of Program Encumbered Land); the indemnity provisions of subsection 6.2 (Entry for Inspection) and subsection 14.4 (Indemnity); subsection 8.3 (Annual Payments) as to payment or deduction obligations incurred prior to termination; section 11 (Remedies); section 13 (Dispute Resolution); and section 14 (Miscellaneous Agreements).

### **3. Conditions Precedent and Escrow**

#### **3.1 Conditions Precedent**

The Landowner's participation in the Program and the related obligations of the Parties under this Landowner Agreement, including but not limited to, any obligations of Metropolitan to make payment or of Landowner to Follow Landowner's Program Qualified Land, are contingent upon the satisfaction or waiver by the Parties of the following conditions (each a "Landowner Agreement Condition Precedent"):

##### **3.1.1 Program Agreement**

PVID and Metropolitan shall have satisfied or waived all conditions precedent under the Program Agreement as set forth in section 6 (Conditions Precedent) thereof, on or before December 31, 2004.

##### **3.1.2 No Litigation**

No litigation or proceeding before a federal or state administrative agency shall be pending, or to the actual knowledge of any Party, be threatened which relates to this Landowner Agreement or the subject matter hereof or which, if adversely determined would materially and adversely affect the ability of the Parties, or any of them, to perform their respective obligations under this Landowner Agreement or which raises a question as to the validity of the Landowner Agreement. Without limiting the generality of the foregoing, no challenge to this Landowner Agreement or the Program Agreement under the California Environmental Quality Act, the National Environmental Policy Act, the California Endangered Species Act, or the Federal Endangered Species Act shall be pending. This condition shall be deemed satisfied or waived unless any Party provides written notice to the other Parties, on or before the Closing Date, of the existence or threat of litigation or administrative proceedings as described herein

#### **3.2 Escrow**

Within seven (7) days after the Effective Date, Metropolitan shall establish an escrow ("Escrow") with \_\_\_\_\_ Title Company ("Escrow Holder"). Escrow shall be open when each of the Parties has deposited a fully executed counterpart of this Landowner Agreement and identical escrow instructions with Escrow Holder. Escrow Holder shall notify each Party in writing of the date Escrow is opened and the Closing Date, as defined below. Each Party agrees to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder or such other documents as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Landowner Agreement such instructions and documents to be consistent with the Program Agreement and this Landowner Agreement.

The Closing Date shall be the date that each of the conditions precedent provided in subsection 3.1 (Conditions Precedent) has been satisfied or waived by the Parties, each of the required documents specified in subsection 3.2.3 (Required Documents) has been deposited into Escrow, and the Following Easement deed, any required Tenant Subordination Agreement(s), and any required Encumbrance Subordination Agreement(s) are recorded in the official records of the

county or counties in which the Landowner's Program Encumbered Land is located. The Closing Date shall occur no later than sixty (60) days following the opening of Escrow, unless the Parties agree in writing to extend the Escrow. In the event that the Escrow does not close within the sixty-day period, or such longer period as the Parties may agree to in writing, this Landowner Agreement shall terminate.

### **3.2.1 Title Report and Notice of Required Documents**

**3.2.1.1** No later than ten (10) days after the opening of Escrow, Metropolitan shall order, at Metropolitan's expense, a current preliminary title report issued by \_\_\_\_\_ Title Company or other title company acceptable to Metropolitan ("Title Company") with respect to the Landowner's Program Encumbered Land. Metropolitan shall have ten (10) days after receipt of the current preliminary title report to give Landowner written notice identifying (1) each owner who is required to execute the Following Easement deed pursuant to subsection 4.2 (Following Easement) and (2) each Encumbrance for which, and each holder of such Encumbrance from which, an Encumbrance Subordination Agreement is required pursuant to subsection 4.5.2 (Encumbrance Subordination Agreement). Such notice shall reflect whether each identified owner, Encumbrance, and Encumbrance holder is (1) reflected on the current preliminary title report, or (2) is reasonably believed by Metropolitan to then exist but not of record, in which case the notice shall also specify with particularity the basis for Metropolitan's belief.

**3.2.1.2** If Landowner disputes (1) the existence of an encumbrance specified in Metropolitan's notice, or (2) that a person specified in Metropolitan's notice has an interest in the Program Encumbered Land as specified in Metropolitan's notice, Landowner shall promptly give Metropolitan and PVID notice to that effect, and the Landowner and the PVID and Metropolitan Agreement Administrators shall then promptly confer with each other and the Title Company, if appropriate, to resolve the dispute. If such meeting does not resolve the dispute between the Landowner and Metropolitan, the Landowner shall have the further right, on notice given to PVID and Metropolitan within seven (7) days after such meeting, to require a meeting with the chief executive officer of Metropolitan and general manager of PVID for purposes of resolving the dispute. The Metropolitan chief executive officer and PVID general manager, or persons they individually designate as representing their respective agencies, shall meet with any disputing Landowner within seven (7) days of the Landowner's notice. If the Parties are unable to resolve the dispute, Metropolitan's decision on the documents required shall be final and shall not be subject to the provisions of Section 11 (Remedies) or Section 13 (Dispute Resolution). In such event, however, Landowner shall have: (1) the right to propose substitute Program Encumbered Land, as to which the provisions of subsection 3.2.4 of the Program Agreement (Metropolitan Approval of Proposed Program Encumbered Land) shall apply, or (2) the right to terminate this Landowner Agreement; or (3) the right to deposit into Escrow a properly executed and acknowledged quitclaim deed in recordable form by the person(s) specified in Metropolitan's notice as having an interest in the Program Encumbered Land that quitclaims any interest such person(s) may have in the Program Encumbered Land.



### **3.2.2 Cost of Escrow**

Metropolitan shall pay the costs of Escrow and the premium for any policy of title insurance that Metropolitan, in its discretion, decides to obtain respecting the Following Easement.

### **3.2.3 Required Documents**

Within thirty (30) days after Metropolitan's written notice to Landowner of required documents pursuant to subsection 3.2.1 (Title Report and Notice of Required Documents), or such longer period as the Parties may agree upon in writing, Landowner shall cause to be executed and delivered into Escrow the following: (1) a Following Easement deed as required under subsection 4.2 (Following Easement) below; (b) Tenant Subordination Agreement(s) as required under subsection 4.5.1 (Tenant Subordination Agreement) below, (c) Encumbrance Subordination Agreement(s) as required under subsection 4.5.2 (Encumbrance Subordination Agreement) below, (d) in the event that Landowner is a Participating Landowner Group as described in subsection 14.16 (Participating Landowner Groups) below, Participation Waivers duly executed by any landowner in the Participating Landowner Group who is not a party to this Landowner Agreement but who owns Program Qualified Land that is described in the Landowner Participation Offer for the group, and (e) the Initial Land Designation Notice as required by subsection 5.4.1 (Time and Manner of Designation) with the period covered ending no earlier than at least the end of the first full Contract Year.

## **4. Program Encumbered Land**

### **4.1 Program Encumbered Land**

Landowner shall encumber a portion of Landowner's Program Qualified Land ("Landowner's Program Encumbered Land") with a Following Easement in the form and manner required under subsection 4.2 (Following Easement). The Landowner's Program Encumbered Land shall consist of acreage in an amount equal to the Landowner's Maximum Following Commitment (as the same may be adjusted as provided in this Landowner Agreement) and be made up of parcels reasonably compact and of at least five (5) acres in size. The Landowner's Program Qualified Land described on Exhibit "B" (Landowner's Program Encumbered Land) has been identified by Landowner and provisionally approved by Metropolitan as provided under the terms and conditions of the Program Agreement as land equal in acreage to the Landowner's Maximum Following Commitment, to be encumbered as Landowner's Program Encumbered Land by a Following Easement as provided in subsection 4.2 (Following Easement) below.

### **4.2 Following Easement**

Landowner shall, within the period specified in subsection 3.2.3 (Required Documents), execute, acknowledge and deliver into Escrow an easement deed applicable to the Landowner's Program Encumbered Land ("Following Easement") in the form attached as Exhibit "C" (Following Easement Deed), providing Metropolitan and PVID with certain specified rights to Follow the subject land in the event of certain Defaults by Landowner under this Landowner Agreement as provided in subsection 11.1.1.2 (Enforcement of Easement Rights), below. The Following Easement deed shall be executed and acknowledged by each owner of the affected Landowner's Program

Encumbered Land as specified in Metropolitan's notice given pursuant to subsection 3.2.1.1, subject to resolution of any dispute pursuant to subsection 3.2.1.2. The spouse of any owner of an interest that is the separate property of the owner shall execute and acknowledge the Consent of Landowner's Spouse in the form shown as part of the Following Easement attached hereto as Exhibit "C" (Following Easement Deed). On Close of Escrow, Escrow Holder shall record the Following Easement deed provided pursuant to this subsection 4.2 in the Official Records of the California county or counties where the affected Landowner's Program Encumbered Land is located.

