

AGREEMENT
REGARDING INTERPRETATION
OF
MEMORANDUM OF UNDERSTANDING

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**AGREEMENT REGARDING INTERPRETATION
OF
MEMORANDUM OF UNDERSTANDING**

WHEREAS, the parties hereto, the State of California and the Cities and Counties which become signatories to this Agreement Regarding Interpretation of the Memorandum of Understanding ("this Agreement"), agree that the terms as used herein shall have the meaning ascribed to them in Section 1 hereof; and

WHEREAS, the State and a number of California Cities and Counties, on August 5, 1998, entered into an agreement entitled "Memorandum of Understanding" (the "MOU") which is attached hereto as Appendix A; and

WHEREAS, on December 9, 1998, the Honorable Ronald Prager, Judge of the San Diego County Superior Court, as the Coordination Trial Judge in *In re Tobacco Cases I*, J.C.C.P. 4041, signed and entered a Consent Decree and Final Judgment as between the State of California and the Participating Manufacturers, which Final Judgment is attached hereto in its entirety as Appendix B and incorporates within it as Exhibit A thereto the settlement agreement entitled "Master Settlement Agreement" (the "MSA") which the Settling States, including the State of California, and the Participating Manufacturers entered into on November 23, 1998, and incorporates within it as Exhibit B the MOU; and

WHEREAS, pursuant to the MSA, the State is entitled to funds distributed through the National Escrow Agreement which was entered into on December 23, 1998, between the Settling States, including the State of California, and the Participating Manufacturers and the Escrow Agent, which is attached hereto as Appendix C; and

WHEREAS, pursuant to the National Escrow Agreement, Citibank, N.A., was appointed by the Settling States, including the State of California, and the Participating Manufacturers to serve as the Escrow Agent under the terms and conditions set forth therein; and

WHEREAS, pursuant to the National Escrow Agreement, the Escrow Agent shall allocate the national tobacco settlement monies among accounts including State-Specific Accounts with respect to each Settling State, including the State of California, in which State-Specific Finality occurs, in accordance with written instructions from the National Independent Auditor; and

WHEREAS, pursuant to the MSA, upon the occurrence of State-Specific Finality in California, the California portion of the monies deposited by the Participating Manufacturers in the Subsection IX(b) Account (First), the Subsection IX(b) Account (Subsequent), the Subsection IX(c)(1) Account, and the Subsection IX(c)(2) Account (as such accounts are defined in the National Escrow Agreement) shall be transferred to a State-Specific Account designated by the MSA as the account for the State of California ("California Account"); and

WHEREAS, pursuant to the MSA, after Final Approval, the Independent Auditor shall instruct the Escrow Agent to disburse the funds held in the California Account to (or as directed by) the State; and

WHEREAS, pursuant to the MSA, to the extent that a payment is made to the California Account after the occurrence of all applicable conditions for the disbursement of such payment to the State, the Independent Auditor shall instruct the Escrow Agent to disburse such payment promptly following its deposit; and

WHEREAS, pursuant to the MOU, certain Cities and all Counties in California, upon meeting the conditions set forth in the MOU, are entitled to 50% of all funds transferred to the California Account, designated as the State-Specific account for the State of California distributed by virtue of the MSA; and

WHEREAS, the parties hereto recognize that issues may arise as to the proper interpretation of the MOU and such parties desire to: (i) set forth their understanding of the interpretation to be given to the terms the MOU; and (ii) establish a procedure for the expeditious resolution of any future disputes that may arise as between any of them as to the proper interpretation of the MOU and/or this Agreement; and

WHEREAS, the parties hereto have agreed that if judicial interpretation of the MOU or this Agreement becomes necessary, it is important that a single court within the State of California adjudicate all disputes between the parties as to the meaning and proper interpretation of the MOU and/or this Agreement:

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in the MOU and this Agreement, the parties hereto agree as follows:

SECTION 1. DEFINITIONS.

