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11 Attorneys for Defendant and Cross-Complainant  
12 ELSINORE VALLEY MUNICIPAL WATER  
DISTRICT

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

17 THE HYDRO COMPANY,  
18 INCORPORATED, doing business in  
California as THE NEVADA HYDRO  
19 COMPANY, INC.,

20 Plaintiff,

21 v.

22 ELSINORE VALLEY MUNICIPAL  
23 WATER DISTRICT; and DOES 1 TO 25,  
24 inclusive,

25 Defendant.

26 AND RELATED CROSS-ACTION.  
27

28 02335.0030631325281.1

**FILED**  
Clerk of the Superior Court

JUN 27 2018

By: T. Dietrich, Deputy

Case No. 37-2012-00057077-CU-BC-NC  
Judge: Hon. Timothy Casserly  
Dept.: N-31

[IMAGED FILE]

JOINT APPLICATION FOR ENTRY OF  
CONSENT JUDGMENT

Complaint Filed: September 12, 2012

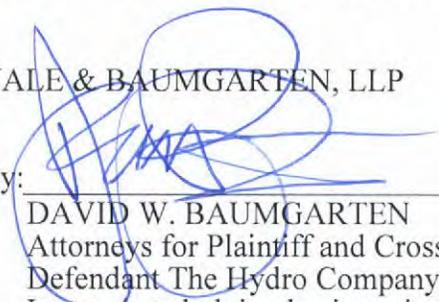
1 Plaintiff and Cross-Defendant The Hydro Company, Incorporated, doing business in  
2 California as The Nevada Hydro Company, Inc. (“Hydro”) and Defendant and Cross-  
3 Complainant Elsinore Valley Municipal Water District (the “District” or “EVMWD”) (each of  
4 whom shall be referred to individually as a “Party” or collectively as the “Parties”) by and  
5 through their undersigned counsel, hereby apply for entry of the proposed Consent Judgment  
6 submitted herewith.

7 The Parties have engaged in extensive settlement negotiations, including multiple  
8 mediation sessions with the Honorable J. Richard Haden, Ret., at JAMS over the last 10 months  
9 while this action was stayed. Throughout the settlement negotiations, the Parties faced difficulty  
10 in reaching a compromise that was mutually acceptable, but after numerous meetings and  
11 circulating draft versions of the documents back and forth, the Parties were able to reach a fair  
12 and equitable settlement of the pending litigation for both Hydro and the District and  
13 confirmation their respective rights and responsibilities related to the provision of Water  
14 Management Services to the LEAPS Project upon licensing as contemplated by Paragraph 7.5 of  
15 the Development Agreement that is the subject of this litigation. The Agreement for Settlement  
16 and Release of Claims (“Settlement Agreement”) is attached hereto as Exhibit “A” and  
17 incorporated herein by reference. One of the provisions of the Settlement Agreement provides for  
18 the application for entry of a Consent Judgment, which Consent Judgment sets forth the ongoing  
19 obligations of the Parties related to the provision of Water Management Services associated with  
20 the pending LEAPS Project.

21 The Parties have executed the proposed Consent Judgment and authorized their respective  
22 counsel to submit the Consent Judgment to the Court for consideration and entry. Pursuant to the  
23 terms of the Consent Judgment, the Court will retain jurisdiction to enforce the Consent Judgment  
24 and the terms of the Settlement Agreement pursuant to Code of Civil Procedure section 664.6;  
25 and the Consent Judgment may be amended or supplemented in any proceeding brought to  
26 enforce this Settlement Agreement.

27 Dated: 7/27/19

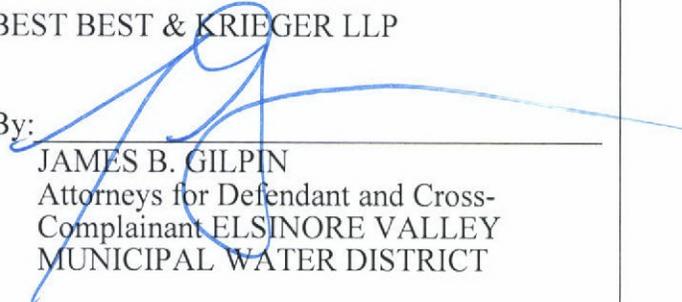
YALE & BAUMGARTEN, LLP

28 By:   
DAVID W. BAUMGARTEN  
Attorneys for Plaintiff and Cross-  
Defendant The Hydro Company,  
Incorporated, doing business in California  
as The Nevada Hydro Company, Inc.

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Dated: 7/27/13

BEST BEST & KRIEGER LLP

By:   
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JAMES B. GILPIN  
Attorneys for Defendant and Cross-  
Complainant ELSINORE VALLEY  
MUNICIPAL WATER DISTRICT

**Exhibit A to Joint Application For Entry of Consent Judgement**

**AGREEMENT FOR SETTLEMENT  
AND RELEASE OF CLAIMS**

This Agreement for Settlement and Release of Claims (the "Agreement") is entered into by and between The Hydro Company, Incorporated, a Nevada Corporation, doing business in California as the Nevada Hydro Company, Inc. ("Hydro"), and Elsinore Valley Municipal Water District, ("EVMWD") for the purpose of resolving the claims between them in the San Diego County Superior Court lawsuit styled, The Hydro Company v. Elsinore Valley Municipal Water District, SDSC case no. 37-2012-00057077-CU-BC-NC, ("Lawsuit"), and establishing their respective rights and obligations relative to the Lake Elsinore Advanced Pumped Storage Project, ("LEAPS Project") on a going forward basis. Hydro and EVMWD are collectively referred to hereinafter as the "Parties".

**RECITALS**

WHEREAS, EVMWD is a municipal water district organized and operating under the California Municipal Water Act of 1911, California Water Code section 71000, et seq.

WHEREAS, EVMWD is engaged in the business of providing water and water treatment services to rate payers in the Elsinore Valley and is a member agency of Western Municipal Water District which, in turn, is a member agency of the Metropolitan Water District of Southern California.

WHEREAS, under California Water Code section 71662, EVMWD is authorized to provide, generate, and deliver hydroelectric power, and acquire, construct, operate, and maintain any and all works, facilities, improvements, and property necessary or convenient for such utilization.

WHEREAS, in April, 1995, EVMWD, consistent with California Water Code section 71662, obtained a Preliminary Permit ("Preliminary Permit") from the Federal Energy Regulatory Commission (the "FERC") for the development of the Lake Elsinore Advanced Pumped Storage Project (Project No. 11504). Project No. 11504 proposed the development of a 250-megawatt hydroelectric facility and related transmission lines.

WHEREAS, Hydro is an engineering and energy consulting firm, with specialized knowledge in the development of hydroelectric facilities and related transmission lines.

WHEREAS, on or about May 15, 1997, EVMWD entered into a written contract with Hydro for the development of the LEAPS Project, ("the Development Agreement") for the development of the Lake Elsinore Advanced Pumped Storage Project (Project No. 11504). A copy of the Development Agreement is attached hereto and incorporated by reference as Exhibit I.

WHEREAS, pursuant to the terms of the Development Agreement, EVMWD and Hydro agreed, in part, to proceed jointly with the FERC licensing application process, acquire FERC licensure, and construct and operate the LEAPS Project.

WHEREAS, under the terms of the Development Agreement, the District agreed, in part, that upon completion of the Project to its operational stage, the District would provide all management at Lake Elsinore necessary for operation of the Project, including, without limitation, maintenance of the water level in Lake Elsinore.

WHEREAS, on or about February 2, 2004, the District and Nevada Hydro filed a new joint application with the FERC for the development of revised Lake Elsinore Advanced Pumped Storage Project (Project No. 11858). The 1997 Development Agreement was included as an attachment to the joint application for Project No. 11858.

WHEREAS disputes subsequently arose between the Parties concerning the development of the LEAPS Project (Project No. 11858).

WHEREAS, on or about May 6, 2011, FERC issued a "request for just cause" letter to Hydro and EVMWD, requesting that the Parties provide an explanation as to why the joint application for licensure of the LEAPS Project should not be dismissed.

WHEREAS, Hydro and EVMWD responded separately to the request for just cause letter.

WHEREAS, on July 12, 2011, FERC dismissed the Parties' application for licensure of the LEAPS Project, citing "the co-applicants' divergent responses to the May 6, 2011 just cause letter".

WHEREAS, on or about July 18, 2011, EVMWD provided Nevada Hydro with a written Notice of Termination and Notice of Default purporting to terminate the 1997 Development Agreement, and made demand for the reimbursement of certain fees paid to the State Water Resources Control Board ("State Water Board") in connection with the LEAPS Project.

WHEREAS, on or about July 14, 2011, Nevada Hydro filed a new application with the FERC, in its name alone, for the development of the Lake Elsinore Advanced Pumped Storage Project (Project No. 14227). Project No. 14227 is essentially the same project as Project No. 11858 and would consist of the following: (1) A new upper reservoir (Decker Canyon) with a 200-foot-high main dam and a gross storage volume of 5,750 acre-feet at a normal reservoir surface elevation of 2,792 feet above mean sea level (msl); (2) a single 21-foot-diameter concrete power shaft and power tunnel with two steel lined penstocks; (3) an underground powerhouse with two reversible pump-turbine units with a total installed capacity of 500 megawatts; (4) an existing lower reservoir (Lake Elsinore) with a gross storage volume of 54,500 acre-feet at a normal reservoir surface elevation of 1,245 feet above msl; (5) about 32 miles of 500-kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

WHEREAS, on or about June 4, 2012, Nevada Hydro served a claim with EVMWD under the California Government Claims Act to recover more than \$24 million in "sunk costs" on the LEAPS Project, ("Claim").

WHEREAS, on or about July 13, 2012, EVMWD rejected the Claim.

WHEREAS, on September 12, 2012, Hydro filed an action against the District in San Diego County Superior Court Case No. 37-2012-00057077 (the "Action"). The complaint in the Action included one cause of action for breach of contract which alleged that the District breached the Development Agreement ("Complaint"). The Complaint alleges that, contrary to the express and implied provisions of the Development Agreement, EVMWD subverted Hydro's efforts to entitle the Project, which caused FERC to dismiss the pending application for licensure, scuttling the Project, and resulting in damage to Hydro in excess of \$24 million.

WHEREAS, on or about October 24, 2012, FERC granted Nevada Hydro a preliminary permit to study the feasibility of the Lake Elsinore Advanced Pumped Storage Project ("Project No. 14227").

WHEREAS, on or about November 1, 2012, EVMWD filed an answer denying the allegations in the Complaint, and filed a cross-complaint, alleging that Hydro breached the Development Agreement by failing to prosecute reasonably the FERC License Application; failing to prosecute reasonably the Clean Water Act Section 401 water quality certification for the Project; and by failing to timely pay fees for Project-related permitting fees, including the two separate 401 Certification Fees assessed by the State Board of Equalization on behalf of the State Water Board in the amounts of \$131,294.68 for fiscal year 2010-2011 and \$113,860.00 plus continually accruing interest and penalties for fiscal year 2011-2012 in fees owing the State Water Board ("Cross-Complaint").

WHEREAS, on or about December 14, 2012, Hydro filed an answer denying the allegations in the Cross-Complaint.

WHEREAS Hydro subsequently amended and supplemented the Complaint to include a claim for reimbursement of certain fees paid to the United States Department of Agriculture, Forestry Service, which were erroneously refunded to EVMWD instead of Hydro.

WHEREAS EVMWD denies the allegations in the amended and supplemented Complaint.

WHEREAS Hydro is now attempting to revive the LEAPS Project, and has filed a new application for FERC licensure under Project number 14227-003, with the support of Grafton Asset Management, Inc., a global energy investment firm.

WHEREAS the Parties attended a private mediation conference with the Hon. J. Richard Haden, Ret., and have since discussed the potential for the global resolution of the Lawsuit.

WHEREAS the Parties now desire to resolve the Lawsuit in its entirety, and establish their respective rights and responsibilities relative to the LEAPS Project on a going forward basis.

NOW THEREFORE, given the facts and circumstances set forth in the Recitals, and in consideration of the terms, conditions, and covenants contained herein below, and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree to be bound as follows:

## TERMS AND CONDITIONS

### **1.0 SUMMARY OF SETTLEMENT CONSIDERATION**

1.01 Extinguishment of Development Agreement. Subject to the provisions of this Agreement, the Parties acknowledge and agree that the Development Agreement is terminated, and all rights and obligations thereunder are extinguished.

1.02 Submission of Consent Judgment; Execution of Water Supply and Management Agreement in Principle. The Parties shall execute an Agreement in Principle for a Water Supply and Management Agreement as set forth in Article 2.0 herein below.

1.03 Cooperation with Hydro on the LEAPS Project. EVMWD shall cooperate with Hydro during the entitlement, development, and construction of the LEAPS Project as set forth in Article 3.0 herein below.

1.04 Monetary Consideration. EVMWD shall pay and forgive the monetary sums set forth in Article 4.0 herein below.

1.05 Mutual Releases. The Parties shall mutually waive and release claims against one another arising out of the Lawsuit as set forth in Article 5.0 herein below.

