

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made, entered into and effective as of this 30th day of ~~April~~ ^{June}, 2009 (the "Effective Date") by and between the COACHELLA VALLEY WATER DISTRICT, a county water district and public agency organized, operating and existing under California Water Code Section 30000 *et seq.* ("DISTRICT"), the CITY OF INDIO, a California Municipal Corporation ("CITY"), and the INDIO WATER AUTHORITY, a California joint powers agency formed pursuant to the Joint Exercise of Powers Act, California Government Code Section 6500 *et seq.* ("AUTHORITY"). City and Authority are referenced below in the aggregate as "INDIO." District, City and Authority are hereinafter collectively referenced as the "Parties," and sometimes alternatively referenced as a "Party."

RECITALS

WHEREAS, as of December 10, 2008 INDIO and DISTRICT executed a Term Sheet regarding the dismissal of District's Replenishment Assessment Charge litigation and City's cross-complaint filed in response thereto.

WHEREAS, Recital B of the Term Sheet directed the preparation of a mutually acceptable comprehensive settlement agreement formalizing each and every term and provision expressed in the Term Sheet and presentation of same to each of the Parties for approval with all reasonable speed.

WHEREAS, the Parties agree that in the context of this Agreement, the Term Sheet meets their respective needs as stated in Recital B.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, including but not limited to the mutual promises herein contained, the receipt and adequacy of which are hereby acknowledged, each of the Parties hereto agrees as follows:

1. SUBSTANTIVE TERMS

The terms and conditions of this Agreement shall be as specified in the Term Sheet attached hereto and incorporated, as if stated in full, by this reference herein as Exhibit "A."

2. DISMISSAL OF LITIGATION

Within ten (10) days of the execution of this Agreement by all Parties, the Parties shall file Requests for Dismissal, with prejudice (except as provided in the Term Sheet, that is attached hereto as Exhibit "A"), of the entire actions denominated (i) *Coachella Valley Water District v. City of Indio*, Riverside Superior Court Case No. INC 073838, (ii) *Coachella Valley Water District v. Indio Water Authority*, Riverside Superior Court Case

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No. INC 075618, and (iii) *City of Indio v. Coachella Valley Water District*, Riverside Superior Court Case No. INC 077545 (collectively, the "Litigation"), and shall provide all Parties with a conformed copy of the dismissals when they have been entered.

3. MODIFICATION.

This Agreement cannot be modified or changed except by written instrument signed by all of the Parties that have an interest in the issue or topic that is the subject of the modification or change.

4. RESPONSIBILITY FOR COSTS TO DATE.

The Parties agree that each Party shall bear its own costs and attorneys' fees, directly or indirectly relating to or arising from the Litigation and other matters covered by this Agreement.

5. NO THIRD PARTY BENEFICIARIES.

This Agreement is not for the benefit of any person or entity not a Party hereto.

6. EXECUTION, EFFECTIVE DATE, COUNTERPARTS.

Given the Parties' character as public agencies, all Parties understand and agree that this Agreement can only be effective and binding between and among them provided that CITY's City Council, AUTHORITY's Board of Directors, and DISTRICT's Board of Directors approve the Agreement and authorize its execution. Further, each of the Parties hereby warrants to the others that whichever of them is the last Party to execute this Agreement shall date this Agreement in its first paragraph, designating the Agreement's "Effective Date," and shall distribute a true and correct copy of the first page hereof to the other Parties. This Agreement will be executed in counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

7. PARTIES DULY AUTHORIZED.

Each person executing this Agreement on a Party's behalf is duly authorized and empowered to do so.

8. TIME OF ESSENCE.

Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9. GOVERNING LAW AND VENUE. The Parties hereby agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Riverside, Indio Branch ("Court").

10. BREACH, REMEDIES AND ENFORCEMENT.

The Court shall retain jurisdiction over the Litigation dismissed pursuant to the Term Sheet for purposes of enforcing this Agreement. Notwithstanding any provision of this Agreement to the contrary, no Party hereto shall be deemed to be in default under this Agreement with respect to any obligation owed to another unless the Party alleging the breach of another shall have first delivered a written notice of any alleged default to the allegedly defaulting Party that specifies the nature of such default. If such default is not cured by the allegedly defaulting Party within ten (10) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, the allegedly defaulting Party fails to commence to cure the alleged default within five (5) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, the Party alleging default by another may bring an action to enforce this Agreement, *i.e.*, to enforce a provision of the Term Sheet, or, at the option of the Party claiming default, bring a motion to enforce this Agreement under Section 664.6 of the Code of Civil Procedure. In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by a Party alleging a default against an allegedly defaulting Party for an alleged breach of this Agreement may be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement in addition to any other remedy available at law or equity. Notwithstanding the terms of this Agreement, no legal action filed by INDIO or DISTRICT per this Agreement shall affect or in any way limit any Party's rights per any Integrated Regional Water Management Plan that may be adopted for any portion of the Coachella Valley.