In the event of the acceptance under subsection 3.6 (Subsequent Solicitation of Participation Offers) of the Program Agreement of Landowner's subsequent Landowner Participation Offer, if any, the Parties shall amend this Landowner Agreement, increase Landowner's Maximum Following Commitment and Metropolitan's payments, record the Following Easement Deed and any required Tenant Subordination Agreement(s) and Encumbrance Subordination Agreements(s), in the manner described in section 7 (Acceptance of Subsequent Participation Offers), below.

#### **4.3 Substitution of Program Encumbered Land**

Landowner may, subject to Metropolitan's approval given in the same manner as specified in subsection 3.2.4 of the Program Agreement (Metropolitan Approval of Proposed Program Encumbered Land) substitute other Program Qualified Land for Landowner's Program Encumbered Land by giving written notice to PVID and Metropolitan of the Participating Landowner's intent to do so. Such notice shall specify, by PVID Water Toll Number and legal description, the land proposed to be removed as Program Encumbered Land and the Program Qualified Land proposed to be substituted for it. Upon approval by Metropolitan it shall give the Landowner notice to that effect. The substitution shall be effective, and the Parties shall amend Exhibit "B" (Landowner's Program Encumbered Land) to this Landowner's Agreement to reflect the approved substitution, upon receipt by Metropolitan of a Following Easement deed as provided in subsection 4.2 (Following Easement) and the documents specified in subsections 4.5.1 (Tenant Subordination Agreement) and 4.5.2 (Encumbrance Subordination Agreement) for the substituted Program Encumbered Land.

#### **4.4 Re-conveyance of Program Encumbered Land**

PVID and Metropolitan shall execute, deliver and record a re-conveyance of the Following Easements specified in subsection 4.2 (Following Easement) (1) as to all Program Encumbered Land, within thirty (30) days of the termination of this Landowner Agreement, and (2) as to land that is to be removed as Program Encumbered Land under subsection 4.3 (Substitution of Program Encumbered Land), promptly on receipt of, and concurrently with recording of, a Following Easement deed for the substituted Program Encumbered Land.

#### **4.5 Leases and Encumbrances**

##### **4.5.1 Tenant Subordination Agreement**

Nothing in the Landowner Agreement shall prohibit Landowner from leasing ("Tenant Lease") all or a portion of the Landowner's Program Encumbered Land ("Premises") to a third party tenant ("Tenant") subject to the terms and conditions of this subsection 4.5.1 (Tenant

Subordination Agreement). Landowner shall give Metropolitan written notice of any Tenant Lease for the Landowner's Program Encumbered Land within ten (10) days of the opening of Escrow for any Tenant Lease existing on the Effective Date and prior to the effective date of any Tenant Lease subsequently created on the Landowner's Program Encumbered Land. Landowner shall provide a copy of this Landowner Agreement to any existing or subsequent Tenant leasing any of the Landowner's Program Encumbered Land and obtain from such Tenant a fully executed and acknowledged agreement recognizing, and subordinating the Tenant Lease to, the terms and conditions of this Landowner Agreement and the Following Easement as applicable to the Premises substantially in conformance with the form of Exhibit "D," attached hereto (Tenant Subordination Agreement). The executed and acknowledged Tenant Subordination Agreement for any Tenant Lease of any Landowner's Program Encumbered Land existing on the opening of Escrow shall be delivered into Escrow within the time period provided in subsection 3.2.3 (Required Documents). The Tenant Subordination Agreement for any subsequent Tenant Lease of any Landowner's Program Encumbered Land shall be delivered to Metropolitan prior to the commencement date of the applicable lease. Metropolitan shall have the right, at its sole cost and expense, to record any Tenant Subordination Agreement provided pursuant to this subsection 4.5.1 (Tenant Subordination Agreement) subsequent to the close of Escrow in the Official Records of the California county or counties where the affected Landowner's Program Encumbered Land is located.

Notwithstanding Landowner's lease of any portion of Landowner's Program Encumbered Land, Landowner shall remain responsible to Metropolitan and PVID under this Landowner Agreement for any breach in the terms hereof. Metropolitan shall make payments under this Landowner Agreement solely to Landowner and Metropolitan shall have no responsibility for providing compensation to any Tenant.

#### **4.5.2 Encumbrance Subordination Agreement**

Nothing in this Landowner Agreement shall prohibit Landowner from encumbering by mortgage, deed of trust or other monetary encumbrance or security device ("Encumbrance") any of the Landowner's Program Encumbered Land, subject to the terms and conditions of this subsection 4.5.2 (Encumbrance Subordination Agreement). Landowner shall provide a copy of this Landowner Agreement to the holder of any Encumbrance on any of Landowner's Program Encumbered Land existing on the Effective Date and to the holder of any subsequently created Encumbrance. Landowner shall obtain from each holder of an Encumbrance a fully executed and acknowledged agreement subordinating such Encumbrance to the terms and conditions of the Following Easement substantially in conformance with the form of Exhibit "E," attached hereto (Encumbrance Subordination Agreement). The Encumbrance Subordination Agreement for any Encumbrance existing as of the opening of Escrow and specified in Metropolitan's written notice of required documents pursuant to subsection 3.2.1 (Title Report and Notice of Required Documents) shall be delivered into Escrow within the time period provided in subsection 3.2.3 (Required Documents). The Encumbrance Subordination Agreement for any Encumbrance created after the Effective Date shall be delivered to Metropolitan prior to the effective date of the applicable Encumbrance. Metropolitan shall have the right, at its sole cost and expense, to record any Encumbrance Subordination Agreement provided subsequent to the close of Escrow in the Official Records of the California county or counties where the affected Landowner's Program Encumbered Land is located.

### **4.5.3 No Change to Condition of Title**

Landowner shall not convey or encumber, and shall not permit conveyance or encumbrance, of title or any other property interest, including a Tenant Lease or Encumbrance, in or to Landowner's Program Encumbered Land, prior to the day following the Closing Date without giving prior written notice to PVID and Metropolitan and providing any documents required by Metropolitan to perfect the Following Easement as to all ownership interests, or to subordinate any Tenant Lease or Encumbrance to the Following Easement.

## **5. Landowner's Following Obligation**

### **5.1 Base Amount Following**

Except as provided in subsection 5.7 (Temporary Reductions), Landowner shall Follow Program Qualified Land during each partial or full Contract Year in an amount equal to twenty-five percent (25%) of the Landowner's total Maximum Following Commitment, such amount being specified on Exhibit "A" as the "Base Amount." The Base Amount shall be \_\_\_\_ water toll acres, subject to recalculation for adjustments for the acceptance of subsequent participation offers as provided in section 7 (Acceptance of Subsequent Participation Offers), below.

### **5.2 Calls by Metropolitan for Additional Following**

#### **5.2.1 Following Calls**

Periodically during the term of this Landowner Agreement, Metropolitan may, subject to the requirements and limitations of subsection 5.2 (Calls by Metropolitan for Additional Following), by written notice to Landowner, issue "Following Calls" to Landowner for the Following by Landowner of Landowner's Program Qualified Land in addition to the Base Amount. Each Metropolitan Following Call shall require Following by Landowner for at least two (2) full consecutive Contract Years except for a Following Call that involves Following for the partial Contract Year in which the Landowner Agreement is executed, in which case the Following Call shall require the Landowner to Follow for the remainder of such partial Contract Year as well as the subsequent full Contract Year. A Following Call once made may not be rescinded or diminished.

#### **5.2.2 Minimum and Maximum Following Requirements**

Except as provided in subsection 5.7 (Temporary Reductions), Landowner shall Follow Program Qualified Land in the amount specified in Metropolitan's Following Calls, subject to the following minimum requirements and maximum limitations for Following Calls:

##### **5.2.2.1 Minimum Average Following Requirements**

Notwithstanding, anything to the contrary in this Landowner Agreement, Metropolitan will, during the Term of this Landowner Agreement, provide Following Calls sufficient to ensure that the minimum average acres of Program Qualified Land that will be Followed by Landowner for all thirty-five (35) full Contract Years under subsection 5.1 (Base Amount Following) and subsection 5.2 (Calls by Metropolitan for Additional Following) shall be no less than

forty-five and three-tenths percent (45.3%) of the total of Landowner's Maximum Fallowing Commitment for all thirty-five (35) full Contract Years ("Minimum Average Fallowing Acreage"), subject to adjustment for any temporary reductions made pursuant to subsection 5.7 (Temporary Reductions). The Minimum Average Fallowing Acreage shall be \_\_\_\_ water toll acres, subject to recalculation for adjustments for the acceptance of subsequent participation offers as provided in section 7 (Acceptance of Subsequent Participation Offers), below.

Unless previously terminated as provided herein, compliance with the Minimum Average Fallowing Acreage requirement provided in this subsection 5.2.2.1 shall be determined during the first six (6) months of the twenty-fourth (24th) full Contract Year. If the average number of acres Fallowed by Landowner under this Landowner Agreement does not meet the Minimum Average Fallowing Acreage requirement at that time, Metropolitan shall take all actions necessary to meet this requirement during the remainder of the Term of this Landowner Agreement.