1.06 Dismissal of Lawsuit. Hydro shall dismiss the operative Complaint with prejudice and EVMWD shall dismiss the cross-complaint with prejudice as set forth in Article 6.0 herein below.

1.07 Attorney's Fees and Costs. Except as otherwise provided herein below, each Party shall bear its own attorney fees, expert witness fees, and litigation costs incurred in connection with the Lawsuit.

### **2.0 SUBMISSION OF CONSENT JUDGMENT; EXECUTION OF WATER SUPPLY AND MANAGEMENT AGREEMENT**

2.01 Submission of Consent Judgment. The Parties shall execute and cooperate in submitting and seeking approval of this Agreement and a proposed consent judgment in the form attached hereto as Exhibit 4, which confirms the terms of the District's prior agreement set forth in Section 7.5 of the Development Agreement to provide the Water Management Services upon licensing and completion of the LEAPS Project, ("Consent Judgment").

2.02 Agreement in Principle. Concurrently with the execution of this Agreement, the Parties agree to enter into the Agreement in Principle for a Water Supply and Management

Agreement in the form attached hereto as Exhibit 2, ("Agreement in Principle"), which is an agreement that will allow the Parties to work together to plan and prepare for the execution of a final Water Supply and Management Agreement for the LEAPS Project. Hydro is authorized to disclose the Agreement in Principle to FERC, and any other regulatory or administrative agency needing to know, and to represent that that the Agreement in Principle constitutes an agreement in principle between the Parties on the material terms of a contemplated Water Supply and Management Agreement, pending entry of a final and enforceable Consent Judgment, or finalization and execution of a Definitive WSMA as defined herein below.

2.03 Finalization and Execution of Definitive Agreement. The Parties shall, in good faith, negotiate and perform all acts, satisfy all conditions, and execute all documents as may be necessary and advisable to duly and timely finalize and execute a definitive Water Supply and Management Agreement on the terms set forth in the Agreement in Principle, ("Definitive WSMA") either through entry of the Consent Judgment, or, in the event the Consent Judgment is not entered or does not become final and enforceable, by finalization and approval by the Parties of a Definitive WSMA in compliance with the California Environmental Quality Act ("CEQA"). During the negotiation of the definitive WSMA, the Parties shall negotiate diligently and in good faith. The Parties shall cooperate with each other and supply such documents and information as may be reasonably requested by the other to facilitate the conduct of the negotiations. The Parties shall exercise reasonable and good faith efforts to timely and duly complete discussions relating to the terms and conditions of a Definitive WSMA and such other related matters, as may be necessary to execute and effect a Definitive WSMA. In negotiating the precise terms and conditions of a Definitive WSMA, if any, the Parties shall retain their respective discretionary authority; provided, however, that the definitive WSMA shall be consistent with the terms of the Agreement in Principle.

2.03 Negotiation and Execution of Third Party Agreements. EVMWD shall, in good faith, negotiate, secure, and execute third party agreements necessary and advisable to effect the intent of the Agreement in Principle and achieve a Definitive WSMA. Such third party agreements shall include, by way of example and not as a limitation, water supply agreements with Western Municipal Water District; and or cooperation and understanding agreements with the City of Lake Elsinore, to the extent such agreements are necessary.

### 3.0 COOPERATION WITH HYDRO FOR THE LEAPS PROJECT

EVMWD shall cooperate with Hydro in good faith for the successful entitlement, development, and construction of the LEAPS Project. Without limiting the generality of the foregoing, EVMWD's cooperation shall include:

3.01 No Affirmative Opposition or Interference. At no time shall EVMWD directly or indirectly oppose, interfere with, or cause any third party to oppose or interfere with, any effort or proceeding to entitle, develop or construct the Project, including without limitation, the pending FERC application for Project No. 14227, State Water Resources Control Board proceedings for water quality certification for the Project under Section 401 of the federal Clean Water Act ("401 Certification"), or proceedings before the United States Forest Service; nor

shall EVMWD directly or indirectly prevent any consultant, lobbyist, or other third party from engaging or working with Hydro on the LEAPS Project.

3.02 Withdrawal of Affirmative Opposition. EVMWD shall withdraw and otherwise unwind any affirmative opposition to the LEAPS Project that it has lodged with any governmental, administrative, regulatory or public agency, political body, and/or private interest group, including without limitation, the County of Riverside, since Hydro announced its intention to apply for licensure on Project No. 14227 in June, 2017. EVMWD shall submit a letter in the form attached hereto as Exhibit 3 to be submitted to FERC by the District withdrawing any prior affirmative opposition and supporting the benefits of additional water being stored in Lake Elsinore in connection with Project No. 14227.

3.03 Good Faith Consideration of Environmental Studies and Reports. Hydro will be responsible to commission and pay for any environmental studies and reports in connection with the review and approval of the Project and the Definitive WMSA. The Parties anticipate that the State Water Resources Control Board will serve as the CEQA lead agency in connection with the 401 Certification, which is expected to evaluate the water quality effects of the Project, including those associated with the water supplies addressed in the proposed Water Supply and Management Agreement and that EVMWD will serve as a "Responsible Agency" as defined by the CEQA Guidelines. EVMWD shall consider all such studies and reports honestly and in good faith, and shall not misrepresent to the public or otherwise mischaracterize in any forum, any finding in any such study or report.

3.04 Responding to Requests for Information. EVMWD shall cooperate with Hydro in responding to any request for information from any governmental, administrative, regulatory or public agency, political body, private interest group, or other person or entity connected to or concerned with the entitlement, development, financing, and/or construction of the LEAPS Project, provided that Hydro shall reimburse EVMWD for all extraordinary costs incurred by EVMWD in responding to such requests within thirty (30) days from the presentation of an invoice documenting such extraordinary costs.

3.05 Joint Press Release Regarding Settlement. Without limiting any other obligation in this Agreement, the Parties, to avoid conflicting or divergent accounts of the fact of settlement or content of this Agreement, shall cooperate in the timing and content any press release regarding the fact of settlement or content of this Agreement. The Parties covenant and agree to cooperate in good faith in the production of any statement as may be reasonably advisable to further inform the public regarding the Project or any anticipated effect of the Project on the Lake.

#### 4.0 MONETARY CONSIDERATION

EVMWD shall pay and forgive the following monetary sums:

4.01 Return of USFS Check. Upon the execution of this Agreement, EVMWD shall return to Hydro the sum of \$154,851.76, which is the amount of the refund EVMWD received from the United States Forest Service in connection with the LEAPS Project, ("USFS Check").

Reimbursement of the USFS Check shall be made payable to "Nevada Hydro, Inc.", and shall be delivered to Yale & Baumgarten, LLP, at 1450 Frazee Road, Suite 403, San Diego, California 92108, or shall be made by wire transfer as Hydro may direct.

4.02 Release of Claim for State Water Board and Other Fees. Consistent with the release set forth in Article 5.0, EVMWD shall release its claim to recover from Hydro monies paid to the State Water Board or others in connection with the LEAPS Project.

4.03 Release of Claim for Reimbursement Under Development Agreement. Consistent with the release set forth in Article 5.0, EVMWD shall release any claim for reimbursement from Hydro as provided for in Paragraphs 3.1 (a) and (b) of the Development Agreement.

4.04 Amount of Additional Monetary Compensation. As further consideration for the waivers and releases, and dismissal of the Lawsuit as set forth in Articles 5.0 and 6.0, EVMWD shall pay Hydro the sum of two million dollars (\$2,000,000.00), ("Additional Monetary Compensation").

4.05 Payment of Additional Monetary Compensation. The Additional Monetary Compensation shall be paid by EVMWD to Hydro within thirty (30) days of the execution of this Agreement. All payments of Additional Monetary Compensation shall be deposited into an interest bearing escrow account (escrow holder of Hydro's choice), and shall, unless the provisions of Article 9.0 are invoked, be irrevocably distributed by the escrow holder to Hydro upon issuance of Notice to Proceed. In the event Hydro elects to return to the status quo ante pursuant to Article 9.0, the Additional Monetary Compensation shall remain on deposit with the escrow holder pending final resolution of the Lawsuit. Upon final resolution of the Lawsuit by judgment or settlement, the escrow holder shall pay (or return as the case may be) the Additional Monetary Compensation to the Party in whose favor judgment is entered, or as may be directed by the Parties pursuant to a mutually executed settlement agreement. This section 4.05 shall survive a termination of this Agreement and return to the status quo ante under Article 9.0.

## 5.0 MUTUAL RELEASE AND WAIVER OF CLAIMS

5.01 Release and Waiver of Claims by Hydro. Except for the rights and obligations set forth in this Agreement, Hydro, for itself and on behalf of its agents, attorneys, employees, insurers, owners, officers, directors, shareholders, members, principals, predecessors, partners, affiliates, successors, subsidiaries, assigns, and all other persons, firms or entities acting on its behalf, hereby fully and forever completely releases, acquits and discharges EVMWD, as well as its agents, attorneys, employees, insurers, owners, officers, directors, shareholders, members, principals, predecessors, partners, affiliates, successors, subsidiaries, spouses, heirs, assigns, and all other persons, firms or entities acting on its behalf, (collectively "EVMWD Releasees") from any and all claims, demands, losses, damages, costs, attorneys' fees, actions, causes of action, liabilities of whatever kind and nature, whether known or unknown, suspected or unsuspected, claimed or unclaimed, which it has or might in the future have against EVMWD Releasees, arising out of or in any way related to or connected with the Development Agreement or the Lawsuit.

5.02 Release and Waiver of Claims by EVMWD. Except for the rights and obligations set forth in this Agreement, EVMWD, for itself and on behalf of its agents, attorneys, employees, insurers, owners, officers, directors, shareholders, members, principals, predecessors, partners, affiliates, successors, subsidiaries, assigns, and all other persons, firms or entities acting on its behalf, hereby fully and forever completely releases, acquits and discharges Hydro, as well as its agents, attorneys, employees, insurers, owners, officers, directors, shareholders, members, principals, predecessors, partners, affiliates, successors, subsidiaries, spouses, heirs, assigns, and all other persons, firms or entities acting on its behalf, (collectively Hydro Releasees") from any and all claims, demands, losses, damages, costs, attorneys' fees, actions, causes of action, liabilities of whatever kind and nature, whether known or unknown, suspected or unsuspected, claimed or unclaimed, which it has or might in the future have against Hydro Releasees, arising out of or in any way related to or connected with the Development Agreement or the Lawsuit.

5.03 Acknowledgment of Scope of Release. It is acknowledged and understood by the Parties, and each of them, that there is a risk that, as of now and/or subsequent to the execution of this Agreement, the Parties, and each of them, their heirs, successors or assigns may discover or may incur or suffer additional loss, damage or injury that is or may be related to the Development Agreement and/or the Lawsuit, but that said loss or damage or injury is unknown or unexpected at the time of the execution of this Agreement. There is also a risk that loss, damage or injury now known may become worse or greater than now known or expected. The purpose of this Agreement is to release the Parties, and each of them, from all such known or unknown, expected or unexpected, matured or unmatured claims. The Parties, and each of them, acknowledge that this Agreement and all releases and waivers contained herein are intended to and do apply to all such known or unknown, expected and unexpected, risk, losses, damage and/or injuries.

5.04 Waivers of Civil Code Section 1542. The Parties, and each of them, expressly waive and understand that they are waiving all rights under Section 1542 of the California Civil Code. Said section reads as follows:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

5.05 Effectiveness of Releases. The effectiveness of the releases set forth in this section are subject to the provisions of Article 8.0 and Article 9.0 herein below.

## **6.0 ENTRY OF CONSENT JUDGMENT; DISMISSAL OF LAWSUIT; RETENTION OF JURISDICTION**

6.01 Survival of this Agreement. This Agreement shall survive entry of the Consent Judgment by the Court.

6.02 Dismissal of the Lawsuit. In the event the Consent Judgment is not entered by the Court the Parties, by and through their attorneys of record shall dispose of the Lawsuit by filing a dismissal of the entire action with prejudice; each party to bear its own attorney fees, expert witness fees, and costs.

6.03 Retention of Jurisdiction; Enforcement of Agreement. The court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6 and the dispute resolution and remedies procedures contained in Article 8.0. Without limiting the generality of the foregoing, the Court, in any proceeding to enforce this Agreement under Code of Civil Procedure section 664.6 after the Consent Judgment is entered and has become final, shall have the authority to amend or supplement the Consent Judgment to provide for enforcement of this Agreement.

## 7.0 REPRESENTATIONS AND WARRANTIES

7.01 Representations and Warranties. As material consideration for the execution of this Agreement, the Parties make the following representations and warranties, which shall survive the execution and delivery of this Agreement:

(a) Each is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation.

(b) Each has the right, power, legal capacity and authority to execute and enter into this Agreement, to undertake the obligations, perform the acts, and execute the documents required or advisable under this Agreement.

(c) Neither the execution and delivery of this Agreement, nor any other document, instrument or agreement to be executed pursuant hereto, nor the consummation of the transactions contemplated herein, nor compliance with the terms and provisions hereof or with the terms and provisions of any other instrument, agreement or document to be executed hereunder, nor any covenants made or rights granted hereunder, will conflict or will be inconsistent with, or will result in any breach of, any of the terms, covenants, conditions or provisions of any agreement or other instrument to which it is a party or by which it may be bound or to which it may be subject, or will violate any provision of any charter, organizational document, bylaw, resolution, or will in any way violate or infringe upon any rights belonging to any third party person, firm or entity.