11. WAIVER.

Failure by a Party to insist upon the strict performance of any of this Agreement's provisions by another Party, or the failure by a Party to exercise its rights upon an alleged default of another Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

12. NOTICES.

All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS]), sent by telecopier or facsimile ("Fax") machine capable of confirming

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transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid to the following parties at the following addresses or numbers:

**If to CITY or
AUTHORITY:**

City of Indio
100 Civic Center Mall
Indio, California 92201
Attention: Glenn Southard, City Manager/Exec. Dir.
Telephone: (760) 391-4015; Fax: (760) 391-4008

With copy to: Woodruff, Spradlin & Smart, APC

555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attention: Edward Kotkin, City Attorney/Gen. Csl.
Telephone: (714) 558-7000; Fax: (714) 835-7787

If to DISTRICT:

Coachella Valley Water District
PO Box 1058
Coachella, CA 92236
Attention: Steve Robbins, General Manager
Telephone: (760) 398-2651; Fax: (760) 398-3711

With copy to: Law Offices of Redwine and Sherrill

1950 Market Street
Riverside, CA 92501
Attention: Gerald Shoaf, CVWD Counsel
Telephone: (951) 684-2520; Fax: (951) 684-9583

Notices sent in accordance with this Section shall be deemed delivered upon the: *(a)* date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); *(b)* date of actual receipt (if personally delivered by other means); *(c)* date of transmission (if sent by telecopier or facsimile machine); or *(d)* date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section and shall be effective three (3) days after mailing by the above-described procedure.

11. BINDING EFFECT.

This Agreement inures to the benefit of and is binding upon the Parties and all of their respective predecessors, assigns and successors. References to any Party in this Agreement shall be construed also as references to that Party's respective predecessors, assigns and successors.

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12. FURTHER COOPERATION.

Each of the Parties agrees to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the terms and conditions of this Agreement, including the execution of any additional documents that may be necessary.

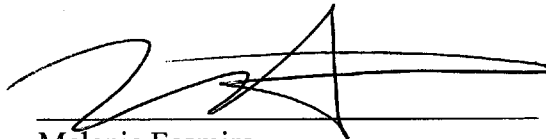
13. MERGER OF PRIOR AGREEMENTS.

This Agreement contains the entire understanding between the Parties and supersedes any prior understanding and/or written or oral agreements between them respecting the subject matter of this Agreement. To the extent, if any, that either of the Parties or any third party may deem a conflict or inconsistency to exist between the text and/or intent of this Agreement on the one hand, and the Term Sheet on the other hand, the Parties understand and agree that the text and/or intent of the Term Sheet shall prevail. There are no representations, agreements, arrangements, or understandings, oral or written, by and between the Parties relating to the subject matter of this Agreement, which are not fully expressed herein. The terms of this Agreement are intended by the Parties as a final expression of their agreement with respect to such terms as are included herein, and may not be contradicted by evidence of any prior agreement or any contemporaneous agreement. The Parties further intend that this Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Agreement.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the day and year written below.

CITY

Dated: 6/30/09

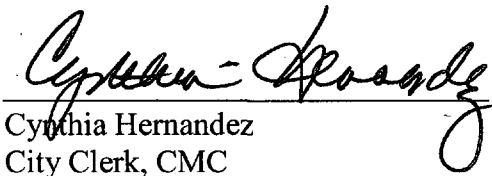


Melanie Fesmire,
Mayor, City of Indio

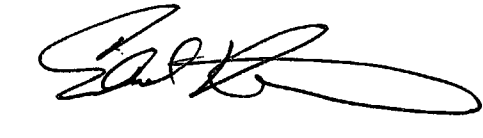
ATTEST:

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART



Cynthia Hernandez
City Clerk, CMC



Edward Kotkin, Esq.,
City Attorney, City of Indio

ADDITIONAL SIGNATURES FOLLOW

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AUTHORITY

Dated: 6/30/09

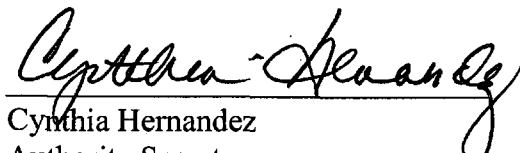


Melanie Fesmire,
President, Indio Water Authority

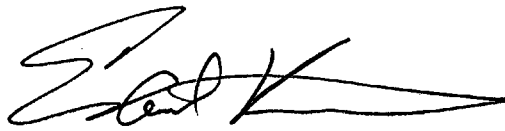
ATTEST:

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART



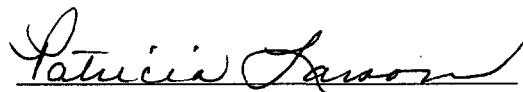
Cynthia Hernandez
Authority Secretary



Edward Kotkin, Esq.,
General Counsel, Indio Water Authority

DISTRICT

Dated: _____

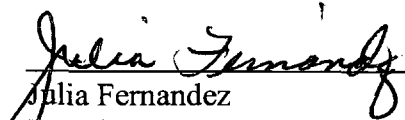


Patricia Larson,
President, Board of Directors,
Coachella Valley Water District

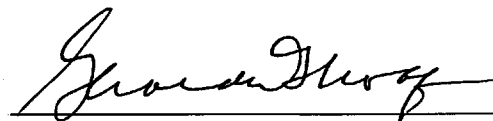
ATTEST:

APPROVED AS TO FORM:

REDWINE AND SHERRILL



Julia Fernandez
Board Secretary



Gerald Shoaf, Esq.,
General Counsel,
Coachella Valley Water District

CVWD-CITY OF INDIO TERM SHEET

(SETTLEMENT AGREEMENT AND DISMISSAL OF RAC LITIGATION AND CROSS-COMPLAINT)

This CVWD-CITY OF INDIO TERM SHEET ("Term Sheet"), entered into and effective on ~~November~~ ^{December} 8, 2008, is by and between the COACHELLA VALLEY WATER DISTRICT, a county water district and public agency organized, operating and existing under California Water Code Section 30000 et seq. (alternatively "CVWD" or "District") and the CITY OF INDIO, a California municipal corporation (alternatively "Indio" or "City").

RECITALS

- A. CVWD and Indio are authorized to enter into this Term Sheet.
- B. CVWD and Indio hereby direct to their respective legal counsel to prepare a mutually acceptable comprehensive settlement agreement formalizing each and every term and provision expressed herein (a "Formal Settlement") and present same to each agency for approval with all reasonable speed.
- C. CVWD and Indio intend and agree that this Term Sheet represents an accurate summary of the terms of the Formal Settlement; accordingly each reserves its right to insist upon mutually acceptable revisions to any Formal Settlement prepared by legal counsel.
- D. CVWD and Indio intend and agree that this Term Sheet will provide an inclusive process regarding management of the Lower Whitewater River Area consistent with the autonomous status of Indio on the one hand, and the District on the other, and in a way that manifests the mutual respect of each entity for the other. It will establish coordinated decision-making processes in accord with the separate legal context in which each of the parties acts, and will recognize the long-term responsibility of both Indio and CVWD regarding the health of the entire Coachella Valley groundwater basin. The Settlement Agreement will address six topics: (1) participation and cooperation of Indio and the District ("the parties") to develop an Integrated Regional Water Management Plan ("IRWMP"); (2) the Lower Whitewater River Area replenishment program; (3) cooperation between the City and District regarding projects by either agency; (4) payment of the Replenishment Assessment Charge ("RAC") and dismissal of the litigation; (5) sewer services; and (6) mitigation of impacts on water supply.