- A.** All terms herein have the same meaning as, and are defined the same as they are defined in the MSA unless specifically modified in Section 1.B hereof. All definitions contained in the MSA entered on November 23, 1998, are incorporated by reference herein in this Agreement.
- B.** As used in this Agreement, the following terms have the following meanings:
- (1) The term "Agreement" or "this Agreement" means this Agreement Regarding Interpretation Of Memorandum Of Understanding.
 - (2) The term "book value" means the net amount at which a portfolio is shown in the accounting records.

- (3) The term "California Account" means the State-Specific Account with respect to California which is established after California State-Specific Finality has occurred as referenced by Section 3(b) of the National Escrow Agreement.
- (4) The term "City/County Steering Committee" means the City and County of San Francisco, the City of Los Angeles, the City of San Jose, the County of Santa Clara, the County of Santa Barbara and the County of Los Angeles.
- (5) The term "City Designee," "County Designee," "City and County Designees" and/or "City Designees/County Designees" means, individually or collectively, the person(s) designated by each individual Eligible City and Eligible County to receive any notifications or statements and/or to provide any transfer or disbursement instructions.
- (6) The term "City" or "Cities" means, individually or collectively, the City of Los Angeles, the City of San Diego, the City of San Francisco and the City of San Jose.
- (7) The term "County" or "Counties" means, individually or collectively, the 58 counties of California.
- (8) The term "City/County Dispute Resolution Court" means the J.C.C.P. 4041 Court.
- (9) The term "Eligible City," "Eligible County," "Eligible Cities and/or Eligible Counties" and/or "Eligible Cities/Eligible Counties" means, individually or collectively, those Cities and Counties who because they have satisfied all requirements under the MOU and this Agreement are entitled to receive a portion of tobacco settlement monies which are transferred to the California Account as provided by the MSA, the MOU and this Agreement. To achieve the status of Eligible City or Eligible County, each City or County must:
- (a) Execute one original "Model Release," attached hereto as Appendix "D" (or such other form of release that the City/County Dispute Resolution Court determines satisfies the release requirements of Section 6.a.ii of the MOU), and provide the executed original Release to the State; and
 - (b) Execute one original of this Agreement and provide the executed original to the State; and
 - (c) Execute one original "Authorization and Designation of City/County Designees," attached hereto as Appendix "E," and provide the executed original to the State; and
 - (d) Execute one original "Transfer Instructions" in the form attached hereto as Appendix "F," and provide the executed original to the State; and

- (e) Execute one original Form W-9, attached hereto as Appendix "G," and provide the executed original to the State.

The address to which the above identified executed original documents are to be sent by each City and/or County seeking to become an Eligible City and/or Eligible County is set forth in Appendix "H."

(10) The term "J.C.C.P. 4041 Court" means the San Diego County Superior Court that presided over *In Re Tobacco Cases I*, Judicial Council Coordination Proceeding No. 4041.

(11) The term "Memorandum of Understanding" or "MOU" means the agreement entered between the State and certain Represented Cities and Counties on August 5, 1998, which is attached hereto as Appendix A.

(12) The term "MOU Proportional Allocable Share" means that portion of the Tobacco Settlement Proceeds to be transferred to the California Account as provided for by the MSA and then received by the State and Cities and Counties, in the percentages set forth in Section 6 of the MOU.

(13) The term "mark-to-market" means the value of a portfolio at current market prices.

(14) The term "Official United States Decennial Census" means the census taken every ten years by the federal government, but such census does not become the "Official United States Decennial Census" for the purposes of the MOU and this Agreement until such time as it is presented to the Governor of the State of California. If the United States Decennial Census is presented to the Governor of the State of California within the 30 days immediately prior to the date the State is to give notice pursuant to Section 3.K of this Agreement, it shall not be treated as the "Official United States Decennial Census" until after the transfer which is the subject of such notification has been made.

(15) The term "Represented City," "Represented County" and/or "Represented Cities and Counties" means individually or collectively, the City and County of San Francisco, the Cities of Los Angeles, San Diego and San Jose, and the Counties of Alameda, Contra Costa, Marin, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta and Ventura that executed contingency fee contracts with private outside counsel to prosecute tobacco-related claims, and the County of Los Angeles who executed a separate contingency fee contract with private outside counsel to prosecute tobacco-related claims.