(d) It will not enter into any agreement or other commitment which would interfere with the full and prompt performance of its obligations under this Agreement.

7.02 Indemnity. EVMWD agrees to defend, indemnify and hold Hydro Releasees (as defined hereinabove) from and against any and all loss, damage, liability or expense (including costs and attorneys' fees) which Hydro Releasees may incur by reason of, or in connection with, any breach of the foregoing representations. Hydro agrees to defend, indemnify and hold EVMWD Releasees (as defined hereinabove) from and against any and all loss, damage, liability

or expense (including costs and attorneys' fees) which EVMWD Releasees may incur by reason of, or in connection with, any breach of the foregoing representations. The duty to defend, indemnify, and hold harmless shall not extend to any claims brought against EVMWD, Hydro Releasees, or others alleging challenging the validity or execution of this Agreement. In the event such an action is brought against EVMWD, Hydro Releasees, or others associated with the approval and/or execution of this Agreement, each party shall bear its own attorney fees and costs in the defense of such an action. Unless otherwise mutually agreed, the District and Hydro agree to vigorously defend any such action challenging the approval and/or execution of this Agreement, including the Agreement in Principle, to and through "Final Judgment." For purposes of this Agreement, Final Judgment means through final appeal of any appealable adverse order, ruling or judgment in the trial court. In the event any third party action challenging the approval and/or execution of this Agreement results in a final adverse judgment and a final award of attorney's fees and costs in favor of the third party challenger, the Parties shall share equally in the payment of such fees and costs.

## **8.0 DEFAULT; BREACH; DISPUTE RESOLUTION AND REMEDIES**

8.01 Default by EVMWD. In event EVMWD fails to timely and duly perform any obligation or satisfy any condition required under this Agreement, it shall be deemed in default. Unless Hydro deems the default to be an incurable breach, EVMWD shall have 10 business days from written notice of default to cure the default, unless additional time is reasonably required to cure. If EVMWD fails to cure said default within the time provided, it shall be deemed to be in breach of this Agreement.

8.02 Default by Hydro. In event Hydro fails to timely and duly perform any obligation or satisfy any condition required under this Agreement, it shall be deemed in default. Unless EVMWD deems the default to be an incurable breach, Hydro shall have 10 business days from written notice of default to cure the default, unless additional time is reasonably required to cure. If Hydro fails to cure said default within the time provided, it shall be deemed to be in breach of this Agreement.

8.03 Dispute Resolution. In the event of any dispute between the Parties arising out of this Agreement, including a claim of breach, the Parties shall first attempt to resolve their disputes by way of mediation before the Hon. J. Richard Haden at JAMS San Diego within sixty (60) days from the onset of the Dispute. Mediation fees shall be split equally between the Parties. If Judge Haden is unavailable or unable to serve, the Parties shall meet and confer within five (5) days of notice of unavailability, and mutually agree on a replacement mediator. If the Parties cannot mutually agree on a replacement mediator, either Party may petition the court for the appointment of a replacement mediator on an ex parte basis after proper notice under the California Rules of Court. Notwithstanding the foregoing, nothing in this section shall preclude either party from seeking a provisional remedy in a court of competent jurisdiction pending completion of the mediation process.

8.04 Rights and Remedies in Event of Breach. In the event of a breach of this Agreement, the Parties shall be entitled to pursue all remedies available at law or in equity. In any action by Hydro under this section 8.04, nothing shall preclude Hydro from seeking and

recovering as a component part of its damages for breach of this Agreement by EVMWD, the sunk costs alleged as damages in the Lawsuit, to the extent such sunk costs would have been recoverable by Hydro upon the successful completion of the Project No. 14227.

8.05 Attorney's Fees and Costs. In any suit, arbitration or other proceeding brought to interpret or enforce this Agreement, or to assert this Agreement as a defense to any proceeding, the prevailing Party shall be entitled to an award of reasonable attorneys' fees, expert witness fees, and costs, in addition to any other relief to which it is entitled. This provision shall not apply to any action brought as part of the return to status quo ante set forth in Article 9.0.

## 9.0 CONDITION SUBSEQUENT

In the event Hydro is not in breach of any of the covenants contained in this Agreement and has negotiated diligently and in good faith, and the Parties have engaged in dispute resolution pursuant to this Agreement, but the Parties cannot reach a definitive WSMA consistent with the terms in the Agreement in Principle, Hydro shall have the right to declare a return to the status quo ante. For purposes of this Agreement, a return to the status quo ante shall include a setting aside of the dismissals of the Lawsuit *nunc pro tunc*, nullification of the Releases, including but not limited to the Release of Claims set forth in Sections 4.02, 4.03, 5.01, 5.02, 5.03, 5.04, and 5.05 of this Agreement with each Party retaining each and every right or defense on both the First Amended Complaint and Cross-Complaint, that it had or may have had as of the date of dismissal without regard to waivers and releases contained in this Agreement. For purposes of this section, each Party expressly agrees that all time accrued from the date of filing of the original Complaint to the date of dismissal provided in Article 6.0 shall not count against the five year period provided by Code of Civil Procedure section 583.310. In the event Hydro elects to return to the status quo ante, this Agreement and all of the obligations herein, unless expressly stated otherwise, shall terminate and be of no further force and effect. In the event the Court enters the Consent Judgment, and that Consent Judgment becomes final and enforceable, the Condition Subsequent will be deemed satisfied.

## 10.0 GENERAL PROVISIONS

10.01 Good Faith Negotiation. The Parties to this Agreement, and each of them, acknowledge: (a) this Agreement and its reduction to final written form is a result of extensive good faith negotiations between the Parties through their respective counsel; (b) the Parties understand the meaning and effect of this Agreement after having had an opportunity to consult with counsel; and (c) any statute or rule of construction that ambiguities are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement.

10.02 Governing Law. This Agreement is made and entered into in the State of California and shall in all respects, be interpreted, enforced and governed by the laws of the State of California.

10.03 Interpretation; Severability. Paragraph headings are for reference only and shall not affect the interpretation of any paragraph herein. Should any provision of this Agreement be declared by any Court to be illegal or invalid, the validity of the remaining parts, terms, or

provisions shall not be affected thereby, and said illegal and/or invalid part, term, or provision shall be deemed not to be a part of the Agreement.

10.04 No Admissions. Each Party understands that this Agreement is the result of a compromise, and the furnishing of the above described consideration shall never at any time for any purpose be construed as an admission of any liability by any Party hereto, and each Party denies having engaged in any wrongful conduct.

10.05 Final Agreement; Modification and Waiver. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof, and all prior or contemporaneous agreements, representations or understandings by and between the Parties, whether written or oral, are superseded and merged herein. No supplement, amendment or modification of this Agreement shall be valid or binding unless in writing and executed by both Parties. Neither Party shall be deemed to have waived any provision in this Agreement, unless specifically agreed to in writing and signed by the Party effecting the waiver. No waiver of any provision of this Agreement shall be deemed to constitute a continuing waiver of that provision, nor shall it be deemed to constitute a waiver of any other provision.

10.06 Binding on Successors. This Agreement is and shall be binding upon, and shall inure to the benefit of the Parties, and each of them, including their respective past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, members, predecessors, successors-in-interest, heirs, assigns and all other persons, firms or corporations with whom any of the former have been, or now or may hereinafter be affiliated.

10.07 Time is of the Essence. Time is of the essence in the performance of each and every material obligation contained in this Agreement.

10.08 Further Assurances. The Parties shall do, execute, acknowledge and deliver such further acts, deeds, conveyances, assignments, notices of assignment or transfer and assurances as the requesting Party may reasonably require in order to better assure, convey, grant, assign, transfer and confirm upon the requesting Party the rights now or hereafter intended to be granted under this Agreement or any other instrument executed in connection with this Agreement; provided, however, no Party shall be obligated to provide any further assurance that would materially increase the liabilities or obligations of such Party hereunder or materially reduce the rights and benefits of such Party hereunder.

10.09 Notices. All notices, demands, requests, consents and waivers under this Agreement shall be in writing, shall refer to this Agreement and shall be delivered electronically and personally, or by registered or certified mail, postage prepaid, return receipt requested, or by a nationally recognized overnight courier, and addressed as set forth below. Any notice shall be deemed to have been given on the first (1st) Business Day on or after the date of electronic transmission.

///

To Hydro:

Rexford J. Wait  
Nevada Hydro Company, Inc.  
2416 Cades Way  
Vista, California 92083  
rwait@controltechnology.org

With copies to

David W. Baumgarten, Esq.  
Yale & Baumgarten, LLP  
1450 Frazee Rd., Suite 403  
San Diego, California 92108  
baum@yblaw.com

David Aladjem  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814  
daladjem@downeybrand.com

To EVMWD:

John Vega, General Manager  
Elsinore Valley Municipal Water District  
31315 Chaney St.  
Lake Elsinore, CA 92530

With copies to

James Gilpin, Esq.  
Best Best & Krieger LLP  
655 West Broadway, 15th Floor  
San Diego, California 92101  
James.Gilpin@bbklaw.com

Steven Anderson, Esq.  
Best Best & Krieger LLP  
655 West Broadway, 15th Floor  
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Steve.Anderson@bbklaw.com

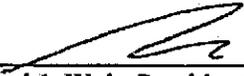
10.10 Execution in Counter-Parts. This Agreement may be executed in counter-parts, with the same force and affect as if executed in one complete document. A signature sent by



one party to this Agreement to the other party via facsimile or in Portable Document Format ("PDF") shall be treated as an original.

10.11 Warranty of Capacity. Each individual executing this Agreement warrants that he or she has the authority to sign, and, as the case may be, pay or receive the Additional Monetary Compensation, on behalf of the person or entity for whom he or she is signing.

In witness whereof, the undersigned have executed this Agreement on the dates affixed by their respective signatures.

Dated: July 26, 2018	The Hydro Company, Incorporated, doing business in California as the Nevada Hydro Company, Inc.  By:  Rexford J. Wait, President
Dated: July __, 2018	Elsinore Valley Municipal Water District  By: _____ John Vega, General Manager

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one party to this Agreement to the other party via facsimile or in Portable Document Format ("PDF") shall be treated as an original.

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In witness whereof, the undersigned have executed this Agreement on the dates affixed by their respective signatures.

Dated: July __, 2018	The Hydro Company, Incorporated, doing business in California as the Nevada Hydro Company, Inc.  By: _____ Rexford J. Wait, President
Dated: July __, 2018	Elsinore Valley Municipal Water District  By:  John Vega, General Manager

02335.00306\3129624.1



**DEVELOPMENT AGREEMENT**  
by and between  
**ELSINORE VALLEY MUNICIPAL WATER DISTRICT**  
and  
**THE HYDRO COMPANY, INCORPORATED**

This DEVELOPMENT AGREEMENT ("Agreement"), made this 15th day of May, 1997, by and between the ELSINORE VALLEY MUNICIPAL WATER DISTRICT, a Municipal Water District organized pursuant to section 71000 *et seq.* of the Water Code of the State of California ("District") and THE HYDRO COMPANY, INCORPORATED, a corporation organized under the laws of the State of Nevada ("Company"), with District and Company sometimes being referred to herein as the "Parties".

RECITALS

*WHEREAS*, District wishes to utilize the stabilization benefits of the Lake Management Project to develop a revenue source for the costs associated with the Lake Management Facilities through the generation of hydroelectric power; and

*WHEREAS*, to meet this goal, District has begun the process to develop the Lake Elsinore Advanced Pumped Storage Project and related transmission facilities ("Project"); and

*WHEREAS*, District has received a preliminary permit from the Federal Energy Regulatory Commission ("FERC"), Project No. 11504-000, dated April 7, 1995, to begin development of the Project, a copy of which is attached to this Agreement as Exhibit "A" ("Preliminary Permit"); and

*WHEREAS*, the Preliminary Permit requires that an application be submitted to the FERC within three years to obtain the license required to construct and operate the Project ("FERC License"); and

*WHEREAS*, District supports the continued development of the Project as in the public interest but does not wish to spend the remaining funds required to obtain the FERC License and to construct and operate the Project; and

*WHEREAS*, Company desires to continue with the development of the Project, namely, to proceed with the FERC License application process, to acquire the FERC License in the District's name or jointly in the District's and Company's name, and to construct and operate the Project; and

*WHEREAS*, District and Company have agreed that it is mutually beneficial to enter into this Agreement to allow the Project to proceed with minimal additional expenditure of public funds and without delay in the FERC License application and in the construction and operation of the Project.

### AGREEMENT

*NOW, THEREFORE*, for and in consideration of the foregoing premises and the agreements, covenants, representations, and warranties hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are acknowledged and agreed, the Parties agree as follows:

1. Completion of the Project Entitlements; Certain Related Matters.

1.1 Company promptly and timely will take all actions required and necessary to fully entitle the Project. Such actions will include, without limitation, completion and submittal of the FERC License application for the Project, development of all studies, reports, plans, and such other data as required in support of the FERC License application, including, without limitation, a draft Environmental Assessment or Environmental Impact Statement pursuant to the National Environmental Policy Act. Company also agrees to conduct any necessary scoping, consultation, and sites visits required as part of the FERC License application.