1. IRWMP

The Parties shall participate and cooperate to develop an IRWMP. It is the intent of the parties that the IRWMP will:

- a. Use the District's CVWMP, as well as other planning documents and studies created by other agencies throughout the Coachella Valley as a starting point for developing a plan that meets the statutory requirements for state grants for the implementation of integrated regional water management plans as set forth in Water Code section 79560 *et. seq.*, and related legislation.
- b. Identify clear objectives and planning targets, the goal being that any individual can pump, and any agency can pump and/or agree to supply water for new development without regard to water rights or priorities, *i.e.*, the assurance of an adequate water supply for all needs.
- c. Adopt or develop the strategies to meet those objectives and targets. The strategies shall include methods to offset current overdraft, increase supplies and promote conservation, and will include currently operating projects and integration of multiple strategies to avoid duplication of organizational effort and cost where possible.
- d. Establish performance measures to evaluate strategy performance, monitoring systems to gather performance data, and mechanisms to change strategies if planning targets aren't being met.
- e. Create a Coordinating Committee ("CC") consisting of representatives from participating agencies; the CC will retain a consultant, acceptable to all participants, to review, analyze and rank projects proposed by the CC or by a participant and to monitor performance of each project. The CC will consider all proposed recharge, recycling, conservation, stormwater harvesting and in-lieu programs, and determine which to refer to the consultant for study, analysis and recommendations. The CC will not be responsible for carrying out individual projects.
- f. Foster coordination, collaboration and communication between agencies by providing a forum for discussion and support of individual agency projects and integrated projects that are consistent with the IRWMP.

2. Lower Whitewater River Area Replenishment Program

The goal of this section is to ensure that recharge projects financed collectively through the RAC provide benefit to the Lower Whitewater River Area in a manner that is quantifiable and that is supported and verifiable by all parties.

- a. Proposals for New Projects
 - (1) Proposals for new replenishment or new in-lieu projects to be funded by CVWD's RAC may be made by Indio or by the City of Coachella, as well as by CVWD. A copy of the proposals shall be given to each agency not making the proposal. Such proposals shall be submitted to the CC's Consultant for review, analysis and report, including recommendations. A

copy of the proposals shall be given to CVWD if made by one of the Cities. A copy of the report shall be given to each member of the CC and to each member of the Joint Water Policy Advisory Committee for Lower Whitewater River Subbasin Area of Benefit.

- (2) Upon receipt of the Consultant's report, CVWD's staff shall review the report and meet and confer with the Consultant, if necessary, to address any questions or issues and then issue a written response to the report. CVWD's Board will then provide an opportunity for further input, discussion or objections at a regular meeting before voting on the proposal.
- (3) CVWD's Board could override the Consultant's recommendations by adoption of findings in support of the action taken. In support of such an override, the Board will have an obligation to find that the Consultant's recommendations are not:
 - (a) consistent with the IRWMP;
 - (b) consistent with the replenishment needs for the Lower Whitewater River Area;
 - (c) otherwise technically defensible; or
 - (d) cost effective.
- (4) The statutory procedures for challenge will remain in place.

b. Increased Charges Relating to Existing Projects

- (1) Proposals by CVWD to increase existing charges in connection with existing projects shall be submitted to the Joint Water Policy Advisory Committee for Lower Whitewater River Subbasin Area of Benefit for review, analysis and report, including recommendations. The Advisory Committee's report and recommendations shall be given to each of the committee members.
- (2) Upon receipt of the Advisory Committee's report, CVWD's staff shall review the report and meet and confer with the Advisory Committee, if necessary, to address any questions or issues and then issue a written response to the report. CVWD's Board will then provide an opportunity for further input, discussion or objections at a regular meeting before voting on the proposal.
- (3) CVWD's Board could override the Advisory Committee's recommendations by adoption of findings in support of the action taken. The Board's actions will be required to be reasonable and non-arbitrary.
- (4) The Statutory procedures for challenge will remain in place.

c. Indio-Specific Project

- (1) The parties shall identify and evaluate for implementation to be funded with RAC monies, at least one project first and foremost within the City of Indio, or, if no such project can be identified, a project that directly benefits Indio.
- (2) This Indio-specific project shall not be subject to review by the CC, but shall be:
 - (a) consistent with the IRWMP;
 - (b) consistent with the replenishment needs for the Lower Whitewater River Area;
 - (c) otherwise technically defensible; and
 - (d) cost effective.

CVWD's Board consideration shall be consistent with the standards described in 2.a.(3) above and all other applicable laws.

d. Accounting

- (1) CVWD will track all money collected from groundwater producers within Indio Water Authority ("IWA") and shall report the quantities collected and the manner in which it is spent on an annual basis. This reporting is intended to allow Indio a way to identify its contributions to the recharge efforts for the Coachella Valley.
- (2) Indio shall report to CVWD any recharge efforts that it undertakes on an independent basis. Any successful recharge efforts undertaken by Indio shall work as a credit, on an acre-foot for acre-foot basis, against RAC payments within the Basin benefited by that recharge otherwise owed by Indio. There will be no cap on the amount of credits that can be accumulated by Indio; such credits may eliminate in full a RAC payment by Indio.