(16) The term "Responsible Entity" means the entity, whether the State or a City or County, that obtains a judgment or settlement which causes a claim-over as described in Section XII(a)(4) of the MSA.

- (17) The term "State" means the State of California.
- (18) The term "States" means those States and Commonwealths of the United States that signed the MSA.
- (19) The term "Sub-Account(s)" means a sub-account or sub-accounts created in the California Account.
- (20) The term "Tobacco Settlement Proceeds" or "Tobacco Settlement Monies" means the monies transferred to the California Account as provided by the MSA.
- (21) The term "transfer" means the transfer of money among and to different Sub-Accounts of the California Account. It does not mean payment or disbursement as used in the National Escrow Agreement.

**SECTION 2.
AGREEMENT AS TO THE PROPER COURT
FOR INTERPRETATION OF THE MOU AND THIS AGREEMENT.**

The parties hereto irrevocably and unconditionally submit to the continuing exclusive jurisdiction of the J.C.C.P. 4041 Court for purposes of any action or proceeding seeking to enforce any provision of, or based on any right arising out of, the MOU or this Agreement, and agree that they shall not commence any such action or proceeding except in the J.C.C.P. 4041 Court. The parties hereto agree that any dispute between or among the State, any Eligible City and/or any Eligible County shall be submitted by motion (or, if appropriate, by Ex Parte Application) to the J.C.C.P. 4041 Court, including any dispute regarding (i) the accurateness of any calculation pertinent to the allocation formula as described in Section 3.J of this Agreement, and/or (ii) the calculation or assessment of a Claim Over Offset Amount as described in Section 4.C of this Agreement. The parties hereto agree that any such decision by the J.C.C.P. 4041 Court shall be appealable, but that absent an appropriate Order any such appeal shall not delay any disbursement of any disputed amounts in accordance with the J.C.C.P. 4041 Court's decision. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such application, motion action or proceeding in the J.C.C.P. 4041 Court, and further irrevocably waive and agree not to plead or claim in the J.C.C.P. 4041 Court that any such suit, action or proceeding has been brought in an inconvenient forum.

**SECTION 3.
UNDERSTANDINGS REGARDING THE MSA AND THE MOU
AS THEY RELATE TO THE RELEASE OF FUNDS
PURSUANT TO THE MSA AND THE MOU
PRIOR TO SATISFACTION OF ALL TERMS AND CONDITIONS
OF SECTION 3.C OF THE NATIONAL ESCROW AGREEMENT.**

- A. Before such time as all events and conditions set forth in Section 3.C of the National Escrow Agreement have been satisfied and the funds are released to the States, all funds received by the Escrow Agent pursuant to the terms of the National Escrow Agreement shall constitute the "Escrow" and shall be held and disbursed in accordance with the terms of the National Escrow Agreement and this Agreement. In the event of a conflict, until such time as all events and conditions set forth in Section 3.C of the National Escrow Agreement have been satisfied and the Escrow Agent is notified to release the escrow funds to the States, the terms of the National Escrow Agreement shall govern over terms in the MOU or this Agreement. The State shall instruct the national Escrow Agent that such funds and any earnings thereon shall be held by the Escrow Agent separate and apart from all other funds and accounts of the Escrow Agent, the State, the Cities and Counties and the Participating Manufacturers.
- B. The Escrow Agent shall allocate the Escrow among the accounts referenced in the National Escrow Agreement (each one an "Account" and collectively the "Accounts") including the California Account in accordance with written instructions from the Independent Auditor.
- C. Pursuant to Section 20 of the National Escrow Agreement, and in accordance with the MOU and this Agreement, the State shall instruct the Escrow Agent to allocate the money flowing into the California Account as follows:
- (1) It is understood by the parties to this agreement that prior to the entry of an Order by the J.C.C.P. 4041 Court approving this Agreement, there will be two disbursements of Tobacco Settlement Proceeds pursuant to the MSA; the December 14, 1999, disbursement and the January 10, 2000, disbursement. It is therefore understood by the parties to this Agreement that:
- (a) With respect to the December 14, 1999 disbursement, in accordance with the terms of the MOU, \$1,000,000.00 was credited and transferred to the False Claims Act Fund. The remaining funds (after transfer of \$1,000,000.00 to the False Claims Act Account) were credited 50% to the State and 50% to the Cities and Counties. The 50% of the funds credited to the State were transferred to the State General Fund at or about the time of the December 14, 1999 disbursement. At the time of disbursement, the 50% of the funds credited to the Cities and Counties were transferred to the "Tobacco Settlement Fund Account" maintained by the California Department of Justice, to be held on an interim basis for the exclusive benefit of the Cities and Counties until such time as the Court approves