1.2 Company promptly and timely will obtain any other federal, state, and local entitlements required for the FERC License application and for the construction and operation of the Project ("Related Entitlements").

1.3 The FERC License application and applications for Related Entitlements will be submitted only in either the name of "District" or the name of "District and Company" as Company shall determine in its sole discretion.

1.4 Company will provide all necessary funding and will pay all expenses and costs to complete and submit the FERC License application, to obtain the FERC License, and to obtain Related Entitlements.

2. Development Rights of Company.

2.1 At the Effective Time (as defined in Section 4.1 hereof) and except as otherwise stated in Section 2.2 hereof and elsewhere in this Agreement, District hereby shall grant to Company the exclusive right to develop the Project, which exclusive right shall include, without limitation, the right: (i) to arrange for all necessary licenses and permits, including, without limitation,

the FERC License and Related Entitlements; (ii) to arrange for construction financing; and (iii) to raise equity and to determine other equity participants in the Project, if any.

2.2 Subject to District's Condition Subsequent (as defined in Section 12 hereof), the exclusive right referred to in Section 2.1 hereof shall include the right (i) to form a separate legal entity to hold title to the Project, which entity shall be owned exclusively by the Company and other equity participants, if any; (ii) to acquire from District, at no additional cost, all legal and equitable title and interests in and to the Project, the FERC License and Related Entitlements belonging to the District or belonging jointly to District and Company; and (iii) to transfer by sale, lease, assignment, or any other means, all legal and equitable title and interests in and to the Project, the FERC License and Related Entitlements, and this Agreement, subject to the consent of the District, which consent shall depend solely upon the financial capacity of the transferee of Company to construct and/or operate the Project, and which consent shall not be unreasonably withheld.

2.3 District hereby agrees to make every reasonable effort necessary or appropriate to effectuate the rights referred to in Sections 2.1 and 2.2 hereof, including, without limitation, the execution of deeds of conveyance, assignments, releases, and powers of attorney.

2.4 Subject to Section 6.7 hereof, Company will provide all necessary funding and will pay all expenses and costs in connection with construction and operation of the Project.

### 3. Payment To District.

3.1 After satisfaction of District's Condition Subsequent and at the successful closing of all financing and/or equity contribution required to construct and operate the Project, and solely contingent upon such successful closing, Company will pay, within thirty (30) days thereafter, District as follows, which amounts, unless otherwise agreed herein, shall comprise the sole consideration to which District is entitled herein:

a. Company will reimburse District for all of its expenditures, together with interest thereon at the rate of six percent (6%) per annum calculated from the date each such expenditure was made, in connection with the Project through the date of such closing. Such expenditures include, without limitation, expenditures accrued but not paid and expenditures for consultant and attorneys' fees and costs. The Parties agree that the amount of such expenditures, including interest, at the Effective Time as defined in Section 4.2 hereof shall be \$978,752.43. District shall provide Company with reasonable access to District's books and records maintained in accordance with generally accepted accounting principles as consistently applied by District and as necessary for Company to verify the foregoing amount or any adjustment thereto.

b. Company will pay District five percent (5%) of the "net profit" received by Company. For this purpose, the term "net profit" means: The total amount of funds available to

the Company as of the closing of all necessary construction financing (whether such funds are received in the form of debt, equity, or otherwise) ("Total Available Funds")—less:

(i) Company's ordinary and necessary expenditures, together with interest thereon at the rate of six percent (6%) per annum, in connection with the Project incurred through the date of such closing; and

(ii) amounts payable to District pursuant to the next above Clause (a); and

(iii) One percent (1%) of the Total Available Funds, to be paid to the Company as a development fee.

c. Unless otherwise provided herein, District shall have no other interest in or claim to any amounts received by Company at the closing of construction financing or accruing to the Project during its operation due to energy sales, capacity sales, or otherwise.

3.2 Company will pay District for the performance of water management services, which performance shall include, without limitation, maintaining the water level sufficient for operation of the Project, at Lake Elsinore from revenues resulting from the power generation operations of the Project District's cost for such performance of services plus an amount equal to ten percent (10) thereof for District's overhead costs.

3.3 In its good faith discretion, Company will use reasonable efforts to obtain reimbursement for District for some portion of the expenses and costs incurred by District in connection with the Lake Management Project. District represents that such expenses and costs are in the total amount of \$39,538,897.98. District shall provide Company with reasonable access to District's books and records maintained in accordance with generally accepted accounting principles as consistently applied by District and as necessary for Company to verify the foregoing amount or any adjustment thereto. Because the Parties recognize that the Project could not be financed if repayment of such amount is required, this provision is not a material term of this Agreement.

#### 4. Effectiveness; Actions of District and Company; Termination; Default

4.1 Effective Time. The effectiveness of this Agreement ("Effectiveness") shall be at 10:00 A.M. Lake Elsinore, California, local time on the fifth business day following the execution of this Agreement, unless otherwise agreed to by the Parties ("Effective Time").

4.2 Action of District at Effective Time. At the Effective Time, District shall deliver or have delivered to Company the following:

(i) copies of resolutions duly adopted by District authorizing and approving District's performance of the transactions contemplated in this Agreement and the delivery of the documents described hereunder, certified as true and of full force as of the Effective Time by appropriate representatives of District;

(ii) a certificate, dated as of the Effective Time, of an appropriate representative of District certifying that as of the Effective Time all of the representations and warranties by or on behalf of District contained in this Agreement are true and correct and the covenants and agreements of District to be performed prior to or as of the Effective Time pursuant to this Agreement have been performed; and

(iii) a certificate of incumbency, dated as of the Effective Date, for the representation of District making the certifications described hereunder and for executing this Agreement.

4.3 Action of Company at Effective Time. At the Effective Time or other time stated herein, Company shall have delivered to District the following:

(i) copies of resolutions duly adopted by Company authorizing and approving Company's performance of the transactions contemplated in this Agreement and the delivery of the documents described hereunder, certified as true and of full force as of the Effective Time by appropriate officers of Company;

(ii) a certificate, dated as of the Effective Time, of an officer of Company certifying that as of the Effective Time all of the representations and warranties by or on behalf of Company contained in this Agreement are true and correct and the covenants and agreements of Company to be performed prior to or as of the Effective Time pursuant to this Agreement have been performed;

(iii) a certificate of incumbency, dated as of the Effective Date, for the officer of Company making the certifications described hereunder and for executing this Agreement; and

(iv) within thirty (30) days after execution of this Agreement, a copy, certified by the Company as true and correct, of its application for a certification of qualification to do business of Company from the State of California.

4.4 Termination. If the FERC denies the License, this Agreement shall terminate upon the earlier to occur of default (as defined in Section 4.5 hereof) or the receipt of notice of the denial, unless Company, in its sole discretion, seeks FERC reconsideration or appellate review. If FERC reconsideration or appellate review is unsuccessful, this Agreement shall terminate upon

receipt of notice of final completion of the review process. Termination shall relieve both parties of any further obligations under this Agreement, although each shall continue to have any and all remedies for any breach of any Agreement obligation which occurred prior to the date of termination. If the FERC grants the License without conditions, or grants the License with conditions acceptable to the Company in its sole discretion, this Agreement shall remain in force until the earlier of the following two events: (i) end of the life of the project; or (ii) the Company's sale, lease, assignment, or transfer by any means, of the Company's legal and equitable title and interests in and to the Project.

#### 4.5 Default.

4.5.1 Default by Company. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by Company:

a. The failure by company to obtain qualification to do business in the State of California.

b. The failure by Company to make any payment required to be made by hereunder, as and when due, where such failure shall continue for a period of ten (10) days after the amount is due. If any payment due from Company is not received by District within ten (10) days of when due, Company shall pay District an additional sum of ten percent (10%) of the overdue payment as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the administrative cost that District will incur by reason of a late payment by Company. Acceptance of any late payment charge shall not constitute a waiver from exercising any of the other rights and remedies available to District under this Agreement, at law or in equity, including, but not limited to, any interest charges imposed herein.

c. The failure by Company to observe or perform any of the express or implied covenants of this Agreement to be observed or performed by Company, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by Company from District; provided, however, that it shall not be deemed an Event of Default by Company if Company shall commence to cure such failure within said thirty (30)-day period and thereafter diligently prosecute such cure to completion.

d. If there occurs an Event of Default by Company, in addition to any other remedies available to District at law or in equity, District shall have the option to terminate this Agreement and all rights of Company hereunder.

4.5.2 Default by District. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by District:

a. The failure by the District to perform any responsibility or transfer any interest as specified in this Agreement

b. The failure by District to observe or perform any of the express or implied covenants of this Agreement to be observed or performed by District, where such failure shall continue for a period of thirty (30) days after written notice thereof is received by District from Company; provided, however, that it shall not be deemed an Event of Default by District if District shall commence to cure such failure within said thirty (30)-day period and thereafter diligently prosecute such cure to completion.

c. If there occurs an Event of Default by District, in addition to any other remedies available to Company at law or in equity, Company shall have the option to terminate this Agreement and all rights of District hereunder.

5. Representations and Warranties of District. As of the date hereof District represents and warrants to Company the following:

5.1 Capacity. District is a Municipal Water District duly organized and validly existing under the laws of the State of California with all requisite power and authority.

5.2 Authorization; Contract Binding. The execution, delivery, and performance by District of this Agreement and other agreements and transactions contemplated hereby are within District's power. No provisions exist in any document or instrument to which District is a party or by which District is bound which would be violated by the execution of this Agreement or the consummation of the transactions contemplated hereby. This Agreement will, upon execution, constitute the valid, legal, and binding obligation of District, enforceable against District in accordance with its terms, except as such may be limited by bankruptcy and other laws of general applicability affecting sellers' and creditors' rights and general equitable principles.

6. Representations and Warranties of Company. As of the date hereof Company represents and warrants to District the following:

6.1 Capacity. Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada with all requisite power and authority, and, within thirty (30) days of the date hereof, will submit a complete application and do all things necessary to obtain qualification to carry on its business in the State of California with all requisite power and authority.

6.2 Authorization; Contract Binding. The execution, delivery, and performance by Company of this Agreement other agreements and transactions contemplated hereby are within Company's power. No provisions exist in any document or instrument to which Company is a party

or by which Company is bound which would be violated by the execution of this Agreement or the consummation of the transactions contemplated hereby. This Agreement will, upon execution, constitute the valid, legal, and binding obligation of Company, enforceable against Company in accordance with its terms, except as such may be limited by bankruptcy and other laws of general applicability affecting sellers' and creditors' rights and general equitable principles.

6.3 Licenses. Company (including its agents and subcontractors) has all engineering and other professional licenses and permits required or necessary to develop the Project, including, without limitation, to proceed in accordance with the instructions and requirements of the Preliminary Permit.

6.4 Litigation or Proceedings. There are no such claims, actions, proceedings, or investigations of which Company has received notice pending or threatened challenging the validity or propriety of the transactions contemplated by this Agreement. Company is not now, and has not been, a party to any injunction, order, or decree restricting the method of the conduct of its business or the marketing of any of its services, nor has any governmental agency investigated or requested (other than on a routine basis) information with respect to such methods of business or marketing of services; Company has not received any claim that Company currently violates any federal, state, or local law, ordinance, rule or regulation, which could have a material adverse effect on the Project, and no such claim is or has been threatened; and there have been no developments materially adverse to Company with respect to any pending or threatened claim, action or proceeding of an administrative or judicial nature.

6.5 Payments. Neither Company nor any affiliate or representative thereof has, directly or indirectly, paid, delivered or agreed to pay or deliver any fee, commission, or other sum of money or item of property, however characterized, to any person, government official or other party with respect to the Project that was or is illegal under any federal, state or local law.

6.6 Absence of Liabilities. As of the date hereof, the Company has no liabilities.

6.7 Sufficient Resources. Company has sufficient resources, including, without limitation, personnel, working capital, and adequate funding sources to do all things reasonably necessary to obtain the FERC License. Company will use its best efforts to obtain additional equity and financing necessary to construct the Project. In the event Company in its sole discretion determines that it is unable to obtain equity and or financing necessary to construct the Project, it shall inform District of such determination and discuss with District the reasons for such determination. Following such discussions, Company, in its sole discretion, may cease efforts to further develop the Project. In the event of such cessation, and whether or not the FERC has granted the License, Company shall make the transfers to District contemplated under Section 12.2 of this Agreement.

6.8 Expertise. Company has the expertise and will exercise its best and reasonable judgment therewith to continue with the FERC License application; to construct the Project, and to operate the Project

6.9 No Misleading Statements. No representation or warranty by Company contained in this Agreement, the documents to be delivered at the Effective Time by or on behalf of Company to District or any of its representatives in connection with the transactions contemplated hereby, and no written statement made or delivered by Company in connection with this Agreement or the transactions contemplated hereby, contains or will contain any untrue statement of a material fact, or, to the best of their knowledge after due inquiry, omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading. Copies of all documents described herein shall be true, correct and complete, and all descriptions of such documents shall be true and complete.