In order to facilitate new projects implemented by Indio that make reasonable and beneficial use of water, CVWD will agree to sell Colorado River Water to Indio for use as groundwater recharge in such projects at a rate equal to the rate that is charged to any CVWD recharge project. This agreement shall not be interpreted to require CVWD to limit its deliveries to non-recharge customers in order to supply water for recharge purposes, however, in times of shortage CVWD will not give its own recharge projects priority over Indio's.

e. Transparency and Peer Review

- (1) It is the intent of the parties that all technical determinations made with respect to the Lower Whitewater River Area Replenishment Program shall be transparent and subject to peer review, by and between the parties and or by a neutral third party as may be warranted.
- (2) In order to accomplish transparency and enable peer review, the parties agree to openly share all available technical information, subject only to compliance with privacy requirements, *e.g.*, as to private party well data. Information shared per this Agreement shall include well drawdown, yield and pumping information, and all additional technical data relevant to establishing whether and to what extent individual replenishment projects provide quantifiable benefit to the Lower Whitewater River Area.
- (3) Indio and CVWD will each provide access to any computer models used to evaluate the hydrology of the Lower Whitewater River Area and quantify the need for replenishment and/or the impact of replenishment projects.
- (4) Either Indio or CVWD may initiate in-house or third party peer review as to any data or determination provided by the other party. Each of the parties will fully cooperate with any peer review initiated by the other.
- (5) Each party shall ensure that it and its agents maintain the confidentiality of all data, including without limitation all computer models, provided by the other party, and shall execute and deliver any confidentiality agreements which may be reasonably necessary to carry out the provisions of this section.

3. Cooperation Regarding Projects by Either Agency

The intent of this section is to develop procedures for project activities within the City of Indio undertaken by one agency but which require permits or approvals by the other agency that will foster expeditious and efficient processing in a spirit of cooperation.

a. Cooperation

(1) Communications

The parties agree to communicate on a regular basis on a staff-to-staff level and establish regular staff-to-staff meetings for the purpose of exchanging information, discussing issues, and coordinating efforts regarding proposed projects, plans and actions by one or the other agency to minimize, if not eliminate, conflicts and delays.

(2) City's Conditions of Approval for New Development

City will include in its Conditions of Approval of a proposed development project reasonable conditions requested by District. In the event that City does not include a condition requested by the District, the City will advise the District and provide the reason for that omission and will meet with the District to discuss the matter, if requested, before taking formal action on the project. The City Council's formal action on a project which does not include a condition requested by the District will be required to be reasonable and non-arbitrary.

(3) Expediting Permits and Requests for Approvals for Information

- (a) Each party will take reasonable efforts to expedite a request by the other for a permit, approval, or information and if there are issues or problems involved, will promptly advise the other party thereof and offer to meet and discuss resolution. Where Bureau of Reclamation approval is required for a project or action proposed by City, District will use its best efforts to expedite the process, will keep the City advised of its efforts, and will invite City to participate in that process, if appropriate.
- (b) The parties shall meet at the beginning of each year to discuss anticipated projects within the City and whether permits or approvals will be required for such projects. The parties will develop a general permit or form of approval that covers all such anticipated projects.

4. Payment of RAC and Dismissal of Litigation

- a. Within 10 days of execution of the Settlement Agreement by both parties, Indio will remit payment, exclusive of any late fees or penalties imposed by CVWD, for all outstanding RAC to CVWD, and both parties will promptly file a request for dismissal of the District's complaint and the City's cross-complaint with prejudice, consistent with section b. below.
- b. The parties acknowledge that Indio's payment of the RAC is made voluntarily based in part on representations made by CVWD through the Settlement Agreement that Indio will be treated as a partner in decision-making concerning the development of projects that will be funded through the RAC payments. Indio's payment of the RAC under the Settlement Agreement is thus in no way to be construed as a waiver of any of its legal or equitable claims concerning the validity of the RAC in general or as applied specifically to Indio. That is, Indio's remedy if it does not believe that CVWD is in fact treating it as a partner in decision-making will be to discontinue RAC payments. In such instance either party may re-assert all legal claims raised in its complaint or cross complaint, respectively.