this Agreement, and the City/County Account described in section 4.B.(2)(ii) of this Agreement is created.

(b) With respect to the January 10, 2000, disbursement, in accordance with the terms of the MOU, 50% of the funds will be credited to the State and 50% to the Cities and Counties. The 50% of the funds credited to the State will be transferred to the State General Fund at the time of the disbursement. At the time of disbursement, the 50% of the funds credited to the Cities and Counties will be transferred to the "Tobacco Settlement Fund Account" maintained by the California Department of Justice, to be held on an interim basis for the exclusive benefit of the Cities and Counties until such time as the Court approves this Agreement, and the City/County Account described in section 4.B.(2)(ii) of this Agreement is created. Any future disbursements that become available before the execution of this Agreement and a conforming escrow agreement between the State and the Escrow Agent shall be treated in the same manner.

(c) Upon approval of this Agreement by the J.C.C.P. 4041 Court and the execution of a conforming escrow agreement between the State and the Escrow Agent, all funds in the "Tobacco Settlement Fund Account" (including any interest generated thereon) shall be transferred to the City/County Account to be disbursed to the Eligible Cities and Eligible Counties in accordance with section 3.J this Agreement. However, each Eligible City and/or Eligible County may elect to have the State transfer its MOU Proportional Allocable Share (including any interest generated thereon) directly to such Eligible City and/or Eligible County without requiring such funds to be first transferred to the Escrow Agent.

(2) Upon approval by the J.C.C.P. 4041 Court of this Agreement and the execution of a conforming escrow agreement between the State and the Escrow Agent, all additional money that enters the California Account shall be allocated as follows:

- (a) 50% of each dollar, or portion thereof, shall be credited to the State; and
- (b) 50% of each dollar, or portion thereof, shall be credited to the Cities and Counties to be distributed in the manner set forth in Section 3.J hereof, unless the Escrow Agent receives different instructions from the State in the manner set forth by this Agreement.

D. All amounts credited to an Account shall be retained in such Account until disbursed therefrom in accordance with the provisions of the National Escrow Agreement pursuant to (i) written instructions from the Independent Auditor; or (ii) written instructions from all of the following: all of the Original Participating Manufacturers, all of the Subsequent Participating Manufacturers that contributed to such amounts in such Account, and all of the Settling States (collectively, the "Escrow Parties"). The Escrow Agent shall be entitled to rely upon the Independent Auditor's identification of the Settling States and the Subsequent Participating Manufacturers that contributed any amounts in an Account.

In the event of a conflict, instructions pursuant to subclause (ii) shall govern over instructions pursuant to subclause (i).