### **5.2.2.2 Maximum Fallowing Limits**

#### **5.2.2.2.1 Maximum Fallowing Commitment**

Landowner shall not be required to Fallow Program Qualified Land (whether owned by Landowner or leased as provided in subsection 5.4.2.2 (Leased Land)) under this Landowner Agreement in any Contract Year in excess of the Landowner's Maximum Fallowing Commitment. The Landowner's Maximum Fallowing Commitment shall be \_\_\_\_ water toll acres, subject to recalculation for adjustment for the acceptance of subsequent participation offers as provided in section 7 (Acceptance of Subsequent Participation Offers), below.

#### **5.2.2.2.2 Ten Year Maximum**

Landowner shall not be required to Fallow Program Qualified Land under this Landowner Agreement in an amount greater than ninety and six-tenths percent (90.6%) of the Maximum Fallowing Commitment in more than ten (10) (consecutive or nonconsecutive) full Contract Years.

### **5.3 Notice of Fallowing Calls; Acreage Specification**

Metropolitan shall give Landowner written notice of Fallowing Calls ("Fallowing Call Notice") as follows: (1) concurrently with delivery of notice to Landowner that Landowner's Participation Offer has been provisionally accepted in accordance with subsection 3.4.2 (Notice of Provisional Acceptance to Landowners; Documents for Delivery by Landowners into Escrow) of the Program Agreement for Fallowing that is to occur during the initial partial Contract Year, if any, and the first full Contract Year; and (2) at least one Contract Year in advance for Fallowing that is to occur in subsequent Contract Years. Fallowing Calls issued by Metropolitan shall specify (1) the percentage of the Landowner's Maximum Fallowing Commitment that the Landowner's Fallowed Land must equal, with the percentage being the same for all Participating Landowners, and (2) the acreage amount of Program Qualified Land to be Fallowed by the Landowner.

## **5.4 Designation of Fallowed Land**

### **5.4.1 Time and Manner of Designation**

Landowner shall, by written notice to PVID and Metropolitan in the form described below as the “Landowner’s Land Designation Notice,” designate Program Qualified Land to be Fallowed pursuant to this Landowner Agreement (“Fallowed Land”) as follows:

(1) As to Program Qualified Land that will be Fallowed to meet the Landowner’s obligation to Fallow a Base Amount, and as to Program Qualified Land that will be Fallowed to meet the Landowner’s obligation to Fallow in response to Metropolitan’s initial Fallowing Call, such notice shall be given at least thirty (30) days in advance of the date on which Fallowing is to begin (“Initial Landowner’s Land Designation Notice”); and

(2) As to Program Qualified Land to be Fallowed to meet the Landowner’s obligation pursuant to a Fallowing Call, other than the first Fallowing Call, issued by Metropolitan, such notice shall be given at least sixty (60) days in advance of the date on which such Fallowing is to begin.

The form to be utilized as the Landowner’s Land Designation Notice shall be provided by PVID and approved by Metropolitan, and shall identify all designated Program Qualified Land by the applicable PVID Water Toll Numbers and include Landowner’s representation and warranty that (1) the designated land satisfies the requirements for land to be Fallowed specified in subsection 5.4.2 (Requirements for Land to be Designated for Fallowing), (2) that Landowner has the right to Fallow the designated land as required under this Landowner Agreement; and (3) that Landowner has the right to grant PVID and Metropolitan the right of entry for inspection required under subsection 6.2 (Entry for Inspection) and authorizes PVID and Metropolitan to enter the designated land for purposes of ascertaining whether such land is being Fallowed in accordance with this Landowner Agreement as provided in subsection 6.2 (Entry for Inspection).

Landowner may change any such designations with respect to land that has been fallowed for twelve (12) consecutive months by giving PVID and Metropolitan a modified Landowner’s Land Designation Notice, sixty (60) days in advance of such change, specifying (1) the effective date of the change, (2) the Program Qualified Land that no longer will be Fallowed, and (3) the Program Qualified Land that thereafter will be Fallowed.

### **5.4.2 Requirements for Land to be Designated for Fallowing**

#### **5.4.2.1 Basic Land Requirements for Fallowing**

All land designated for Fallowing under this Landowner Agreement shall be (1) Program Qualified Land that otherwise would be irrigated, and (2) in parcels that are reasonably compact and are at least five (5) acres in size.

### **5.4.2.2 Leased Land**

Landowner may, in any Landowner's Land Designation Notice, designate Program Qualified Land for Fallowing under this Landowner Agreement that is not owned by Landowner, but is leased by Landowner ("Leased Land") subject to satisfaction of the following conditions:

(1) The Leased Land shall comply with the requirements for land designated for Fallowing provided in subsection 5.4.2.1 (Basic Land Requirements for Fallowing), above, and shall not have been included in any other Land Designation Notice under the Program.

(2) The owner of the Leased Land ("Lessor") shall consent in writing, in the lease or otherwise, to the designation of the Leased Land for Fallowing pursuant to the terms of this Landowner Agreement and authorize PVID and Metropolitan to enter the Leased Land according to the terms and conditions of subsection 6.2 (Entry for Inspection) for purposes of ascertaining whether the Leased Land is being Fallowed in accordance with the requirements of this Landowner's Agreement. Landowner's Land Designation Notice that designates Leased Land for Fallowing shall be accompanied by a copy of the applicable lease and any other document reasonably necessary to evidence compliance with the requirements of this subsection 5.4.2.2 (Leased Land) in a form reasonably acceptable to Metropolitan.

### **5.5 Actions Required for Fallowing**

Landowner shall, at Landowner's sole cost and expense, comply with its Fallowing obligations under this Landowner Agreement in any Contract Year by not undertaking or permitting the following activities on Program Qualified Land designated for Fallowing on the applicable Landowner's Land Designation Notice: (1) the growing of agricultural crops or any other vegetation; (2) application of water (other than rain that naturally falls on the Fallowed Land); (3) extraction of or application of groundwater; and (4) use or collection of surface water provided, however, that water may be utilized for dust control in connection with the land management measures specified in subsection 6.4 (Land Management Measures), subject to provisions for deductions in Metropolitan's payment obligations in subsection 6.5 (Deductions for Deficient Saved Water).

### **5.6 Limitations on Fallowing**

No Program Qualified Land shall be Fallowed for purposes of this Landowner Agreement for more than five (5) consecutive Contract Years, provided that this limitation shall not apply to any Program Encumbered Land which Metropolitan is causing to be Fallowed through exercising of its rights under the Fallowing Easement as permitted under this Landowner Agreement in subsection 11.1.1.2 (Enforcement of Easement Rights).

### **5.7 Temporary Reductions**

Landowner may request in writing approval to reduce or eliminate land to be Fallowed in response to a Fallowing Call. Such approval shall be given or denied by Metropolitan, in its sole discretion, within thirty (30) days of Metropolitan's receipt of the request. Metropolitan shall promptly notify PVID of any such request and of Metropolitan's action on the request. In the event

that Metropolitan approves the reduction or elimination of land to be Fallowed in response to a Fallowing Call, the Annual Payment to the Landowner shall be re-calculated in accordance with subsection 8.3 (Annual Payments) based on the revised number of acres of Program Qualified Land to be Fallowed by Landowner. If Metropolitan has already made the Annual Payment to the Landowner for the Contract Year for which the number of acres of Program Qualified Land to be Fallowed has been revised, Metropolitan's notice of approval of the Landowner's request shall include a calculation of the amount of overpayment and Landowner shall, upon notice by Metropolitan, make payment to Metropolitan of that amount within fifteen (15) days of the notice.

### **5.8 Commencement of Fallowing Prior to First Full Contract Year**

In response to the first Fallowing Call issued to Landowner by Metropolitan, Landowner shall not be required to begin to Fallow the Program Qualified Land designated for Base Amount Fallowing or for Fallowing pursuant to the initial Fallowing Call by Metropolitan until the earlier of (1) the date on which any crop growing on such parcel as of the Effective Date has been harvested, or (2) one hundred twenty (120) days after the Closing Date of Escrow.

## **6. Other Covenants of Landowner**

### **6.1 Payments of Taxes and Tolls**

Landowner shall pay to PVID, or ensure the payment to PVID of, all taxes, water tolls, standby charges, and assessments imposed by PVID on Landowner's Program Encumbered Land and on all Program Qualified Land Fallowed by Landowner under this Landowner Agreement.

### **6.2 Entry for Inspection**

Landowner shall, upon twenty-four (24) hours prior written notice, allow Metropolitan and/or PVID to enter onto and inspect the Program Qualified Land designated for Fallowing under this Landowner Agreement at the time of such entry. Such entry shall be for the purpose of inspection to confirm Landowner's performance of its Fallowing obligation hereunder. Any such entry for inspection shall be done without expense to the Landowner, and Metropolitan and/or PVID, as applicable, shall indemnify, defend and hold Landowner and the subject property harmless from and against any and all claims, demands, actions, causes of action, suits, judgments, losses, damages, injuries, liabilities, penalties, costs and expenses (including without limitation attorneys' fees and costs), whether direct or indirect, known or unknown arising out of, connected with or incidental to the entry onto the property under this subsection 6.2 (Entry for Inspection). This indemnity shall survive the expiration or earlier termination of this Landowner Agreement.