- (1) Before discontinuing RAC payments, Indio shall give CVWD written notice describing with particularity the reasons that it intends to discontinue RAC payments. CVWD shall have 60 days to address and cure Indio's concerns, and during that 60-day period, CVWD's general manager and Indio's city manager shall meet and confer in good faith to resolve Indio's concerns. This notice period shall not be construed as a limitation on Indio's discretion to discontinue RAC payments at the end of the 60-day period, as described above.
 - (2) Notwithstanding the above, once CVWD's Board awards a construction contract for a project as described above in 2.c., above, Indio will waive its right to challenge the validity of the RAC as applied to Indio, including but not limited to its right to raise any of the issues raised in its cross complaint as they pertain to a challenge of the validity of the RAC. However, Indio may raise such issues, including but not limited to the adjudication of water rights, to the extent they relate to other basin management issues and not to the validity of the RAC.
- c. CVWD will waive late fees and penalties for any pumper within Indio that pays outstanding RAC charges to CVWD within 30 days of execution of the Settlement Agreement.

5. Sewer Services

Counsel for both parties will exchange informal briefs setting forth each party's legal position regarding which party has the superior legal right regarding provision of sewer service within the City of Indio (excluding Valley Sanitary District's service area). Counsel will then meet to discuss the legal positions and will advise their respective clients accordingly. If no agreement is reached among counsel, the parties will consider what further actions to take to resolve the issue, including without limitation a possible cooperative effort to seek a court determination through declaratory relief or possible alternative dispute resolution.

6. Mitigation of Impacts on Water Supply

a. Mitigation Required

All new development in the Coachella Valley will result in an additional demand on existing supplies which must be mitigated.

b. Mitigation Methods

The parties desire to create a format or mechanism for analysis and approvals of residential and commercial projects within the Indio Water Authority ("IWA") service area, or areas to be annexed thereto, as related to water supplies, including a determination of impacts thereon and mitigation to offset such impacts. The

goal of this approach is to establish a formula for water supply mitigation related to land use approvals to eliminate the need for objections or comment letters addressing that topic. The following approach shall be utilized for this purpose:

(1) Impacts

City and District shall cooperate and work in good faith to develop an objective schedule of impacts by new development on existing water supplies, based upon average water use per acre by each category of use.

(2) Mitigation

Said parties shall also cooperate and work in good faith to develop a list of acceptable means of mitigating the water supply impacts and shall prioritize the methods according to cost and efficiency. The Parties agree that the methods shall be employed according to their rating, *i.e.*, the lowest cost, highest efficiency method shall be used first if reasonably possible.

(3) Monitoring

The Parties shall cooperate and work in good faith to develop a monitoring program in each case, where appropriate, to review the effectiveness and efficiency of mitigation employed and to make changes where appropriate. The Parties shall meet and confer to resolve any issues regarding the effectiveness or efficiency of mitigation being employed in a particular case.

(4) Supplemental Water Supply Program

(a) Consistent with paragraph 6.a., the City will implement a Supplemental Water Supply Program on or before January 1, 2010. This Program will become effective on or before July 1, 2010.

Any fee incorporated in this Program shall apply to any development project for which a building permit is issued on or after the effective date of the Program and shall be payable at the time when a building permit is issued in connection with a development project. The sole exception to this Program shall be development projects pursued pursuant to the terms and conditions of a Development Agreement approved by City prior to this term sheet's effective date.

(b) The parties acknowledge that since implementation of this Program will not occur immediately, the parties will benefit from interim understandings. The Mitigation Methods described above in subparagraphs 6.b.1 through and including 6.b.3 shall be utilized in order to prevent objections and comment letters regarding such

development in the absence of the Supplemental Water Supply Program. Prior to July 1, 2010, CVWD shall not raise objections concerning any project that does not require a water supply assessment.

- (c) The parties acknowledge that the City's Supplemental Water Supply Program will include provisions for case-by-case in-lieu mitigation measures.

(5) Export Impact Avoidance

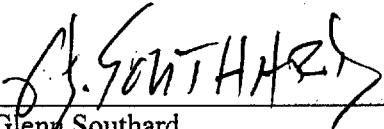
The parties agree that impacts associated with any water pumped within the City limits that is exported outside the Lower Whitewater River Area shall be directly mitigated.