- E.** All amounts credited to a Sub-Account shall be retained in such Sub-Account until and unless transferred pursuant to written instructions received by the Escrow Agent from the State. However, the State shall not provide any instructions for a transfer which consists of a disbursement in violation of this Agreement or of the National Escrow Agreement.
- F.** It is understood by the parties to this Agreement that the MSA requires that on the First Business Day after each date identified to the Escrow Agent by the Independent Auditor in writing as a date upon which any payment is due under the MSA, the Escrow Agent shall deliver to each other Notice Party as defined in the MSA, and to those the State has designated in writing, a written statement showing the amount of such payment (or indicating that no payment was made, if such is the case), the source of such payment, the Account or Accounts to which such payment has been credited, and the payment instructions received by the Escrow Agent from the Independent Auditor with respect to such payment. As soon as practical after receipt of such information from the Escrow Agent, but in no event more than 24 hours after receipt or the next business day, which ever is later, of such information, the State shall give notice to each City Designee and County Designee of which the State is aware, by sending by facsimile or other electronic transmission to each such City Designee and County Designee, a copy of the information the State has received from the Escrow Agent.
- G.** It is understood by the parties to this Agreement that the MSA requires that on the first Business Day after each transfer, the Escrow Agent shall deliver to the State a written statement showing the amount of such transfer, the source of the transfer, and the Sub-Account or Sub-Accounts to which such transfer has been credited. As soon as practical after receipt of such information from the Escrow Agent, but in no event more than 24 hours after receipt of such information or the next business day after receipt of such information, which ever is later, the State shall give notice to each City Designee and County Designee of whom the State is aware, by sending by facsimile or other electronic transmission to each such City Designee and County Designee, a copy of the information it has received from the Escrow Agent.
- H.** It is understood by the parties to this Agreement that the MSA requires that the Escrow Agent shall comply with all payment instructions received from the Independent Auditor, unless before 11:00 a.m. (E.S.T.) on the scheduled date of payment the Escrow Agent receives written instruction to the contrary from the State in the manner set forth in this Agreement, in which event the Escrow Agent shall comply with such instructions. It is understood by the parties to this Agreement that instructions received after 11:00 a.m. (E.S.T.) will be treated as if received on the following Business Day.

- I.** It is understood by the parties to this Agreement that the MSA requires that the Escrow Agent shall comply with all transfer instructions received from the State unless before 11:00 a.m. (E.S.T.) on the day the transfer is to occur the Escrow Agent receives different written instruction from the State in which event it shall comply with such instructions. The State shall not provide any instructions to the Escrow Agent that contradict the terms of the MOU or the terms of this Agreement. It is understood by the parties to this Agreement that instructions received after 11:00 a.m. (E.S.T.) will be treated as if received on the following Business Day.
- J.** The State shall instruct the Escrow Agent that all funds in the California Account shall be disbursed in the manner set forth in Section 3.C of this Agreement. Thus, as set forth in the MOU, 10% of the funds to be credited to the Cities and Counties (i.e., 10% of the 50% of the Tobacco Settlement Proceeds) shall be allocated 2.5% each among the Eligible Cities, and 90% of the funds to be credited to the Cities and Counties (i.e., 90% of the 50% of the Tobacco Settlement Proceeds) shall be allocated among the Counties, on a per capita basis, calculated by using population data set forth for California Counties as reported in the most current Official United States Decennial Census. Assuming that each City and County which can become an Eligible City or Eligible County, in fact is an Eligible City or Eligible County, and unless otherwise modified by the State in accordance with Sections 4.B or 4.C of this Agreement, the transfer instructions given by the State to the Escrow Agent shall be in the form of the Model Escrow Instructions set forth as Appendix I which sets forth the model MOU Proportional Allocable Shares based on the official 1990 United States Decennial Census. The State shall make any necessary adjustments to the distribution percentages as they relate to this clause and the MOU promptly upon the issuance of each future Official United States Decennial Census. All parties to this Agreement realize that with each new Official United States Census the MOU Proportional Allocable Share to be received by each Eligible County will most likely change.
- K.** The State shall provide to the Escrow Agent, as far in advance of the next actual disbursement date as possible, the transfer instructions for the next transfer of funds from the California Account and shall provide at the same time to each Eligible City Designee and Eligible County Designee of whom the State is aware, by sending by facsimile or other electronic transmission to each such City Designee and County Designee, a copy of the transfer instructions the State is providing to the Escrow Agent along with proof of service to the Eligible Cities and Eligible Counties of such transfer instructions.

SECTION 4.
UNDERSTANDINGS REGARDING THE MSA AND THE MOU
AS THEY RELATE TO RELEASE OF FUNDS PURSUANT TO THE MSA
AND THE MOU AFTER SATISFACTION OF ALL TERMS AND CONDITIONS OF
SECTION 3.C OF THE NATIONAL ESCROW AGREEMENT.