### **6.3 Non Assignment**

Landowner acknowledges that it does not have the right to, and shall not transfer or assign (by lease, license, easement, grant or any other form of agreement) any rights to the Saved Water that is developed through Fallowing pursuant to this Landowner Agreement.



## **6.4 Land Management Measures**

Landowner shall, at Landowner's sole cost and expense, implement the land management measures described on Exhibit "F" attached hereto (Land Management Measures) on the Program Qualified Land Fallowed by Landowner in accordance with the requirements of this Landowner Agreement.

## **6.5 Deductions for Deficient Saved Water**

### **6.5.1 Deduction Calculation**

The Parties acknowledge that all water applied to Fallowed Land during a Contract Year, other than naturally falling rain or water from a PVID canal break, ("Applied Water") will cause a deficiency in the amount of Saved Water that Metropolitan would otherwise receive ("Deficient Saved Water"). Each Contract Year Metropolitan shall be entitled to compensation for any Deficient Saved Water resulting from application of Applied Water during the Contract Year by means of a deduction from future payments owed by Metropolitan to Landowner, in the amount determined in accordance with this subsection 6.5.1 (Deduction Calculation).

(1) Within ninety (90) days after the end of any Contract Year in which Applied Water has been applied to Fallowed Land, PVID and Metropolitan shall jointly determine the amount of Applied Water using the best available data and employing calculation techniques customarily used by irrigation districts to determine the amount of water applied to fields from irrigation canals, groundwater pumping, and other sources. Any disagreement between PVID and Metropolitan with respect to such determination shall be resolved through the Dispute Resolution provisions set forth in section 8 (Remedies and Dispute Resolution) of the Program Agreement.

(2) The amount of Deficient Saved Water deemed to have resulted from the application of Applied Water shall be calculated as follows: the amount of Applied Water determined in accordance with paragraph (1), above, shall be multiplied by a fraction, the numerator of which is the total of (a) the amount of Colorado River water diverted by PVID for the year less (b) the amount of return flows credited to PVID for the year, and the denominator of which is the total amount of diversions by PVID for that year. The numerator and denominator of the fraction shall be obtained using data from the United States Bureau of Reclamation's "Compilation of Records in Accordance with the Decree of the Supreme Court of the United States in *Arizona v. California*" for the most recent calendar year for which such compilation is available.

(3) The amount of the total deduction to which Metropolitan is entitled under this subsection 6.5 (Deductions for Deficient Saved Water) shall be calculated by multiplying the number of acre-feet of Deficient Saved Water as calculated in accordance with paragraph (2), above, by a unit rate of One Hundred and Fifty-Four Dollars (\$154.00) per acre-foot for the first Contract Year. The unit rate shall be adjusted in the same manner provided in subsection 8.3.2 (Initial Payment and Escalation) for the adjustment of Annual Payments.

## **6.5.2 Notice of Deduction Calculation**

Within ten (10) days of commencing the process of determining the amount of Applied Water pursuant to paragraph (1) of subsection 6.5.1 (Deduction Calculation), PVID and Metropolitan shall give notice to Landowner that they are assessing the issue of Applied Water on Landowner's Fallowed Land and may determine that Metropolitan is entitled to a deduction for Deficient Saved Water as a result of the Applied Water. Landowner may submit any information or documentation to PVID and Metropolitan for consideration in the determination.

Metropolitan shall give Landowner notice of any determination of Deficient Saved Water within thirty (30) days of the determination by PVID and Metropolitan of the amount of Applied Water, specifying (1) the amount of Applied Water and, with particularity, the data and methodology used to make the determination, (2) the calculations of Deficient Saved Water and the total amount of any deduction to which Metropolitan is entitled, and (3) the future payment(s) from which the deduction will be taken. No deduction shall be taken from any payment prior to thirty (30) days after the notice is given.

## **6.6 No Challenge to Fallowing Easement**

Metropolitan has entered into this Landowner Agreement in reliance upon the validity and enforceability of the Fallowing Easement against all owners of the Program Encumbered Land, and Landowner covenants that Landowner will not challenge the validity or enforceability of the Fallowing Easement.

## **7. Acceptance of Subsequent Participation Offers**

The parties acknowledge and agree that under the terms and conditions of the Program Agreement subsection 3.6 (Subsequent Solicitation of Participation Offers), Metropolitan and PVID may solicit additional offers from PVID landowners for participation in the Program on terms essentially similar to those specified in the Program Agreement except for the limit on the amount of Landowner's Program Qualified Land that may be included in the Maximum Fallowing Commitments. In the event that PVID and Metropolitan solicit such subsequent Landowner Participation Offers, and Landowner makes a Landowner Participation Offer that is provisionally approved by Metropolitan and PVID, this Landowner Agreement will be amended through the escrow procedures set forth herein to reflect the changes in Landowner's Program Qualified Land, Maximum Fallowing Commitment, and Landowner's Program Encumbered Land, upon compliance with each of the requirements of this Landowner Agreement for satisfaction of the applicable conditions precedent set forth in section 3 (Conditions Precedent and Escrow).

## **8. Payments by Metropolitan to Landowner**

### **8.1 Metropolitan's Obligation**

All payments to be made to Landowner for Fallowing as provided under this Landowner Agreement shall be made by Metropolitan, and PVID shall have no obligation or liability to Landowner respecting any payments due to Landowner under this Landowner Agreement.

## 8.2 Initial Payment

Metropolitan shall pay to Landowner an initial payment of Three Thousand One Hundred and Seventy Dollars (\$3,170.00) for each water toll acre of Landowner's Maximum Following Commitment, such payment to be made in annual installments over a two (2) to five (5) year period according to the sign-up payment option which Landowner shall have irrevocably elected in Landowner's Participation Offer. Landowner has elected to receive the initial payment in accordance with Option \_\_\_ described below.

The first installment of the initial payment shall be made by deposit into Escrow upon the satisfaction of, or waiver by Metropolitan of, all contingencies to the close of Escrow. All subsequent installments of the initial payment shall be made by Metropolitan to the Landowner as follows:

**Option A:** Two (2) separate payments, (i) the first payment of One Thousand Five Hundred Eighty-Five Dollars (\$1,585.00) for each water toll acre of Landowner's Maximum Following Commitment to be payable into Escrow upon the satisfaction of, or waiver by Metropolitan of, all conditions precedent to the close of Escrow and deposit into Escrow by Landowner of all required documents pursuant to subsection 3.2.3 (Required Documents); and (ii) the second payment of One Thousand Six Hundred Thirty Dollars (\$1,630.00) for each water toll acre of Landowner's Maximum Following Commitment to be due and payable one (1) calendar year after the Commencement Date.

**Option B:** Three (3) separate payments, each of One Thousand Seventy-Eight Dollars (\$1,078.00) for each water toll acre of Landowner's Maximum Following Commitment, (i) the first of which is to be payable into Escrow upon the satisfaction of, or waiver by Metropolitan of, all conditions precedent to the close of Escrow and deposit into Escrow by Landowner of all required documents pursuant to subsection 3.2.3 (Required Documents); (ii) the second of which is due and payable one (1) calendar year after the Commencement Date; and (iii) the third of which is due and payable two (2) calendar years after the Commencement Date.

**Option C:** Four (4) separate payments each of Eight Hundred Thirteen Dollars (\$813.00) for each water toll acre of Landowner's Maximum Following Commitment, (i) the first of which is to be payable into Escrow upon the satisfaction of, or waiver by Metropolitan of, all conditions precedent to the close of Escrow and deposit into Escrow by Landowner of all required documents pursuant to subsection 3.2.3 (Required Documents); (ii) the second of which is due and payable one (1) calendar year after the Commencement Date; (iii) the third of which is due and payable two (2) calendar years after the Commencement Date; and (iv) the fourth of which is due and payable three (3) calendar years after the Commencement Date.

**Option D:** Five (5) separate payments, each of Six Hundred Fifty-Five Dollars (\$655.00) for each water toll acre of Landowner's Maximum Following Commitment, (i) the first of which is to be payable into Escrow upon the satisfaction of, or waiver by Metropolitan of, all conditions precedent to the close of Escrow and deposit into Escrow by Landowner of all required documents pursuant to subsection 3.2.3 (Required Documents); (ii) the second of which is due and payable one (1) calendar year after the Commencement Date; (iii) the third of which is due and

payable two (2) calendar years after the Commencement Date; (iv) the fourth of which is due and payable three (3) calendar years after the Commencement Date; and (v) the fifth of which is due and payable four (4) calendar years after the Commencement Date.

### **8.3 Annual Payments**

#### **8.3.1 Annual Payment Formula**

**8.3.1.1** Metropolitan shall pay Landowner an annual payment (“Annual Payment”) for each water toll acre of Fallowed Land at the annual per water toll acre rate (“Annual Rate”) specified for the applicable Contract Year as provided in Section 8.3.2 (Initial Payment and Escalation). The Annual Payment shall be calculated by multiplying the number of water toll acres of Program Qualified Land to be Fallowed by Landowner under this Landowner Agreement in the applicable Contract Year times the applicable Annual Rate. Except as provided in subsection 8.3.1.2 for an initial Contract Year that is a partial Contract Year, annual payments shall be made on September 1st of the applicable Contract Year.