7. Covenants of District. District covenants and agrees as follows:

7.1 Best Efforts. District shall use its best efforts to proceed toward the Effectiveness and to cause the conditions to Effectiveness to be met as soon as practicable and consistent with other terms contained herein. District shall notify Company as soon as practicable of any event or matter which comes to District's attention which may reasonably be expected to prevent the conditions to District's obligations being met.

7.2 Consents. Subject to Sections 1.4 and 2.4 hereof, District will use its reasonable best efforts to obtain all permits, approvals, authorizations, and consents of all third parties, necessary in the reasonable opinion of Company, desirable for the purpose of (i) consummating the transactions contemplated hereby or (ii) enabling Company to proceed with development of the Project.

7.3 Acquisition of Land Rights. District will assist the Company to the maximum extent possible with the acquisition of land and rights of way as necessary to allow construction and operation of the Project; however, Company shall be responsible for payment of compensation, if any, for such acquisition and of District's expenses, including, without limitation, reasonable attorneys' fees and costs, provided such compensation, expenses and costs were approved in advance by Company in writing.

7.4 Notice; Efforts to Remedy. District promptly shall give written notice to Company upon becoming aware of the impending occurrence of any event which would cause or constitute a breach of any of the representations, warranties, or covenants of District contained or referred to in this Agreement and shall use its reasonable best efforts to prevent or promptly remedy the same.

7.5 Water Management Services. Upon the completion of the Project to its operational stage, District shall provide all water management at Lake Elsinore necessary for operation of the Project, including, without limitation, maintenance of the water level in Lake Elsinore.

7.6 Future Project Entitlements. Subject to Sections 1.4 and 2.4 hereof, District will act as lead agency for all licensing and permitting requirements including environmental, FERC, and other regulatory requirements and submittals.

8. Covenants of Company. Company covenants and agrees as follows:

8.1 Best Efforts. Company shall use its best efforts to proceed toward the Effectiveness and to cause the conditions to Effectiveness to be met as soon as practicable and consistent with other terms contained herein. Company shall notify District as soon as practicable of any event or matter which comes to Company's attention which may reasonably be expected to prevent the conditions to Company's obligations being met.

8.2 Expenditure Records. Company shall keep adequate books and records maintained in accordance with generally accepted accounting principles for all expenditures incurred in connection with the Project for the purpose of, among others, determining net profit under Section 3.1(b) hereof.

8.3 Consents. Company will use its reasonable best efforts to obtain all permits, approvals, authorizations, and consents of all third parties, necessary in the reasonable opinion of District, desirable for the purpose of (i) consummating the transactions contemplated hereby or (ii) enabling Company to proceed with the Project.

8.4 Notice: Efforts to Remedy. Company promptly shall give written notice to District upon becoming aware of the impending occurrence of any event which would cause or constitute a breach of any of the representations, warranties, or covenants of Company contained or referred to in this Agreement and shall use its reasonable best efforts to prevent or promptly remedy the same.

8.5 Project Entitlements. Company promptly and timely shall prepare and submit the FERC License application, applications for Related Entitlements, all other associated documents, studies, and data necessary to complete the application and all related services.

8.6 Progress Reports. Company shall maintain progress reports on the Project.

8.7 Public Relations. Company promptly and timely shall respond to all matters relating to public and community relations for the Project.

8.8 Preliminary Permit. Company will comply with all terms and conditions of the Preliminary Permit.

8.9 Notification. In the event Company fails to meet any FERC or any other regulatory filing deadlines during the FERC License application process, Company will timely notify District and will undertake all actions necessary to cure such failure.

8.10 Insurance. At the Effective Time, Company shall provide District with satisfactory evidence of general liability and personal property insurance, normally carried by similar businesses engaged in the transactions contemplated hereunder, sufficient to protect all personal property owned or controlled by District from theft, fire, or other loss or damage while upon such property. To the extent allowed or allowable, Company hereby releases District and District's Board of Directors, affiliates, agents, and employees from liability or responsibility for any loss or damage resulting from any cause or hazard for which insurance is required to be carried by Company pursuant to this Section 8.10, including any loss or damage resulting from any loss of the use of any property. This release shall apply between the Parties, and it also shall apply to any claims under or through either Party as a result of any asserted right or subrogation.

9. Indemnification.

9.1 Indemnification by District. From and after the Effective Time and continuing only until such time when the FERC License is issued, District shall indemnify and hold harmless Company and its respective officers, directors, employees, and agents (collectively, "Company Indemnified Parties") from and against any and all liabilities, losses, damages, demands, claims, suits, actions, judgments, causes of action, assessments, costs and expenses, including, without limitation, interest, penalties, attorneys' fees, any and all expenses incurred in investigating, preparing, and defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation (collectively, "Damages"), asserted against, resulting to, imposed upon, or incurred or suffered by any of them, directly or indirectly, as a result or arising from the following:

(i) any inaccuracy in or breach or nonfulfillment of any of the representations, warranties, covenants, or agreements made by District in this Agreement or the other agreements contemplated hereby;

(ii) any liability of District arising prior to the Effectiveness which is imposed on Company, except to the extent such liability has been expressly assumed by Company pursuant to this Agreement; and

(iii) any misrepresentation in or any omission from any certificate or other document (collectively, the "Additional Documents") furnished or to be furnished by or on behalf of District under this Agreement.

To be entitled to such indemnification, Company Indemnified Party shall give District prompt written notice of any breach or of the assertion by a third party of any claim with respect to which Company Indemnified Party may bring a claim for indemnification hereunder, and in all events must have supplied such notice to District within the period for the defense of such claims by District. District shall have the right, at its own expense, to defend and litigate any such third party claim, and such Company Indemnified Party shall cooperate to the maximum extent with District to permit District to do so. Should such Company Indemnified Party settle or compromise any claim or matter for which an indemnity would be payable by District hereunder without the prior written consent of District, District shall be relieved of any liability hereunder to Company Indemnified Party with respect to such claim or matter.

9.2 Indemnity by Company. From and after the Effective Time, Company shall indemnify, defend and hold harmless District and its Board of Directors, affiliates, agents, and employees (collectively, the "District Indemnified Parties") from and against any and all Damages asserted against, resulting to, imposed upon, or incurred or suffered by any of them, directly or indirectly, as a result or arising out from the following:

(i) any inaccuracy in or breach or nonfulfillment of any of the representations, warranties, covenants or agreements made by Company in this Agreement or the other agreements contemplated hereby;

(ii) any liability of Company arising prior to the Effectiveness which is imposed on District, except to the extent such liability has been expressly assumed by District pursuant to this Agreement; and

(iii) any misrepresentation in the Additional Documents furnished or to be furnished by or on behalf of Company under this Agreement.

To be entitled to such indemnification, a District Indemnified Party shall give Company prompt written notice of any breach or the assertion by a third party of any claim with respect to which a District Indemnified Party may bring a claim for indemnification hereunder, and in all events must have supplied such notice to Company within the applicable period for defense of such claims by Company. At the request of Company, District Indemnified Party shall contest in good faith by appropriate proceedings any claim or matter for which an indemnity may be payable by Company hereunder. In the alternative, Company shall also have the right, at its own expense, and at its option, to contest any such third party claim, and such District Indemnified Party shall cooperate to the maximum extent with Company to permit Company to do so. Should such District Indemnified Party

settle or compromise any claim or matter for which an indemnity may be payable by Company hereunder without the prior written consent of Company, Company shall be relieved of any liability hereunder with respect to such claim or matter.

10. Conditions Precedent to Obligations of District. The obligations of District hereunder are subject to the satisfaction, on or prior to the Effective Time, of the following conditions unless waived in writing by District:

10.1 Representations/Warranties. The representations and warranties of Company contained in this Agreement shall be true and correct as of the Effective Time; and the covenants and conditions of this Agreement to be complied with or performed by Company at or before the Effective Time pursuant to the terms hereof shall have been duly complied with and performed.

10.2 Action or Proceeding. No action, proceeding, investigation or administrative hearing before a court or any other governmental agency or body shall have been instituted or threatened against Company which seeks injunctive relief in anticipation of the transactions contemplated hereunder and may reasonably be expected to prohibit same.

10.3 Consents; Licenses. All notices to, and consents, authorizations, approvals and waivers from, third parties required for Company to consummate the transactions contemplated hereby shall have been made and obtained, except that qualification to conduct business in the State of California shall have been applied for and there shall be no impediment to obtain the same.

10.4 Proceedings and Documents Satisfactory. District shall have received such certificates, opinions and other documents as it or its counsel may reasonably require in order to consummate the transactions contemplated hereby, all of which shall be in form and substance reasonably satisfactory to it and its counsel. All proceedings in connection herewith and all certificates and documents delivered to District pursuant to this Agreement shall be reasonably satisfactory in form and substance to District and its counsel acting reasonably and in good faith.

10.5 Delivery of Certain Documents. At the Effective Time, District shall have delivered to Company all documents, agreements and instruments contemplated by Agreement.

10.6 Adverse Changes. There shall not have occurred after the date hereof any change in or effect on Company that is, or with reasonable certainty might be, materially adverse to its business, prospects, operations, properties, assets, liabilities or condition (financial or otherwise).

10.7 Letter Agreement Among District and the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California ("Letter Agreement With Cities"). District represents and warrants that it has obtained from each of the Cities an effective waiver of the provisions of Section VII of the Letter Agreement With Cities which waiver shall be acceptable to Company in form and content.

Company hereby undertakes to honor District's obligations, if any, under Section V of the Letter Agreement With Cities.

11. Conditions Precedent to Obligations of Company. The obligations of Company hereunder are subject to the satisfaction, on or prior to the Effective Time, of the following conditions unless waived in writing by Company:

11.1 Representations/Warranties. The representations and warranties of District contained in this Agreement shall be true and correct as of the Effective Time; and the covenants and conditions of this Agreement to be complied with or performed by District on or before the Effectiveness pursuant to the terms hereof shall have been duly complied with and performed.

11.2 Action or Proceeding. No action, proceeding, investigation or administrative hearing before a court or any other governmental agency or body shall have been instituted or threatened against District which seeks injunctive relief in anticipation of the transactions contemplated hereunder and may reasonably be expected to prohibit same.

11.3 Consents; Licenses. All notices to, and consents, authorizations, approvals and waivers from, third parties required for District to consummate the transactions contemplated hereby shall have been made and obtained.

11.4 Proceedings and Documents Satisfactory. Company shall have received such certificates, opinions and other documents as it or its counsel may reasonably require in order to consummate the transactions contemplated hereby, all of which shall be in form and substance reasonably satisfactory to it and its counsel. All proceedings in connection herewith and all certificates and documents delivered to Company pursuant to this Agreement shall be reasonably satisfactory in form and substance to Company and its counsel acting reasonably and in good faith.

11.5 Delivery of Certain Documents. At the Effective Time, Company shall have delivered to District all documents, agreements and instruments contemplated by this Agreement.

11.6 Adverse Changes. There shall not have occurred after the date hereof, any change in or effect on District that is, or with reasonable certainty might be, materially adverse to its business, prospects, operations, properties, assets, liabilities or condition (financial or otherwise).

12. District's Condition Subsequent.

12.1 Condition Subsequent. The Parties expressly understand and agree that District's obligations under this Agreement are subject to a condition subsequent that the FERC License will be issued either in the name of "District" or in the name of "District and Company" as Company shall determine in its sole discretion ("District's Condition Subsequent"). District's

Condition Subsequent is for the benefit of only District and may not be waived by or on behalf of District.

12.2 Failure of District's Condition Subsequent. If District's Condition Subsequent is not satisfied, which non-satisfaction shall arise only upon the denial of the FERC License after the exhaustion of FERC reconsideration and all appellate review, then Company promptly shall take all actions required and necessary to transfer any and all of Company's legal and equitable title and interest in and to the Project, including, without limitation, the Preliminary Permit, the FERC License application, the FERC License (if granted), Related Entitlements, and real property interests, to District, all at no expense or cost to District, free and clear of all liens and encumbrances except such liens and encumbrances as were in place prior to acquisition by District.

12.3 Reimbursement of Company. In the event Company transfers interests to District under the provisions of Section 12.2, and solely in the event District or its agent, contractor, or transferee subsequently develops the Project, upon the successful closing of construction financing and/or equity contribution required to construct and operate the Project and solely contingent upon such successful closing, District will pay, within thirty (30) days thereafter, Company, such amounts as company expended to the date of Company's cessation of efforts to develop the Project, together with interest thereon at the rate of six percent (6%). As necessary for such verification, Company agrees to provide District reasonable access to Company's books and records maintained in accordance with generally accepted accounting principles as consistently applied by Company.

### 13. Miscellaneous.

13.1 Schedules; Certificates. Each schedule and certificate, if any, to this Agreement shall be considered a part hereof as if set forth herein in full.

13.2 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however) at the request of either party, The other party shall execute such additional instruments and take such additional acts as are reasonably necessary to effectuate this Agreement.