IN WITNESS WHEREOF, each of the parties has executed this Term Sheet on the day and year written below.

Dated:

12/10/08

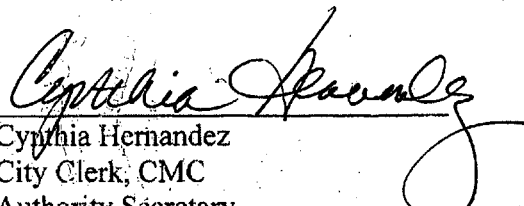
CITY OF INDIO

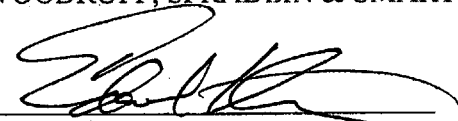

Glenn Southard,
City Manager, City of Indio
Executive Director, Indio Water Authority

ATTEST:

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

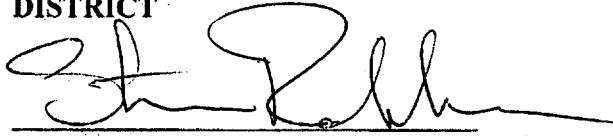

Cynthia Hernandez
City Clerk, CMC
Authority Secretary


Edward Kotkin, Esq.
City Attorney
Authority General Counsel

ADDITIONAL SIGNATURES FOLLOW

**COACHELLA VALLEY WATER
DISTRICT**

Dated: 12/8/08

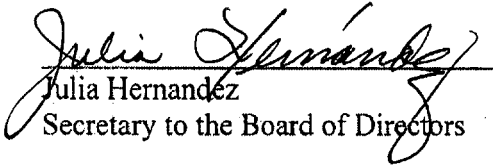


Steve Robbins,
General Manager-Chief Engineer

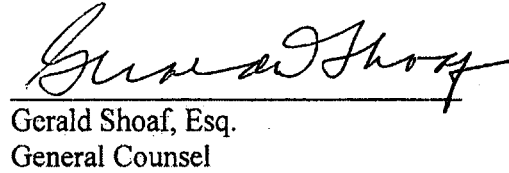
ATTEST:

APPROVED AS TO FORM:

REDWINE & SHERRILL



Julia Hernandez
Secretary to the Board of Directors



Gerald Shoaf, Esq.
General Counsel

FIRST AMENDMENT TO SETTLEMENT AGREEMENT

This First Amendment to Settlement Agreement ("**First Amendment**"), dated as of September 17, 2009, is made by and among COACHELLA VALLEY WATER DISTRICT, a county water district and public agency organized, operating, and existing under California Water Code section 30000 *et seq.* ("**DISTRICT**"), the CITY OF INDIO, a California municipal corporation ("**CITY**"), and the INDIO WATER AUTHORITY, a California joint powers agency formed pursuant to the Joint Exercise of Powers Act (California Gov't Code § 6500 *et seq.*) ("**AUTHORITY**"). DISTRICT, CITY, and AUTHORITY are hereinafter collectively referenced as the "**Parties**," and sometimes alternatively referenced as a "**Party**."

RECITALS

A. The Parties previously entered into that certain Settlement Agreement, dated as of June 30, 2009 ("**Agreement**").

B. Capitalized terms that are used in this First Amendment without definition and that are defined in the Agreement are used herein as so defined.

C. Subject to the following terms and conditions, the Parties now desire to amend the Agreement to modify the implementation and effective dates of the Supplemental Water Supply Program provided for in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

OPERATIVE PROVISIONS

1. Section 6.b.(4)(a) of the Agreement is hereby deleted in its entirety, and the following is inserted into its place and stead:

- (a) Consistent with paragraph 6.a., the City will implement a Supplemental Water Supply Program on or before September 1, 2010. This Program will become effective on or before March 1, 2011. Any fee incorporated in this Program shall apply to any development project for which a building permit is issued on or after the effective date of the Program and shall be payable at the time when a building permit is issued in connection with a development project. The sole exception to this Program shall be development projects pursued pursuant to the terms and conditions of a Development Agreement approved by City prior to this term sheet's effective date.

2. Section 6.b.(4)(b) of the Agreement is hereby deleted in its entirety, and the following is inserted into its place and stead:

- (b) The parties acknowledge that since implementation of this Program will not occur immediately, the parties will benefit from interim understandings. The Mitigation Methods described above in subparagraphs 6.b.1 through and including 6.b.3 shall be utilized in order to prevent objections and comment letters regarding such development in the absence of the Supplemental Water Supply Program. Prior to March 1, 2011, CVWD shall not raise objections concerning any project that does not require a water supply assessment.