**8.3.1.2** If Commencement Date is not August 1, then a prorated installment payment shall be made within fifteen (15) days following the later of the Commencement Date or the date of the Following Call Notice, or if no Following Call Notice is given on or before the Commencement Date, then within fifteen (15) days after the Commencement Date for the Base Amount of Fallowing to be performed through the end of the partial Contract Year. The pro-rated payment shall be calculated at the rate of Fifty and No/100ths Dollars (\$50.00) per water toll acre of Fallowed Land per month payable for the period until the beginning of the first Contract Year following the Commencement Date.

#### **8.3.2 Initial Payment and Escalation**

The Annual Rate for any partial Contract Year and the first full Contract Year shall be Six Hundred Two Dollars (\$602.00). Commencing the Contract Year beginning August 1, 2006, and continuing to the tenth full Contract Year, the Landowner will receive from Metropolitan a two and one-half percent (2.5%) per Contract Year prospective increase in the Annual Rate compounded each year. Commencing in the eleventh full Contract Year, continuing through the remaining term of this Landowner Agreement, the Landowner shall receive an adjustment in the Annual Rate which shall be a minimum increase of two and one-half percent (2.5%), and a maximum increase of five percent (5%) compounded annually. Subject to this minimum and maximum increase provision, the adjustment for the eleventh and subsequent full Contract Years shall be equal to the percentage change (increase only) in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor for Los Angeles-Riverside-Orange County All Items (1982-84=100) (“Index”) applicable on the adjustment date from that applicable on the immediately prior adjustment date. The applicable adjustment date in each instance shall be the August 1 of the applicable Contract Year. If the Index is no longer issued, Metropolitan and PVID shall utilize an equivalent index. Exhibit “G” (Annual Payment Schedule for Fallowed Acres) depicts the compounded payment schedule for the term of this Landowner Agreement.

## **9 Representations and Warranties**

### **9.1 Representations and Warranties of Landowner**

As a material inducement to Metropolitan and PVID to enter into this Landowner Agreement, Landowner represents, warrants and covenants as follows:

#### **9.1.1 Ownership**

Landowner is the fee owner of Landowner's Program Qualified Land shown in Exhibit "A" (Landowner's Program Qualified Land and Maximum Following Commitment), and of Landowner's Program Encumbered Land shown in Exhibit "B" (Landowner's Program Encumbered Land).

#### **9.1.2 No Guaranty of Saved Water**

Landowner makes no representation, warranty, or guaranty with respect to the amount of Saved Water that may be developed by Landowner's compliance with the terms of this Landowner Agreement.

#### **9.1.3 No Litigation or Impediment**

No legal impediment exists to prevent Landowner from entering into and performing under this Agreement.

#### **9.1.4 Consultation with Legal Counsel**

Landowner has had an opportunity to consult with legal counsel regarding this Agreement.

## **10. Default**

The occurrence of any one or more of the following events shall constitute an "Event of Default" and a material breach under this Landowner Agreement by the nonperforming party ("Defaulting Party"):

### **10.1 Failure to Pay When Due**

The failure of a Party to make any payment required to be made by that Party under this Landowner Agreement as, and when due, where such failure is not cured within ten (10) business days following receipt of written notice thereof by the Defaulting Party from the other Party ("Non-Defaulting Party"); or

### **10.2 Failure to Perform Non-Monetary Obligations**

The failure by a Party to observe or perform any of the covenants, conditions or obligations applicable to that Party under this Landowner Agreement other than as described in subsection 10.1 above, or if any representation or warranty made by any Party shall be untrue or be breached in a

material way, where such failure is not cured within thirty (30) days following receipt of written notice thereof by the Defaulting Party from the Non-Defaulting Party specifically stating the alleged default; provided that if the nature of such failure requires more than thirty (30) days to cure, then it shall not be deemed an Event of Default if the Defaulting Party shall have commenced to cure the failure within the thirty (30) day period and thereafter diligently pursues such cure to completion, in which event the Defaulting Party shall have such additional time as is reasonably necessary to cure the failure before an Event of Default occurs.

### **10.3 Limitation on Remedies**

No Party shall be entitled to seek any remedy for breach of, or default under, this Landowner Agreement by the other Party unless the Non-Defaulting Party shall have first given the written notice specifically required in this section 10, and the Defaulting Party claimed to be in default shall not have cured the alleged default or breach in the allotted cure period provided in this section 10.

## **11. Remedies**

### **11.1 Metropolitan's Remedies**

On the occurrence of an Event of Default by Landowner, Metropolitan shall have the right to pursue any one or more of the following specified remedies, and none other.

#### **11.1.1 For Landowner's Failure to Follow**

On the occurrence of an Event of Default by Landowner with regards to Landowner's Following obligations under section 5 (Landowner's Following Obligation), or subsections 6.2 (Entry for Inspection) or 6.4 (Land Management Measures), Metropolitan shall have the right to pursue any one or more of the following remedies, and none other:

##### **11.1.1.1 Suspension of Payments**

Metropolitan may elect to suspend any payment obligations it may have under this Landowner Agreement until Landowner complies with the terms of this Landowner Agreement and cures such failure to perform Landlord's Following obligation or to allow entry to inspect the Followed Land (if this Landowner Agreement is not terminated prior to such cure), or until it has been determined by mutual agreement of Metropolitan and Landowner or by final judgment entered by a court of competent jurisdiction, that Landowner has not breached or defaulted or failed to perform its obligations under this Landowner Agreement. Notwithstanding such suspension of Metropolitan's payment obligations, this Landowner Agreement shall remain in effect unless and until Metropolitan elects to terminate this Landowner Agreement under subsection 11.1.1.4 (Termination), in which case termination shall occur in accordance with and as provided in such provision. If Metropolitan has suspended payments to Landowner under this subsection 11.1.1.1 (Suspension of Payments) but this Landowner Agreement has not been terminated, Metropolitan shall reimburse Landowner for any monies withheld and then due to Landowner for Landowner's obligations that have been performed, without interest, as soon as Landowner again fully complies with and cures its breach or default under Landowner Agreement. Notwithstanding an election by Metropolitan under this subsection 11.1.1.1 to suspend payment obligations, Metropolitan or

Landowner may thereafter seek to resolve any dispute under Section 13 (Dispute Resolution) or in a court of competent jurisdiction.

#### **11.1.1.2 Enforcement of Easement Rights**

Metropolitan may elect to exercise its rights under the Following Easement to the extent necessary to cure Landowner's failure to Follow the required acres of Program Qualified Land in accordance with Landowner's Following obligation under this Landowner Agreement. Metropolitan may enforce the Following Easement as to all or portions of the Landowner's Program Encumbered Land subject to the Following Easement. If Metropolitan enforces the Following Easement, the land that is Followed through enforcement of the Following Easement shall be deemed to be Followed Acres for purposes of Landowner's obligations under this Landowner Agreement and Metropolitan's payment obligations under subsection 8.2 (Initial Payment) and subsection 8.3 (Annual Payments).

At any time, the Landowner may provide written notice to PVID and Metropolitan that Landowner has cured the failure to Follow by implementing Following of the required Program Qualified Land or by providing evidence of Landowner's ability and consent to assume the Following of the Program Encumbered Land on which Metropolitan is exercising its rights under the Following Easement. Within fifteen (15) days after receipt of the notice, PVID and Metropolitan shall confirm whether the failure to Follow has been cured, or the Landowner has provided sufficient evidence of Landowner's ability to assume the Following of the Program Encumbered Land being Followed by Metropolitan. If the Landowner's failure to Follow has been cured by Following of appropriate Program Qualified Land or continued Following of the Program Encumbered Land, Metropolitan shall cease to exercise its rights under the Following Easement.

Metropolitan shall submit invoices to Landowner for the additional reasonable direct costs Metropolitan incurs as a result of performing the Following obligations that Landowner has failed to perform. Landowner's payment of the invoices shall be due thirty (30) days after receipt, and if not paid, Metropolitan may elect to deduct the amount due, together with interest calculated in accordance with subsection 14.12 (Interest), from amounts owed to Landowner pursuant to subsection 11.1.2.2 (Setoff).

#### **11.1.1.3 Deductions for Deficient Followed Acres**

If Landowner fails to Follow all or a portion of Landowner's Base Amount or, if applicable, fails to comply with Metropolitan's Following Call pursuant to this Landowner Agreement, Metropolitan may, after the expiration of the notice and cure period provided in section 10 (Default), deduct from subsequent payments an amount calculated by multiplying the difference between Landowner's Base Amount and, if applicable, Metropolitan's Following Call for that Contract Year and the actual number of water toll acres of Program Qualified Land Followed by Landowner for that Contract Year ("Deficient Followed Acres") by four and two-tenths (4.2) times that unit rate (\$/AF) determined pursuant to subsection 6.5.1 (Deduction Calculation). In the event that Metropolitan elects to take deductions from Landowner's payments under this subsection 11.1.1.3, Metropolitan shall not take any deductions for Deficient Saved Water under subsection 6.5

(Deficient Saved Water) due to the failure to Follow the lands for which a deduction is taken pursuant to this subsection 11.1.1.3.