13.3 Consents; Approvals; Discretion. Whenever this Agreement requires any consent or approval to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

13.4 Choice of Law. THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

13.5 Benefit Assignment. Subject to specific provisions herein concerning transfer and assignment of rights, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and assigns; provided, however, that no party may assign this Agreement without the prior written consent of the other party.

13.6 Brokerage. Company on one hand and District on the other hand agree to indemnify the other parties from and against all loss, cost, damage or expense arising out of claims for fees or commissions of brokers employed or alleged to have been employed by such indemnifying party.

13.7 Cost of Transaction. Except as otherwise provided in this Agreement, whether or not the transactions contemplated hereby shall be consummated, the parties agree as follows: (i) Company will pay the fees, expenses, and disbursements of Company and its agents, representatives, accountants, and counsel incurred in connection with the subject matter hereof and any amendments hereto; and (ii) District shall pay the fees, expenses and disbursements of District and its agents, representatives, accountants and counsel incurred in connection with the subject matter hereof and any amendments hereto. Company shall pay any transfer taxes and recording fees resulting from the consummation of the transactions contemplated hereby.

13.8 Confidentiality. It is understood by the parties that all non-public information exchanged between the Parties are of a confidential and proprietary nature. The Parties agree that they will and will use their best efforts to maintain the confidentiality of all such information in connection with the negotiation of this Agreement or in compliance with the terms, conditions and covenants hereof and only to disclose such information to such duly authorized persons as are necessary to effect the transaction contemplated hereby. The Parties further agree that if the transactions contemplated hereby are not consummated, they will return all such information and all copies thereof to the other, and will not use any such non-public information in any way to compete with the other in a manner that would be detrimental to the businesses, financial affairs, or reputations of the other. The Parties recognize that any breach of this Section 13.9 would result in irreparable harm to the other and that the other Party shall be entitled to an injunction to prohibit any such breach, in addition to all of their other legal and equitable remedies. Nothing in this Section 13.9 shall prohibit the use of such confidential information for such governmental filings as are required by law or governmental regulations or the disclosure of such confidential information if such disclosure is compelled by judicial or administrative process or, in the opinion of counsel acting reasonably, other requirements of law.

13.9 Waiver. The waiver by either Party of a breach or violation of any term or provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same provision by any Party or of the breach of any other term or provision of this Agreement. The delay or a failure of a Party to transmit any written notice hereunder shall not

constitute a waiver by such Party of any default hereunder or of any other or further default under this Agreement except as may expressly be provided for by the terms of this Agreement.

13.10 Interpretation. Each Party has agreed to the use of the particular language of the provisions of this Agreement including all attached documents, if any, and any questions of doubtful interpretation shall not be resolved by any rule or interpretation against the draftsman but rather in accordance with the fair meaning thereof, having due regard to the benefits and rights intended to be conferred upon the parties hereto and the limitations and restrictions upon such rights and benefits intended to be provided.

13.11 Notice. Any notice, demand or communication required, permitted, or desired to be given hereunder shall be in writing and shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested addressed as follows:

**District:**

Elsinore Valley Municipal Water District  
31315 Chaney Street  
Post Office Box 3000  
Lake Elsinore, California 92531-3000  
(909) 674-3146  
Attn: General Manager

**Company:**

The Hydro Company, Incorporated  
1222 Magnolia Avenue  
Suite 105-344  
Corona, California 91719  
(909) 737-7008  
Attn: H. L. Mitchell, President

or to such other address, and to the attention of such other person or representative as any party may designate from time to time.

13.12 Severability. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of the remainder of this Agreement, which shall be in full force and effect, enforceable in accordance with its terms, including, without limitation, those terms which contemplate or require the further agreements of the parties. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid or enforceable

13.13 Gender and Number. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words herein shall include the singular and plural.

13.14 Divisions and Headings. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

13.15 Survival. All statements made by the parties hereto herein or in the Schedules or in any other financial statement, document, instrument, certificate, exhibit or list delivered to each other hereunder by or on behalf of parties hereto shall be deemed representations and warranties of the parties hereto regardless of any investigation made by or on behalf of the Parties. Furthermore, the representations, warranties, covenants, and agreements made by the parties herein shall survive the Effective Time.

13.16 Entire Agreement; Amendment. This Agreement supersedes all prior contracts, understandings and agreements, whether written or oral, and constitutes the entire agreement of the parties respecting the within subject matter and no party shall be entitled to benefits other than those specified herein. As between or among the parties, no oral statements or prior written material not specifically included herein shall be of any force and effect; the parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. No terms, conditions, warranties, or representations, other than those contained herein and no amendments or modifications hereto, shall be binding unless made in writing and signed by the party to be charged.

13.17 Counterparts. This Agreement may be executed in multiple originals or counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

13.18 Force Majeure. If by reason of acts of God, earthquakes, droughts, floods, storms, explosion, fires, labor troubles, strikes, insurrection, riots, acts of the public enemy, or federal, state, or local law, order, rule, or regulation, either Party is prevented from complying with any condition of this Agreement, or from complying with any express or implied covenant in the Agreement, then while so prevented the condition shall be suspended and the Party shall be relieved of the obligation of complying with such covenant and shall not be liable for damages for failure to comply with it. Any obligation of either Party shall be extended for as long as it is so prevented from complying with any condition or covenant in the Agreement.

IN WITNESS WHEREOF, District and Company have duly executed this Agreement on the day and year first above written.

**District:**

ELSINORE VALLEY MUNICIPAL  
WATER DISTRICT, a Municipal  
Water District,

By: Ben Wicke  
Ben Wicke  
President of the Board of Directors

**Company:**

THE HYDRO COMPANY,  
INCORPORATED, a Nevada corporation,

By: H. L. Mitchell  
H. L. Mitchell  
President

**APPROVED AS TO FORM:**

By: John E. Brown  
John E. Brown  
Counsel, Elsinore Valley Municipal  
Water District



## Water Supply and Management Term Sheet

The following are the proposed material terms of a proposed Water Supply Agreement to be negotiated between the Hydro Company, Incorporated, doing business in California as The Nevada Hydro Company, Inc. (“Hydro”) and Elsinore Valley Municipal Water District (“District”). This term sheet is non-binding and intended to memorialize the elements of a proposed agreement and does not restrict the District’s discretion to consider any and all mitigation measures, including a reasonable range of project alternatives or mitigation measures that CEQA would otherwise require to be considered.

1. **Proposed Project.** A proposed Water Supply and Storage Agreement which would allow Hydro to purchase, import, and store 15,000 AF of water in Lake Elsinore as follows: (1) 9,000 AF would be permanently stored and maintained in Lake Elsinore (“Stored Water”); and (2) 6,000 AF would be stored and available for use in connection with the operation of the LEAPS Project . Hydro would purchase and import future amounts of water from District as necessary to maintain this 15,000 AF pool of imported water in Lake Elsinore.<sup>1</sup>
  - a. **Imported Water.** Subject to availability, District will procure water from Western Municipal Water District (“Western”) and/or Eastern Municipal Water District (“Eastern”) through its ongoing purchase orders with The Metropolitan Water District of Southern California (“Metropolitan”) in sufficient amounts, including actual conveyance losses, to establish and maintain a 15,000 AF pool of water in Lake Elsinore for use in connection with the operation of the LEAPS Project (“Hydro Water”). Hydro will be responsible for all costs associated with securing and delivering the Hydro Water to Lake Elsinore, as set forth in Paragraph 1(d) below (“Actual Costs”). Such deliveries shall not adversely impact water supplies or water quality in Canyon Lake. The parties will, prior to the execution of a definitive settlement agreement and after joint examination of conveyance options, agree upon the methodologies to be used to calculate the

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<sup>1</sup> Hydro will be responsible for satisfying and obtaining all necessary regulatory approvals that may be associated with the delivery of water from the State Water Project turnout on the San Jacinto River (“Turnout”) to Lake Elsinore. District will fully and promptly cooperate with Hydro’s efforts on these issues, subject to reimbursement to District for its costs.

quantities of conveyance losses associated with the delivery of the water from the Turnout to Lake Elsinore. Hydro will pay in advance to District 100% of the estimated costs for the "Initial Fill", provided that, if the Initial Fill occurs over several years, the payments may be made over the same time period as long as payment for water occurs before that water is ordered from Metropolitan and provided further that under no circumstances will any payment be made prior to Hydro giving "notice to proceed" which shall be understood as occurring after the latest of: (i) the issuance of a license for the LEAPS Project by FERC, (ii) the approval of construction financing for the LEAPS Project, and (iii) approval by FERC of a cost-based formula rate for the recovery of the LEAPS Project costs.

- b. Maintenance Water.** Subject to the availability of water from Western and/or Eastern, District will procure water through its ongoing purchase orders with Western, Eastern or Metropolitan in sufficient amounts for Hydro to maintain the 15,000 AF pool of Hydro Water in Lake Elsinore ("Maintenance Water"), on the same terms and conditions as for the Initial Fill, except that Hydro will pay District 50% of the estimated costs for Maintenance Water when ordered and the other 50% within 30 days of the receipt of an invoice after water has been delivered to Lake Elsinore.
- c. Evaporative Loss.** Hydro shall be responsible for all evaporative loss associated with the Hydro Water. The evaporative loss shall be determined based on the incremental change in surface area of Lake Elsinore associated with Hydro Water and the given Lake level at the time.
- d. Actual Costs.** The term "Actual Costs" in paragraphs 1(a) and 1(b) above shall include: (i) EVMWD's actual direct cost of the water delivered to Lake Elsinore charged to the District by Western or others (which may include water and energy costs associated with conveyance), plus (ii) an administrative fee of ten percent (10%) of the total purchase price. Actual Costs may also include any and all other costs which may be incurred by the District associated with such water deliveries as agreed to by the parties subject to good faith negotiations.

2. **Alternative Water Supplies.** Hydro will have the right, in its reasonable discretion, to make alternative arrangements for the acquisition of water supplies for the LEAPS Project, whether for the Initial Fill or the Maintenance Water. Any such efforts shall be fully coordinated with District. District will fully and promptly cooperate in such efforts as needed, subject to reimbursement of its Actual Costs by Hydro. All such sources shall be of such quality as to satisfy the requirements of the Regional Water Quality Control Board for introduction into Lake Elsinore.
  
3. **Term of Agreement.** The term of the proposed Water Supply and Storage Agreement is to be equal to the term of the FERC license issued to Hydro for the LEAPS Project and would automatically renew upon issuance of a renewal license by FERC. During the term of this agreement, the parties agree that Hydro shall have exclusive rights to generate hydropower at Lake Elsinore.
  
4. **Price of Water.** Hydro shall pay District the Actual Cost of water purchased by District for Hydro, provided: (i) in the event that District has any unallocated, available Tier 1 water in a given year, such water shall be made available to Hydro and Hydro shall pay the rate applicable to such water at the time of delivery of such water to Lake Elsinore for the benefit of Hydro, (ii) in the event that Article 21 water is available at any time from Metropolitan in a given year, District shall purchase and Hydro shall pay the rate applicable to Article 21 supplies at the time of delivery of such water to Lake Elsinore for the benefit of Hydro, and (iii) in the event that District is able to identify water at a lesser cost than Metropolitan's Tier 2 untreated rate, District shall purchase such water and the parties will split the price difference between that water and the then-current Metropolitan Tier 2 untreated water rate equally. The District and its local needs shall have and retain first priority of use to Tier 1 water supplies notwithstanding that Tier 1 supplies may have been provided to Hydro in prior years.
  
5. **Accounting.** District will maintain and provide Hydro with an annual accounting of all imports and losses associated with the Hydro Water.

6. **Operation and Management of Lake Elsinore.** The parties agree that neither Hydro Water nor Maintenance Water shall be introduced into Lake Elsinore at times when such supplies will actually or threaten to result in lake elevation exceeding 1247'. The parties agree to cooperate in addressing this and related issues when and if they arise. The District or City will not interfere with the operation or maintenance of the LEAPS Project, as that project may be approved by FERC, provided the LEAPS Project does not result in a permanent diversion or increased evaporation of water already in Lake Elsinore; interfere with the recreational use of Lake Elsinore; adversely impact fish and wildlife enhancement in and around Lake Elsinore; or in any way frustrate the ability of the District or City to accomplish the objectives and purpose of the Lake Elsinore Management Agreement.
  
7. **Inclusion of Standard FERC Terms and Conditions in Definitive Agreement.** The parties agree and understand that FERC requires licensees to include certain standard terms and conditions in agreements associated with licensed project works, such as Lake Elsinore. Such terms and conditions are likely to include, but are not limited to, a *Linweave* clause granting to Hydro the right to perform, or to obtain the District's performance of, any and all acts required by a FERC order without the prior approval of the District. Hydro agrees that, if the District incurs costs as a result of its compliance with such standard FERC provisions, then Hydro will compensate the District for its Actual Costs of such compliance.
  
8. **Indemnity.** Hydro or its assigns shall defend, indemnify and hold EVMWD and its authorized agents harmless from and against any and all loss, damage, liability or expense (including costs and attorneys' fees) which EVMWD may incur as a result of the water delivered for, and Hydro's storage and use of the water in Lake Elsinore for the LEAPS Project.