3. Each individual executing this First Amendment on behalf of a Party represents and warrants that he is duly authorized to execute and deliver this First Amendment on behalf of such Party and that this First Amendment is binding upon such Party in accordance with its terms. Upon request of any Party, each other Party shall deliver to the requesting Party copies of such resolutions, certificates, or written assurances evidencing authorization to execute, deliver, and perform this First Amendment.

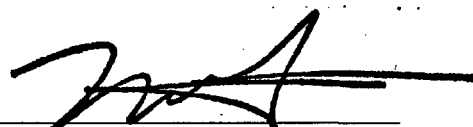
4. Except as set forth in this First Amendment, all of the terms and conditions of the Agreement shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed as of the day and year first set forth above.

CITY

Dated:

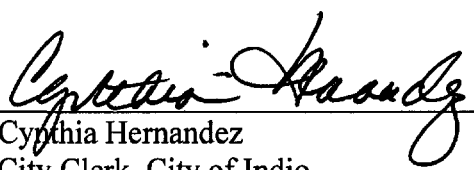
9/17/09

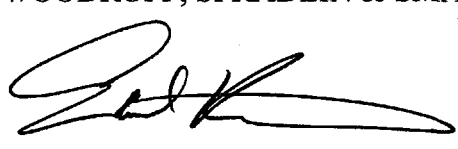

Melanie Fesmire,
Mayor, City of Indio

ATTEST:

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

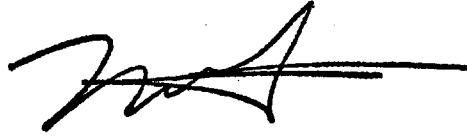

Cynthia Hernandez
City Clerk, City of Indio


Edward Kotkin, Esq,
City Attorney, City of Indio

ADDITIONAL SIGNATURES FOLLOW

AUTHORITY

Dated: 9/17/09

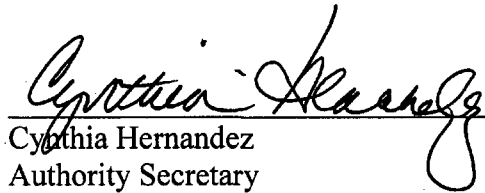


Melanie Fesmire,
President, Indio Water Authority

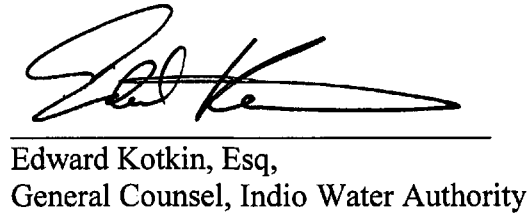
ATTEST:

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART



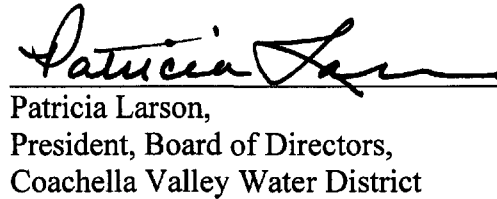
Cynthia Hernandez
Authority Secretary



Edward Kotkin, Esq.,
General Counsel, Indio Water Authority

DISTRICT

Dated: 10/13/09

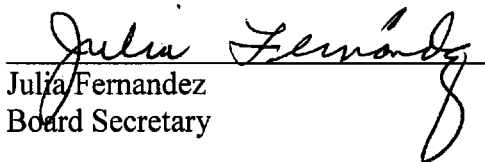


Patricia Larson,
President, Board of Directors,
Coachella Valley Water District

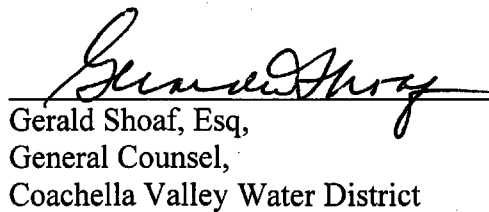
ATTEST:

APPROVED AS TO FORM:

REDWINE AND SHERRILL



Julia Fernandez
Board Secretary



Gerald Shoaf, Esq.,
General Counsel,
Coachella Valley Water District