#### **11.1.1.4 Termination**

Metropolitan may elect to terminate this Landowner Agreement by giving notice of such termination to Landowner effective thirty (30) days after receipt by Landowner, unless within such thirty (30) day period, Landowner shall have cured the Event of Default. Once the termination notice is effective, this Landowner Agreement shall be terminated and the Parties shall be released from all further obligations or liabilities under this Landowner Agreement except for Metropolitan's right to recover payments made to Landowner that were not earned by subsequent performance by the Landowner of its Fallowing obligations under this Landowner Agreement, those provisions of this Landowner Agreement that expressly survive such termination, or as provided for in subsection 14.13 (Pending and Late Arising Claims).

#### **11.1.1.5 Rescission and Reimbursement**

Metropolitan has entered into this Landowner Agreement in reliance upon the validity and enforceability of the Fallowing Easement against all owners of the Program Encumbered Land, all holders of Encumbrances on the Program Encumbered Land, and all Tenants with a Tenant Lease on the Program Encumbered Land. If on default of Landowner for failure to Fallow, (1) Metropolitan seeks to enforce its rights, or Landowner or any other person or entity seeks to preclude Metropolitan from enforcing its rights, under subsection 11.1.1.2 (Enforcement of Easement Rights) and the Fallowing Easement through a court proceeding, (2) the court determines that Landowner has breached Landowner's obligation to Fallow under this Landowner Agreement, (3) the court determines that Metropolitan's rights under subsection 11.1.1.2 (Enforcement of Easement Rights) and the Fallowing Easement are invalid or unenforceable for any reason, and (4) the court has entered a final judgment, then such circumstance shall constitute a material failure of consideration for Metropolitan's obligations under this Landowner Agreement. In that event, within one hundred eighty (180) days of entry of final judgment, Metropolitan may elect to rescind this Landowner Agreement effective upon thirty (30) days written notice to Landowner. Upon such rescission, Landowner shall reimburse Metropolitan for the pro-rated amount of Initial Payments made to Landowner based on the proportionate number of Contract Years of the Program remaining at the time of rescission, together with the total sum of Annual Payments made to Landowner up to the time of rescission less any amounts of the Annual Payments for which Landowner actually performed Fallowing of Program Qualified Land in accordance with Landowner's Fallowing Agreement. Metropolitan shall provide Landowner with notice of the amount due for reimbursement at the same time that notice of rescission is given to Landowner. Landowner's reimbursement of the amount is due and payable within one-hundred twenty (120) days following receipt of the notice.

### **11.1.2 For Landowner's Failure to Pay**

#### **11.1.2.1 PVID Payments**

If Landowner fails to make tax, water toll, standby charge, and assessment payments required by PVID for Landowner's Program Encumbered Land, Metropolitan may, at its



option, after ten (10) days prior notice thereof to Landowner, directly make such payments, including any PVID associated penalty charges, to PVID on Landowner's behalf, and Landowner shall reimburse Metropolitan for all reasonable costs and expenses incurred in connection with such curative action, plus interest as provided in subsection 14.12 (Interest), within ten (10) days of receipt of demand therefor, together with reasonable documentation supporting the expenditures made.

#### **11.1.2.2 Setoff**

Metropolitan shall have the right to deduct from any amounts Metropolitan owes Landowner under this Landowner Agreement the sum of Landowner's payment obligations to Metropolitan under this Landowner Agreement. Metropolitan's right of setoff may be exercised upon ten (10) days prior written notice Landowner. No right of setoff will be deemed to have been waived by any act or conduct on the part of Metropolitan, or by any neglect to exercise such right of setoff, or by any delay in doing so. Every right of setoff will continue in full force and effect until specifically waived or released by an instrument in writing executed by Metropolitan.

#### **11.1.3 Notice of Election of Remedies**

Metropolitan shall advise Landowner of the remedy or remedies which Metropolitan intends to pursue with respect to such failure to perform, default or breach. Metropolitan may elect and enforce its remedy or remedies without first complying with section 13 (Dispute Resolution). Landowner may challenge at any time, pursuant to section 13 (Dispute Resolution), whether in fact there has been a failure to perform, breach or default under this Landowner Agreement by Landowner.

### **11.2 Landowner Remedies in Event of Metropolitan's Failure to Perform**

On the occurrence of an Event of Default by Metropolitan, Landowner shall have the right, without any further demand or additional notice of any kind (except as required by law or by section 10 (Default)) to pursue any one or more of the following specified remedies.

#### **11.2.1 Continued Performance**

Landowner may seek to resolve a dispute under section 13 (Dispute Resolution) or by bringing an action in a court of competent jurisdiction, but shall continue performance under this Landowner Agreement until the dispute is resolved by mutual agreement between Landowner and PVID and/or Metropolitan, as applicable, or until resolved by final judgment entered by a court of competent jurisdiction.

#### **11.2.2 Reimbursement**

Landowner shall be entitled to reimbursement from Metropolitan for any and all payments required to be made by Metropolitan under section 8 (Payments by Metropolitan to Landowner) including without limitation, interest as provided in subsection 14.12 (Interest), except to the extent that Metropolitan has given written notice of Default for the Landowner obligations for which the payments are required to be made. If, after Metropolitan asserts that Landowner caused or

allowed an Event of Default, it is determined by mutual agreement of Metropolitan and Landowner or by final judgment entered by a court of competent jurisdiction, that the Landowner was not in breach or default of an obligation under the Landowner Agreement, Metropolitan shall reimburse Landowner for any monies withheld and then due to Landowner, with interest.

### **11.3 PVID's Remedies**

PVID shall have the right, but not the obligation, to enforce Landowner's obligations as set forth in section 5 (Landowner's Fallowing Obligation) in the same manner as these provisions may be enforced by Metropolitan pursuant to subsection 11.1.1 (Metropolitan's Remedies For Landowner's Failure to Fallow). PVID shall further have the right, but not the obligation to enforce subsection 6.2 (Entry for Inspection), and subsection 6.4 (Land Management Measures) through the process provided by section 13 (Dispute Resolution) or by an action in a court of competent jurisdiction. Nothing in this Landowner Agreement shall affect PVID's existing rights and remedies to collect any payments owed by Landowner pursuant to subsection 6.1 (Payment of Taxes and Tolls).

### **11.4 Remedies Cumulative**

All of the remedies permitted or available to Metropolitan or Landowner under this Landowner Agreement shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

## **12. Agreement Administrator**

Metropolitan shall provide for monitoring and enforcement of compliance with this Landowner Agreement through an agreement administrator ("Metropolitan Agreement Administrator") appointed by Metropolitan. Metropolitan shall provide written notice to Landowner of the name and address of the Metropolitan Agreement Administrator. Except as otherwise directed, Landowner shall coordinate all contact with Metropolitan through the Metropolitan Agreement Administrator. Metropolitan reserves the right to change the designated Metropolitan Agreement Administrator upon written notice to Landowner. Any approval or notice to be given or determination to be made by Metropolitan shall become effective upon notice by its Agreement Administrator.

## **13. Dispute Resolution**

### **13.1 Delegation of Authority to Resolve Disputes**

Any dispute between the Parties, including any dispute as to the existence of an Event of Default or whether an Event of Default has been cured, shall be submitted to the other Parties in writing, and the Landowner, PVID and the Metropolitan Agreement Administrator shall meet within ten (10) days of the written notice to attempt to negotiate a resolution of such dispute.

If Landowner and PVID and/or the Metropolitan Agreement Administrator, as applicable, are unsuccessful in resolving the claim within fifteen (15) days after written notice of the dispute, the Landowner may request the PVID general manager and/or Metropolitan chief executive

officer, as applicable, or such PVID or Metropolitan employee senior to the PVID or Metropolitan Agreement Administrator as the PVID general manager or Metropolitan chief executive officer may delegate, to resolve the dispute. If the Parties fail to resolve the dispute within fifteen (15) days after the delegation, any Party may bring an action in a court of competent jurisdiction to resolve the dispute.

### **13.2 Effect of Program Agreement Determinations**

Final determinations resulting from dispute resolution pursuant to the Program Agreement shall not be subject to section 13 (Dispute Resolution).

## **14. Miscellaneous Agreements**

### **14.1 Governing Law**

This Landowner Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California and any applicable federal laws, without giving effect to any choice-of-law or conflicts-of-laws rule or principle that would result in the application of the laws of any other jurisdiction.

### **14.2 No Third Party Rights**

The Parties do not intend to create rights in or to grant remedies to any third party or others as a beneficiary of this Landowner Agreement or of any duty, covenant, obligation or undertaking established hereunder.

### **14.3 Assignment**

No Party may assign, delegate, or otherwise transfer this Landowner Agreement, any interest therein, or the Party's rights or obligations under this Landowner Agreement without the prior written consent of the other Parties, which consent may be withheld at any Party's sole and absolute discretion. Any such purported assignment or transfer shall be void and without effect.