[EVMWD info]

[Date]

**VIA ELECTRONIC FILING**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**RE: Notice of Withdrawal of Comments Filed by Elsinore Valley Municipal  
Water District in Project No. 14227 Proceeding**

Dear Secretary Bose:

On January 30, 2012, May 31, 2012, and May 6, 2014, Elsinore Valley Municipal Water District ("EVMWD") filed with the Federal Energy Regulatory Commission ("Commission") comments with respect to the Nevada Hydro Company Inc.'s ("NHC") development of the Lake Elsinore Advanced Pumped Storage ("LEAPS") Project No. 14227. On [date] NHC and EVMWD entered into an agreement resolving all outstanding disputes associated with their prior attempt to jointly develop the site, which resolution included execution of an Agreement in Principle for a Water Supply and Management Agreement that will allow NHC and EVMWD to work together to plan, prepare and execute a final Water Supply Management Agreement that would govern NHC's use of Lake Elsinore as a lower reservoir for its proposed LEAPS Project. In light of these agreements, and pursuant to Rule 216 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216, EVMWD hereby gives notice of its withdrawal of its January 30, 2012, May 31, 2012, and May 6, 2014 comments filed in the proceeding for Project No. 14227.

Respectfully submitted,

[EVMWD signatory]



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7 Attorneys for Defendant and Cross-Complainant  
ELSINORE VALLEY MUNICIPAL WATER  
8 DISTRICT

EXEMPT FROM FILING FEES, PURSUANT  
TO GOVERNMENT CODE SECTION 6103

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

12  
13 THE HYDRO COMPANY,  
14 INCORPORATED, doing business in  
California as THE NEVADA HYDRO  
15 COMPANY, INC.,  
16 Plaintiff,  
17 v.  
18 ELSINORE VALLEY MUNICIPAL  
19 WATER DISTRICT; and DOES 1 TO 25,  
inclusive,  
20 Defendant.

Case No. 37-2012-00057077-CU-BC-NC  
Judge: Hon. Timothy Casserly  
Dept.: N-31  
[IMAGED FILE]

CONSENT JUDGMENT

Complaint Filed: September 12, 2012

21  
22 AND RELATED CROSS-ACTION.

23  
24  
25  
26  
27  
28

101

1 This Consent Judgment is hereby stipulated and agreed to by, between, and among  
2 Plaintiff and Cross-Defendant The Hydro Company, Incorporated, doing business in California as  
3 The Nevada Hydro Company, Inc. ("Hydro") and Defendant and Cross-Complainant Elsinore  
4 Valley Municipal Water District (the "District" or "EVMWD") (each of whom shall be referred  
5 to individually as a "Party" or collectively as the "Parties") regarding all claims and actions raised  
6 in the above-captioned litigation, THE HYDRO COMPANY, INCORPORATED, doing business  
7 in California as THE NEVADA HYDRO COMPANY, INC. v. ELSINORE VALLEY  
8 MUNICIPAL WATER DISTRICT, San Diego County Superior Court Case No. 37-2012-  
00057077-CU-BC-NC (the "Litigation"), as follows:

9 RECITALS

10 WHEREAS, EVMWD is a municipal water district organized and operating under the  
11 California Municipal Water Act of 1911, California Water Code section 71000, et seq.

12 WHEREAS, EVMWD is engaged in the business of providing water and water treatment  
13 services to rate payers in the Elsinore Valley and is a member agency of Western Municipal  
14 Water District ("Western") which, in turn, is a member agency of the Metropolitan Water District  
of Southern California ("Metropolitan").

15 WHEREAS, under California Water Code section 71662, EVMWD is authorized to  
16 provide, generate, and deliver hydroelectric power, and acquire, construct, operate, and maintain  
17 any and all works, facilities, improvements, and property necessary or convenient for such  
utilization.

18 WHEREAS, in April, 1995, EVMWD, consistent with California Water Code section  
19 71662, obtained a Preliminary Permit ("Preliminary Permit") from the Federal Energy Regulatory  
20 Commission (the "FERC") for the development of the Lake Elsinore Advanced Pumped Storage  
21 (LEAPS) Project (Project No. 11504). Project No. 11504 proposed the development of a 250-  
22 megawatt hydroelectric facility and related transmission lines.

23 WHEREAS, Hydro is an engineering and energy consulting firm, with specialized  
24 knowledge in the development of hydroelectric facilities and related transmission lines.

25 WHEREAS, on or about May 15, 1997, EVMWD entered into a written contract with  
26 Hydro for the development of the LEAPS Project, ("the Development Agreement") (Project No.  
27 11504). A copy of the Development Agreement is attached hereto and incorporated by reference  
as Exhibit 1.

28 //

1 WHEREAS, pursuant to the terms of the Development Agreement, EVMWD and Hydro  
2 agreed, in part, to proceed jointly with the FERC licensing application process, acquire FERC  
3 licensure, and construct and operate the LEAPS Project.

4 WHEREAS, under the terms of the Development Agreement, the District agreed, in part,  
5 that upon completion of the Project to its operational stage, the District would provide all water  
6 management services at Lake Elsinore necessary for operation of the Project ("Water  
7 Management Services"), including, without limitation, maintenance of the water level in Lake  
8 Elsinore.

9 WHEREAS, on or about February 2, 2004, the District and Hydro filed a new joint  
10 application with the FERC for the development of revised Lake Elsinore Advanced Pumped  
11 Storage Project (Project No. 11858). The 1997 Development Agreement was included as an  
12 attachment to the joint application for Project No. 11858.

13 WHEREAS disputes subsequently arose between the Parties concerning the development  
14 of the LEAPS Project (Project No. 11858).

15 WHEREAS, on or about May 6, 2011, FERC issued a "request for just cause" letter to  
16 Hydro and EVMWD, requesting that the Parties provide an explanation as to why the joint  
17 application for licensure of the LEAPS Project should not be dismissed.

18 WHEREAS, Hydro and EVMWD responded separately to the request for just cause letter.

19 WHEREAS, on July 12, 2011, FERC dismissed the Parties' application for licensure of  
20 the LEAPS Project, citing "the co-applicants' divergent responses to the May 6, 2011 just cause  
21 letter".

22 WHEREAS, on or about July 18, 2011, EVMWD provided Hydro with a written Notice  
23 of Termination and Notice of Default purporting to terminate the 1997 Development Agreement,  
24 and made demand for the reimbursement of certain fees paid to the State Water Resources  
25 Control Board ("State Water Board") in connection with the LEAPS Project.

26 WHEREAS, on or about July 14, 2011, Hydro filed a new application with the FERC, in  
27 its name alone, for the development of the Lake Elsinore Advanced Pumped Storage Project  
28 (Project No. 14227). Project No. 14227 is essentially the same project as Project No. 11858 and  
would consist of the following: (1) A new upper reservoir (Decker Canyon) with a 200-foot-high  
main dam and a gross storage volume of 5,750 acre-feet at a normal reservoir surface elevation of  
2,792 feet above mean sea level (msl); (2) a single 21-foot-diameter concrete power shaft and  
power tunnel with two steel lined penstocks; (3) an underground powerhouse with two reversible

1 pump-turbine units with a total installed capacity of 500 megawatts; (4) an existing lower  
2 reservoir (Lake Elsinore) with a gross storage volume of 54,500 acre-feet at a normal reservoir  
3 surface elevation of 1,245 feet above msl; and (5) about 32 miles of 500-kV transmission line  
4 connecting the project to an existing transmission line owned by Southern California Edison  
5 located north of the proposed project and to an existing San Diego Gas & Electric Company  
6 transmission line located to the south.

7 WHEREAS, on or about June 4, 2012, Hydro served a claim with EVMWD under the  
8 California Government Claims Act to recover more than \$24 million in "sunk costs" on the  
9 LEAPS Project, ("Claim").

10 WHEREAS, on or about July 13, 2012, EVMWD rejected the Claim.

11 WHEREAS, on September 12, 2012, Hydro filed the Litigation against the District in San  
12 Diego County Superior Court Case No. 37-2012-00057077. The complaint in the Litigation  
13 included one cause of action for breach of contract which alleged that the District breached the  
14 Development Agreement ("Complaint"). The Complaint alleges that, contrary to the express and  
15 implied provisions of the Development Agreement, EVMWD subverted Hydro's efforts to entitle  
16 the Project, which caused FERC to dismiss the pending application for licensure, scuttling the  
17 Project, and resulting in damage to Hydro in excess of \$24 million.

18 WHEREAS, on or about October 24, 2012, FERC granted Hydro a preliminary permit to  
19 study the feasibility of the Lake Elsinore Advanced Pumped Storage Project ("Project No.  
20 14227").

21 WHEREAS, on or about November 1, 2012, EVMWD filed an answer denying the  
22 allegations in the Complaint, and filed a cross-complaint ("Cross-Complaint"), alleging that  
23 Hydro breached the Development Agreement by failing to prosecute reasonably the FERC  
24 License Application; failing to prosecute reasonably the Clean Water Act Section 401 water  
25 quality certification for the Project; and by failing to timely pay Project-related permitting fees,  
26 including the two separate Section 401 Water Quality Certification application/processing fees  
27 assessed by the State Board of Equalization on behalf of the State Water Board in the amounts of  
28 \$131,294.68 for fiscal year 2010-2011 and \$113,860.00 plus continually accruing interest and  
penalties for fiscal year 2011-2012 in fees owing the State Water Board.

WHEREAS, on or about December 14, 2012, Hydro filed an answer denying the  
allegations in the Cross-Complaint.

//

1 WHEREAS Hydro subsequently amended and supplemented the Complaint to include a  
2 claim for reimbursement of certain fees paid to the United States Department of Agriculture,  
3 Forestry Service, which were erroneously refunded to EVMWD instead of Hydro.

4 WHEREAS EVMWD denies the allegations in the amended and supplemented  
5 Complaint.

6 WHEREAS Hydro is now attempting to revive the LEAPS Project, and has filed a new  
7 application for FERC licensure under Project number 14227-003, with the support of Grafton  
8 Asset Management, Inc., a global energy investment firm.

9 WHEREAS the Parties attended private mediation conferences with the Hon. J. Richard  
10 Haden, Ret., and have since discussed the potential for the global resolution of the Lawsuit.

11 WHEREAS, throughout the settlement negotiations, the Parties faced difficulty in  
12 reaching a compromise that was mutually acceptable. After numerous meetings and circulating  
13 draft versions of the documents back and forth, the Parties were able to reach a fair and equitable  
14 settlement for both Hydro and the District.

15 WHEREAS, the Parties desire to resolve the Lawsuit in its entirety, and establish their  
16 respective rights and responsibilities relative to the LEAPS Project on a going forward basis, and  
17 to that end have entered into an Agreement for Settlement and Release of Claims ("Settlement  
18 Agreement") which is attached hereto as Exhibit "A" and incorporated herein by reference.

19 WHEREAS, one of the provisions of the Settlement Agreement includes entry of a  
20 Consent Judgment outlining the obligation of the Parties related to Water Management Services  
21 associated with the pending LEAPS Project.

22 **CONSENT JUDGMENT**

23 **THE PARTIES JOINTLY REQUEST THIS COURT TO ENTER A FINAL**  
24 **JUDGMENT BASED UPON THE TERMS SET FORTH BELOW IN THE CONSENT**  
25 **JUDGMENT.**

26 In consideration of the mutual covenants, agreements, representations, and warranties  
27 contained in the Settlement Agreement and this Consent Judgment, the Parties hereby stipulate  
28 and agree that the Superior Court of California, County of San Diego has subject matter  
jurisdiction over the matters alleged in this Litigation and personal jurisdiction over the Parties  
and may enter this Consent Judgment on the terms set forth below:

1. The Development Agreement is terminated, and all rights and obligations  
thereunder are extinguished, provided however, that consistent with prior obligations set forth in

1 Paragraph 7.5 of the Development Agreement, the District shall agree to continue to provide  
2 Water Management Services to the LEAPS Project upon licensing and satisfaction of the terms  
3 and conditions set forth in this Consent Judgment.

4 2. The Water Management Services to be provided by the District shall include  
5 facilitating, at Hydro's cost (as described below), the purchase, importation, and storage of fifteen  
6 thousand acre feet (15,000 AF) of water to be introduced into Lake Elsinore as follows: (1) 9,000  
7 AF to be permanently stored and maintained in Lake Elsinore; and (2) 6,000 AF to be stored and  
8 available for use in connection with the operation of the LEAPS Project. As described herein,  
9 Hydro will purchase 15,000 AF of "Initial Fill" water through the District and purchase future  
10 water supplies to offset losses necessary to maintain this 15,000 AF pool of imported water in  
11 Lake Elsinore. The Parties anticipate that water acquired for the benefit of the LEAPS Project  
12 will be released from the State Water Project or adjacent turnout on the San Jacinto River  
13 ("Turnout") and be conveyed through the San Jacinto River channel via Canyon Lake to Lake  
14 Elsinore.