### **14.4 Indemnity**

#### **14.4.1 Metropolitan Indemnity**

Except to the extent caused by the negligence or willful misconduct of Landowner or its employees, agents or contractors, Metropolitan shall defend (with counsel reasonably acceptable to Landowner), indemnify and hold Landowner and its employees or agents, harmless from and against all claims asserted by a third party (or parties) for direct or indirect damages, losses, and expenses arising out of an act or omission of Metropolitan and/or PVID, its employees or agents in the performance of their obligations under this Landowner Agreement or the Program Agreement.

#### **14.4.2 Landowner Indemnity**

Landowner's duty to indemnify PVID and Metropolitan shall be governed by the laws of the State of California, and is neither expanded nor limited by the terms of this Landowner Agreement.

#### **14.5 Amendment**

Neither this Landowner Agreement nor any provision hereof may be waived, modified, amended, or discharged, except by an instrument in writing signed by all Parties, and then only to the extent set forth in such writing.

#### **14.6 Cumulative Rights; Waiver**

The rights created under this Landowner Agreement, or by law or equity, shall be cumulative and may be exercised at any time and from time to time. No failure by any Party to exercise, and no delay in exercising any rights, shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by any Party preclude any other or future exercise thereof or the exercise of any other right. Any waiver of any provision or of any breach of any provision of this Landowner Agreement must be in writing, and any waiver by any Party of any breach of any provision of this Landowner Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Landowner Agreement. The failure of any Party to insist upon strict adherence to any term of this Landowner Agreement on one or more occasions shall not be considered or construed or deemed a waiver of any provision or any breach of any provision of this Landowner Agreement or deprive that Party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Landowner Agreement. No delay or omission on the part of any of the Parties in exercising any right under this Landowner Agreement shall operate as a waiver of any such right or any other right under this Landowner Agreement.

#### **14.7 Severability**

In the event that a court of competent jurisdiction determines that a provision included in this Landowner Agreement is legally invalid, illegal or unenforceable, and such decision becomes final, such provision shall be deemed to be severed and deleted from this Landowner Agreement and the balance of this Landowner Agreement shall be reasonably interpreted so as to effect the intent of the Parties hereto. The Parties further agree to replace such void or unenforceable provision of this Landowner Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

#### **14.8 Subject Headings**

Subject headings are for convenience and not for interpreting this Landowner Agreement.

#### **14.9 Time is of Essence**

Time is of the essence of this Landowner Agreement and each of its provisions.

#### **14.10 No Fiduciary Relationship**

Nothing in this Landowner Agreement shall be deemed to create a trust relationship between Metropolitan and Landowner, it being expressly understood and agreed that Metropolitan's obligations hereunder are not fiduciary in nature.

#### **14.11 Opinions, Determinations and Consents**

Where the terms of Landowner Agreement provide for an action or decision to be based upon the approval, review, or determination of a Party, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review or determination to be arbitrary, capricious, or unreasonable. If this Landowner Agreement provides that a consent or approval shall not be unreasonably withheld, such consent or approval shall be granted or withheld without unreasonable delay, and, if consent is withheld or approval not granted, the reasons for withholding consent or approval shall be stated with reasonable detail.

#### **14.12 Interest**

If any Party fails to pay another Party amounts owing pursuant to this Landowner Agreement by the specified due date, interest at the lesser of five percent (5%) above the discount rate charged by the San Francisco Federal Reserve Bank to its member banks or the maximum rate allowed by applicable usury law shall accrue, compounded daily, on the amount of such delinquent payment from and after the due date until it is paid and the Parties each agree to pay such interest.

#### **14.13 Pending and Late Arising Claims**

If a claim arising under or with respect to this Landowner Agreement has not been resolved when this Landowner Agreement terminates, or if such a claim is brought after this Landowner Agreement has terminated but within the period of time for bringing such a claim under California law ("Late Arising Claim"), the provisions of this Landowner Agreement shall continue in full force and effect for the sole purpose of resolving such claims and to satisfy the rights and obligations of the Parties hereto with respect thereto.

#### **14.14 Entire Agreement**

This Landowner Agreement constitutes the entire understanding of the Parties hereto, and supersedes any previous or contemporaneous agreements or understandings among the Parties with respect to the subject matter hereof, whether oral or written. It may not be modified or amended except in writing executed by the Parties.

#### **14.15 Notice Procedures and Designation of Mailing Address**

All notices, requests, demands and other communications under this Landowner Agreement must be (1) in writing; (2) delivered in person (by hand or by courier) or sent by regular or certified return receipt requested U.S. mail with postage prepaid, or sent by overnight delivery with a nationally recognized carrier, with charges prepaid or charged to sender's account; and (3) properly addressed as follows:

**If to Metropolitan:**

Fadi Kamand, Agreement Administrator  
The Metropolitan Water District of Southern California  
700 N. Alameda Street  
Los Angeles, California 90012  
or  
P.O. Box 54153  
Los Angeles, California 90054-0153

**If to PVID:**

General Manager  
Palo Verde Irrigation District  
180 West 141h Avenue  
Blythe, CA 92225

**If to Landowner:**

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Any Party may change the person or address to which notice or communication is forwarded upon ten (10) days prior written notice to the other Parties. All notices and other communications required or permitted under this Landowner Agreement, which are addressed as provided in this subsection 14.15 (Notice Procedures and Designation of Mailing Address) shall be deemed effective (i) when delivered personally, upon the date of delivery; (ii) when delivered by regular mail, three (3) days following deposit in the United States mail, (iii) when delivered by certified mail, return receipt requested, upon the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon; or (iv) when delivered by overnight carrier, upon the date of delivery, if delivery is confirmed by the overnight carrier. If a notice is received on a Saturday, Sunday, or legal holiday, it shall be deemed received on the next business day.

**14.16 Participating Landowner Groups [Include only in Landowner Agreements for Groups—For other Landowner Agreements, substitute “Provision Intentionally Omitted” in subsections 14.16.1 and 14.16.2]**

**14.16.1** This Landowner Agreement is for a group of Participating Landowners pursuant to provisions of the Program Agreement that (1) groups of Participating Landowners, including Metropolitan, may join together for purposes of pooling their participation in the Program; (2) in such event, all Participating Landowners in a group shall be parties to a single Landowner Agreement, which shall designate a single agent for purposes of giving and receiving Following Calls, designations of Program Qualified Land to be fallowed, receipt of all payments under the Landowner Agreement, notices, and all other communications to or from PVID and Metropolitan; (3) the Maximum Following Commitment and annual following requirements for the group shall be determined with respect to the aggregate of the Program Qualified Land owned and offered by all landowners in the Participating Landowner group, and Program Encumbered Land under the Landowner Agreement may be designated on Program Qualified Land owned by any one or more of the Participating Landowners in the group. Where applicable, references to “Landowner” in this Landowner Agreement shall be deemed to refer to all Participating Landowners in the group collectively.

**14.16.2** The Participating Landowners who are signatories to this Landowner Agreement hereby designate the person specified in subsection 14.15 (Notice Procedures and Designation of Mailing Address) to receive notices directed to Landowner as their agent for all purposes under this Landowner Agreement, including designating and substituting Program Encumbered Land, receiving Following Calls, designating Program Qualified Land to be Fallowed, receiving all payments by Metropolitan, and giving and receiving all notices and other communications to or from PVID and Metropolitan. This designation of agent may be changed by notice to PVID and Metropolitan signed by all Participating Landowners who are signatories to this Landowner Agreement. The change shall be effective on the tenth (10<sup>th</sup>) day after the date on which the notice is given.

**14.17 Joint and Several Liability**

If more than one individual or entity comprises Landowner, the obligations imposed on each individual or entity that comprises Landowner under this Landowner Agreement shall be joint and several.

**14.18 Binding Effect**

Subject to the provisions otherwise contained in this Landowner Agreement, this Landowner Agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, successors and permitted assigns of the respective Parties hereto.

**14.19 Exhibits**

The Exhibits A (Program Qualified Land and Maximum Following Commitment), B (Landowner’s Program Encumbered Land), C (Following Easement Deed), D (Tenant Subordination Agreement), E (Encumbrance Subordination Agreement), F (Land Management Measures), and G

(Annual Payment Schedule for Fallowed Acres), attached to this Landowner Agreement are a part of this Landowner Agreement and incorporated herein by this reference.

**14.20 Counterparts**

This Landowner Agreement and any amendment thereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Any signature page of this Landowner Agreement or of such an amendment, may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Landowner Agreement or any such amendment, it shall not be necessary to produce or account for more than one counterpart thereof signed by the Party against whom enforcement is sought.

**14.21 Further Assurances**

Each Party hereto, upon the request of another Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Landowner Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed Landowner Agreement on the day and year first above written.

THE METROPOLITAN WATER  
DISTRICT OF SOUTHERN CALIFORNIA

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Ronald R. Gastelum  
Chief Executive Officer

By: \_\_\_\_\_  
Jeffrey Kightlinger  
General Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PALO VERDE IRRIGATION DISTRICT

By: \_\_\_\_\_  
Edward W. Smith  
General Manager

Date: \_\_\_\_\_



**ALTERNATIVE SIGNATURE BLOCKS FOR LANDOWNER**

*[NOTE: USE THIS SIGNATURE BLOCK WHEN LANDOWNER IS AN INDIVIDUAL]*

LANDOWNER

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

*[NOTE: USE THIS SIGNATURE BLOCK WHEN LANDOWNER IS A CORPORATION]*

\_\_\_\_\_  
Corporate Name – All Caps

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President.)