15 3. Subject to availability, the District will procure water from Western and/or Eastern  
16 Municipal Water District ("Eastern") through ongoing purchase orders with Metropolitan in  
17 sufficient amounts, including actual conveyance losses, to establish and maintain a 15,000 AF  
18 pool of water in Lake Elsinore for use in connection with the operation of the LEAPS Project  
19 ("Hydro Water"). Hydro will be responsible for all costs associated with securing and delivering  
20 the Hydro Water to Lake Elsinore ("Actual Costs")<sup>1</sup> and an administrative fee of ten percent  
21 (10%) of the total purchase price of the water. Such deliveries shall not adversely impact water  
22 supplies or water quality in Canyon Lake.

23 a. Before the Initial Fill water is ordered, the Parties shall establish the  
24 methodology to project the anticipated conveyance losses associated with the delivery of  
25 Hydro Water from the Turnout to Lake Elsinore which are currently estimated by  
26 EVMWD to be 30%. Each Party shall designate a technical representative (who shall be a  
27 professional engineer licensed by the State of California experienced in water matters) to  
28 address the technical questions relating to conveyance losses and evaporative losses that  
may arise in connection with the implementation of this Consent Judgment. The two

<sup>1</sup> The term "Actual Costs" shall include EVMWD's actual direct cost of the water delivered to Lake Elsinore charged to the District by Western or others (which may include water and energy costs associated with conveyance). Actual Costs may also include any and all other costs which may be incurred by the District associated with such water deliveries as agreed to by the Parties, subject to good faith negotiations.

1 designated representatives shall select a third neutral individual, who shall also be a  
2 professional engineer licensed by the State of California experienced in water matters.  
3 The two designated Party representatives and the neutral individual shall attempt to reach  
4 consensus on questions related to conveyance losses and evaporative losses that may arise  
5 in connection with the implementation of this Consent Judgment. In the event that the  
6 two designated Party representatives and the neutral individual cannot reach consensus,  
7 the decision shall be made by the neutral individual. The Parties may seek to develop  
8 alternative conveyance facilities to minimize conveyance losses associated with the  
9 delivery of Hydro Water to Lake Elsinore.

10 b. Hydro will pay in advance to District 100% of the estimated costs for the  
11 "Initial Fill", provided that, if the Initial Fill occurs over several years, the payments may  
12 be made over the same time period as long as payment for water occurs before that water  
13 is ordered from Metropolitan and provided further that under no circumstances will any  
14 payment for such water delivery be made to the District prior to Hydro giving "notice to  
15 proceed" which shall be understood as occurring after the latest of: (i) the issuance of a  
16 license for the LEAPS Project by FERC, (ii) the approval of construction financing for the  
17 LEAPS Project, and (iii) approval by FERC of a cost-based formula rate for the recovery  
18 of the LEAPS Project costs.

19 5. Subject to the availability of water from Western and/or Eastern, District will  
20 procure water through its ongoing purchase orders with Western, Eastern or Metropolitan in  
21 sufficient amounts for Hydro to maintain the 15,000 AF pool of Hydro Water in Lake Elsinore  
22 ("Maintenance Water"), on the same terms and conditions as for the Initial Fill, except that Hydro  
23 will pay District 50% of the estimated costs for Maintenance Water when such water is ordered  
24 by the District and the other 50% within 30 days of Hydro's receipt of a District invoice after  
25 water has been delivered to Lake Elsinore.

26 6. Hydro will be responsible for satisfying and obtaining all necessary regulatory  
27 approvals that may be associated with the delivery of Hydro and Maintenance Water from the  
28 Turnout to Lake Elsinore. District will fully and promptly cooperate with Hydro's efforts on  
these issues, subject to reimbursement to District for costs incurred to cooperate with Hydro's  
efforts.

7. Following delivery of the Hydro and Maintain Water, the District shall prepare and  
provide Hydro with an accounting of the actual conveyance losses experienced with each

1 delivery.

2 a. Actual conveyance losses shall be based upon the difference between the  
3 amount of imported water released at the Turnout and the amount imported water which  
4 reaches Lake Elsinore as measured at the following gauging stations: USGS Sun City  
5 Gauge #11070365; USGS Ramona Expressway Gauge #111070210; and/or USGS San  
6 Jacinto Gauge #11070500; or based upon such other gauging facilities as the parties may  
agree to install.

7 b. In the event Hydro disputes the amount of actual conveyance losses, the  
8 parties shall consult and negotiate with each other in good faith and, recognizing their  
9 mutual interests, attempt to resolve the dispute. If the parties are unable to resolve the  
10 dispute, the Parties shall convene the two designated Party representatives and the neutral  
11 individual described in paragraph 3(a) above to resolve the dispute in compliance with the  
process identified in that paragraph.

12 8. In order to more accurately measure, account for and deliver the Hydro Water  
13 including conveyance losses, the Parties agree that it may be necessary to install flow meters,  
14 valves and other measuring devices to increase the accuracy of calculating conveyance losses,  
15 particularly in the San Jacinto River. EVMWD anticipates that the following devices/facilities  
16 may need to be installed to facilitate measurement and delivery of Hydro Water: (a) One or two  
17 18-inch valves in Railroad Canyon Dam; (b) A flow meter at Railroad Canyon Dam; (c) A  
18 diversion/dissipation structure to direct flows around the dam and into the lower San Jacinto  
19 River; (d) A flow meter at the Turnout; (e) Two flow meters in the San Jacinto River; and/or (f) A  
20 flow meter at a point just upstream of Lake Elsinore. Subject to agreement in the future by Hydro  
21 on the need for and types of devices/facilities, Hydro agrees to pay for the entire cost associated  
with installing such facilities, including all actual costs incurred by the District.

22 9. Hydro shall be responsible for all evaporative loss associated with the Hydro  
23 Water. The evaporative loss shall be determined based on the incremental change in surface area  
of Lake Elsinore associated with Hydro Water and the given Lake level at the time.

24 a. The District shall prepare and provide Hydro with an accounting of the  
25 evaporative losses associated with the Hydro Water on an annual basis.

26 b. In the event Hydro disputes the amount of evaporative losses associated  
27 with the Hydro Water, the parties shall consult and negotiate with each other in good faith  
28 and, recognizing their mutual interests, attempt to resolve the dispute. If the parties are

1 unable to resolve the dispute, the Parties shall convene the two designated Party  
2 representatives and the neutral individual described in paragraph 3(a) above to resolve the  
3 dispute in compliance with the process identified in that paragraph.

4 10. Hydro will have the right, in its reasonable discretion, to make alternative  
5 arrangements for the acquisition of water supplies for the LEAPS Project, whether for the Initial  
6 Fill or the Maintenance Water. Any such efforts shall be fully coordinated with the District. The  
7 District will cooperate in such efforts as needed, subject to reimbursement by Hydro of the costs  
8 incurred by the District. The Parties may enter into "in-lieu" arrangements wherein  
9 Eastern/Western deliver imported surface water to the District and pump additional groundwater  
10 from their respective service areas. The Parties may also enter into "exchange" agreements  
11 wherein Eastern/Western exchange imported water for alternative sources of supply. All such  
12 sources shall be of such water quality as to satisfy the requirements of the Regional Water Quality  
13 Control Board for introduction into Lake Elsinore.

14 11. Hydro shall pay the District the Actual Costs of water purchased by the District for  
15 Hydro plus an administrative fee of ten percent (10%) of the total purchase price of the water,  
16 provided: (i) in the event that the District has any unallocated, available Tier 1 water in a given  
17 year, such water shall be made available to Hydro and Hydro shall pay the rate applicable to such  
18 water at the time of delivery of such water to Lake Elsinore for the benefit of Hydro, (ii) in the  
19 event that Article 21 water is available at any time from Metropolitan in a given year, the District  
20 shall purchase and Hydro shall pay the rate applicable to Article 21 supplies at the time of  
21 delivery of such water to Lake Elsinore for the benefit of Hydro, and (iii) in the event that the  
22 District is able to identify water at a lesser cost than Metropolitan's Tier 2 untreated rate, the  
23 District shall purchase such water and the Parties will split the price difference between that water  
24 and the then-current Metropolitan Tier 2 untreated water rate equally. The District and its local  
25 needs shall have and retain first priority of use to Tier 1 water supplies notwithstanding that Tier  
26 1 supplies may have been provided to Hydro in prior years.

27 12. District will maintain and provide Hydro with an annual accounting of all imports  
28 and losses associated with the Hydro Water on an annual basis.

13. Neither Hydro Water nor Maintenance Water shall be introduced into Lake  
Elsinore at times when such supplies will actually or threaten to result in lake elevation exceeding  
1247' msl. The Parties agree to cooperate in addressing this and related issues when and if they  
arise.

1           14. District will not interfere with the operation or maintenance of the LEAPS Project,  
2 as that project may be approved by FERC, provided the LEAPS Project does not result in a  
3 permanent diversion or increased evaporation of water already in Lake Elsinore; interfere with the  
4 recreational use of Lake Elsinore; adversely impact fish and wildlife enhancement in and around  
5 Lake Elsinore; or in any way frustrate the ability of the District or City to accomplish the  
6 objectives and purpose of the Lake Elsinore Management Agreement.

7           15. Hydro or its assigns shall defend, indemnify and hold EVMWD and its authorized  
8 agents harmless from and against any and all loss, damage, liability or expense (including costs  
9 and attorneys' fees) which EVMWD may incur as a result of the water delivered for, and Hydro's  
10 storage and use of the water in Lake Elsinore for the LEAPS Project, provided that nothing in this  
11 paragraph shall require Hydro to indemnify, defend or hold EVMWD harmless from and against  
12 any and all loss, damage, liability or expense (including costs and attorneys' fees) arising out of  
13 EVMWD's sole negligence or intentional wrongdoing. EVMWD or its assigns shall defend,  
14 indemnify and hold Hydro and its authorized agents harmless from and against any and all loss,  
15 damage, liability or expense (including costs and attorneys' fees) which Hydro may incur as a  
16 result of EVMWD's negligence or intentional wrongdoing associated with the water delivered  
17 for, and Hydro's storage and use of the water in Lake Elsinore for the LEAPS Project, provided  
18 that nothing in this paragraph shall require EVMWD to indemnify, defend or hold Hydro  
19 harmless from and against any and all loss, damage, liability or expense (including costs and  
20 attorneys' fees) arising out of Hydro's sole negligence or intentional wrongdoing.

21           16. The term of the obligations to provide Water Supply and Storage is to be equal to  
22 the term of the FERC license issued to Hydro for the LEAPS Project and would automatically  
23 renew upon issuance of a renewal license by FERC.

24           17. During the term of the FERC license issued to Hydro for the LEAPS Project,  
25 Hydro shall have exclusive rights to generate hydropower at Lake Elsinore. The Parties agree  
26 and understand that FERC requires licensees to include certain standard terms and conditions in  
27 agreements associated with licensed project works, such as Lake Elsinore. Such terms and  
28 conditions are likely to include, but are not limited to, a *Limweave* clause granting to Hydro the  
right to perform, or to obtain the District's performance of, any and all acts required by a FERC  
order without the prior approval of the District. Hydro agrees that, if the District incurs costs as a  
result of its compliance with such standard FERC provisions, then Hydro will compensate the  
District for its costs incurred in connection with such compliance.

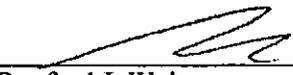
LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
665 WEST BROADWAY, 15TH FLOOR  
SAN DIEGO, CALIFORNIA 92101

1           18. Each Party shall bear its own attorney fees, expert witness fees, and litigation costs  
2 incurred in connection with the Lawsuit.

3           19. The court shall retain jurisdiction to enforce this Consent Judgment and the terms  
4 of the Settlement Agreement pursuant to Code of Civil Procedure section 664.6; and this Consent  
5 Judgment may be amended or supplemented in any proceeding brought to enforce this Settlement  
6 Agreement.

6 Dated: 7-26-18

The Nevada Hydro Company, Inc.

7  
8 By:   
9 Rexford J. Wait  
10 President

11 Dated: \_\_\_\_\_

Elsinore Valley Municipal Water District

12 By: \_\_\_\_\_  
13 John D. Vega  
14 General Manager

15 **WHEREAS, IT APPEARING TO THE COURT THAT THE PARTIES HAVE**  
16 **CONSENTED TO THE ENTRY OF FINAL JUDGMENT AS SET FORTH ABOVE; AND**  
17 **IT FURTHER APPEARING TO THE COURT THAT THERE IS PROPER CAUSE**  
18 **THEREFORE, THE COURT HEREBY ORDERS, ADJUDGES AND DECREES THAT**  
19 **CONSENT JUDGMENT AS SET FORTH ABOVE BE ENTERED.**

19 Dated: \_\_\_\_\_

20 \_\_\_\_\_  
21 Honorable Timothy Casserly  
22 Judge of the Superior Court

23 1526051.1

LAW OFFICES OF  
BEST BEST & KRIEGER LLP  
655 WEST BROADWAY, 15TH FLOOR  
SAN DIEGO, CALIFORNIA 92101

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The Nevada Hydro Company, Inc.

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

Rexford J. Wait  
President

9  
10 Dated: \_\_\_\_\_

Elsinore Valley Municipal Water District

11  
12 By:  \_\_\_\_\_

John D. Vega  
General Manager

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21 \_\_\_\_\_  
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Judge of the Superior Court