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer, or any Assistant Treasurer.)

Federal ID No. \_\_\_\_\_

*[NOTE: USE THIS SIGNATURE BLOCK WHEN LANDOWNER IS A PARTNERSHIP]*

\_\_\_\_\_  
Partnership Name – All Caps

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(This Agreement must be signed in the above space by a senior partner.)

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(This Agreement must be signed in the above space by a partner.)

Federal ID No. \_\_\_\_\_

*[NOTE: USE THIS SIGNATURE BLOCK WHEN LANDOWNER IS A JOINT VENTURE]*

\_\_\_\_\_  
Joint Venturer Name – All Caps

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(This Agreement must be signed in the above space by one of the following for each joint venturer:  
Chairman of the Board, President or any Vice President.)

\_\_\_\_\_  
Joint Venturer Name – All Caps

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(This Agreement must be signed in the above space by one of the following for each joint venturer:  
Chairman of the Board, President or any Vice President.)

Federal ID No. \_\_\_\_\_

**EXHIBIT A**

**LANDOWNER'S PROGRAM QUALIFIED LAND  
AND MAXIMUM FALLOWING COMMITMENT  
Specifications and Calculation**

1. Landowner's Program Qualified Land.

PVID Water Toll No.	Water Toll Acres
Total Water Toll Acres	

2. Landowner's Maximum Fallowing Commitment: \_\_\_\_\_ water toll acres.  
(Calculated as the acreage equal to \_\_\_\_\_ percent (\_\_\_\_\_% ) of Landowner's Program Qualified Land.)
3. Landowner's Base Fallowing Amount: \_\_\_\_\_ water toll acres.  
(Calculated as the acreage equal to twenty-five percent (25%) of Landowner's Maximum Fallowing Commitment.)
4. Landowner's Minimum Average Fallowing Acreage: \_\_\_\_\_ water toll acres.  
(To be determined in the first six (6) months of the twenty-fourth (24<sup>th</sup>) full Contract Year. Calculated as the acreage equal to forty-five and three-tenths percent (45.3%) of Landowner's total Maximum Fallowing Commitments for all thirty-five (35) full Contract Years.)

**EXHIBIT B**

**LANDOWNER'S PROGRAM ENCUMBERED LAND  
(Legal Description)**

**EXHIBIT C**  
**FALLOWING EASEMENT DEED**

**EXHIBIT D**  
**TENANT SUBORDINATION AGREEMENT**



**EXHIBIT E**  
**ENCUMBRANCE SUBORDINATION AGREEMENT**

## **EXHIBIT F**

### **LAND MANAGEMENT MEASURES**

Land management measures to control weed growth and wind erosion are an integral part of the PVID/Metropolitan Forbearance and Fallowing Program. PVID and Metropolitan have agreed that each Participating Landowner would be required to implement these land management measures as a condition for participation in the Program, and that implementation of these land management measures would be an obligation of each Participating Landowner under the terms of the applicable Landowner Agreement.

The Program-related land management measures do not preempt other measures required by federal, state or local agencies for farmlands within their jurisdiction, but are to be implemented in conjunction with any other required measures.

#### **Weed Control**

Weed and invasive plant growth on irrigated fields due to rainfall or water seepage from canals or from neighboring irrigated farmland (especially along the outside borders of non0-irrigated fields) would be controlled by the Landowner. Control measures would be undertaken by the Landowner to prevent the spread of these plants, their consumptive use of water and associated issues concerning the spread of plant disease, insects and other pests. Weeds and other invasive plants would be controlled using measures of each Landowner's choice, including chemical, biological or mechanical methods.

Only chemicals approved for use by the California Department of Food and Agriculture would be allowed to be used for controlling weeds. As with all farm-related activities in the PVID, Landowner shall obtain all proper local, state and federal permits for the use of herbicides, pesticides and insecticides. Also, Landowner shall comply with applicable regulations that pertain to solid waste management and air quality that apply when handling or disposing of farm residues and trash.

#### **Erosion Control**

To protect soil resources within the Palo Verde Valley and to maintain Landowner's eligibility for U. S. Department of Agriculture (USDA) benefits (excluding existing programs that fund the reduction or elimination of production of any agricultural crop), Landowner shall implement wind erosion control measures for Fallowed Land. The measures may include the following:

##### **Stubble Residue and Sod Remnants**

Leaving Fallowed Lands with stubble or sod remnants to lower wind speeds at the soil surface and provide a root system to help hold soil in place and minimize wind erosion.

## Clod Plowing

For crops that would not leave an adequate stubble residue (such as cotton and many vegetable or melon crops) clod plowing may be implemented. The term clod plowing refers to the practice of tilling a field when it is wet so that large, damp clumps of soil are produced. These wet clumps break down into clods of soil that have a low susceptibility to wind erosion because they contain a relatively hard crust that minimized detachment of soil particles.

Cloddy soil remains effective only as long as a hard crust remains on the clods. Rain can wear on soil crusts reducing their effectiveness. During episodes of wind erosion, transported soil particles can also abrade soil crusts. Accordingly, clod plowing must occasionally be repeated in order for this management measure to continue to minimize wind erosion from Fallowed Land. The maximum continuous period that any single episode of clod plowing shall be used as an erosion control measure on Fallowed Land shall be three (3) years. After three (3) years, one of the following shall be implemented:

- The Fallowed Land will be subjected to a new round of clod plowing conducted when the soil has adequate moisture to allow development of new clods
- The Fallowed Land will be returned to active, irrigated production and Landowner will commence Fallowing other Program Qualified Land

For Program Qualified Land on which the soil types have been classified as Highly Erodible Land (HEL) by the National Resource Conservation Service, Landowner will conduct the Fallowing in accordance with the Farm Service Agency Conservation Plans developed for those lands.

## Remedial Measures

In the event that Metropolitan or PVID determine through inspection of the Fallowed Land that additional erosion control measures are required, it shall give written notice to Landowner to implement additional measures at Landowner's cost. The requirement to implement such additional measures shall be based on "noticeable wind erosion" as evidenced by wind-borne soil deposition (such as deposits of fine material adjacent to wind barriers), lack of soil crusts on clods, or the visible transport of topsoil by the wind. Additional erosion control measures that may be required include:

- Spreading mulch or manure over eroding soils
- Seeding a cover crop if natural precipitation is adequate for this purpose, provided that only shallow rooted cover crops are used
- Conducting additional clod plowing to reestablish a thick crust on clods within the affected area, and utilizing the addition of much to improve effectiveness

The use of water other than natural rainfall to implement any of the erosion control measures may result in a deduction from payments by Metropolitan to Landowner in accordance with subsection 11.1.1.5 (Deduction for Deficient Saved Water).

## EXHIBIT G

### ANNUAL PAYMENT SCHEDULE FOR FALLOWED ACRES

Contract Year	Calendar Year	Month	Minimum Annual Payment based on Annual Escation of 2.5 Percent Per Year for the Life of the Program (\$/Fallowed Acre)	Minimum Annual Payment based on Annual Escation of 2.5 Percent Per Year through the First Ten Contract Years and 5 Percent Per Year for the Remainder of the Program (\$/Fallowed Acre)
1	2005	September 1	602.00	602.00
2	2006	September 1	617.05	617.05
3	2007	September 1	632.48	632.48
4	2008	September 1	648.29	648.29
5	2009	September 1	664.50	664.50
6	2010	September 1	681.11	681.11
7	2011	September 1	698.14	698.14
8	2012	September 1	715.59	715.59
9	2013	September 1	733.48	733.48
10	2014	September 1	751.82	751.82
11	2015	September 1	770.62	789.41
12	2016	September 1	789.89	828.88
13	2017	September 1	809.64	870.32
14	2018	September 1	829.88	913.84
15	2019	September 1	850.63	959.53
16	2020	September 1	871.90	1,007.51
17	2021	September 1	893.70	1,057.89
18	2022	September 1	916.04	1,110.78
19	2023	September 1	938.94	1,166.32
20	2024	September 1	962.41	1,224.64
21	2025	September 1	986.47	1,285.87
22	2026	September 1	1,011.13	1,350.16
23	2027	September 1	1,036.41	1,417.67
24	2028	September 1	1,062.32	1,488.55
25	2029	September 1	1,088.88	1,562.98
26	2030	September 1	1,116.10	1,641.13
27	2031	September 1	1,144.00	1,723.19
28	2032	September 1	1,172.60	1,809.35
29	2033	September 1	1,201.92	1,899.82
30	2034	September 1	1,231.97	1,994.81
31	2035	September 1	1,262.77	2,094.55
32	2036	September 1	1,294.34	2,199.28
33	2037	September 1	1,326.70	2,309.24
34	2038	September 1	1,359.87	2,424.70
35	2039	September 1	1,393.87	2,545.94