- A.** After such time as all events and conditions set forth in Section 3.C of the National Escrow Agreement have been satisfied and the escrow funds are released to the California Account, the State shall instruct the Escrow Agent that all funds received by the Escrow Agent pursuant to the terms of the National Escrow Agreement shall be held and disbursed in accordance with the terms of the MOU and this Agreement. The State shall further instruct the Escrow Agent that such funds and any earnings thereon shall be held by the Escrow Agent separate and apart from all other funds and accounts of the Escrow Agent, other States, the Cities and Counties and the Participating Manufacturers.
- B.** Unless the Escrow Agent receives notification pursuant to Section 4.C of this Agreement:
- (1) The funds credited to the State pursuant to Section 3.C.(2)(a) above, shall be disbursed to the State in accordance with transfer instructions to be provided by the State.
 - (2) The funds credited to the Cities and Counties pursuant to Section 3.C.(2)(b) above, shall be disbursed to the Eligible Cities and Eligible Counties in accordance with transfer instructions to be provided by the State, which shall be subject to the MOU and this Agreement as follows:
 - (i) If the Escrow Agent has received written notification from the State that a City or County has obtained the status of Eligible City and/or Eligible County, prior to the distribution from the California Account:
 - (aa) The State shall instruct the Escrow Agent to disburse each Eligible City's and/or Eligible County's MOU Proportional Allocable Share pursuant to instructions received by the State from the City Designees/County Designees as to which account such funds shall be directed. The instructions the State provides will direct the Escrow Agent to disburse each Eligible City's and/or Eligible County's Share to a single account specified by that Eligible City and/or Eligible County. This account information will be given in the form of executed Transfer Instructions attached hereto as Appendix F jointly executed by two of three such Eligible City's and/or Eligible County's respective City Designees/County Designees. Upon receipt of the executed Transfer Instructions from the Eligible City and/or Eligible County the State shall forward such information to the Escrow Agent within twenty four (24) hours of receipt or the next business day, which ever is later.

(bb) The instructions described in Section 4.B.(2)(i)(aa) above, may be modified from time to time by written amendment, which shall be given in a format specified by the State and shall be executed by two of the three City Designees/County Designees. Upon receipt of the change of the specified account information, and subject to verification by the State, the State shall forward such modified instructions to the Escrow Agent within seventy two (72) hours of receipt or within three business days, which ever is later.

(cc) The City Designees/County Designees may be substituted in either of the following ways: (i) By written amendment, which shall be given in a format specified by the State, and shall provide for additions and deletions of City Designee/County Designees. Substitution by this manner will only be given effect if it is signed by two of the three preexisting City Designees/County Designees; or (ii) By the City Council/County Board of Supervisors substituting the authorization provided for by Appendix E. Substitution by this manner must be done by a resolution of the City Council/County Board of Supervisors and must be done in the format as provided in Appendix E. In the event of a conflict between (i) and (ii) of this subparagraph, the State will follow the Designations as provided for by the City Council/County Board of Supervisors.

(ii) If the Escrow Agent has not received written notification from the State that a City or County has obtained the status of Eligible City and/or Eligible County prior to the first distribution from the California Account:

(aa) The State shall instruct the Escrow Agent to establish a single, interest bearing account into which the Escrow Agent transfers the MOU Proportional Allocable Share of each City and/or County for whom the Escrow Agent has not received written notification from the State that such City and/or County has obtained the status of Eligible City and/or Eligible County and shall instruct the Escrow Agent to provide to the State an accounting of the funds placed in such account, indicating the total amount placed therein and the amount placed therein which is being held for the benefit of each specific City and/or County. Within seventy-two (72) hours of receipt, or within three business days, which ever is later, of the accounting information, from the Escrow Agent, the State shall provide a copy of such information to the City/County Steering Committee. The Escrow Agent may charge each such City and/or County whose MOU Proportional Allocable Share is placed in such account, such City's and/or County's proportional share of the Escrow Agent's normal charges for establishing and maintaining such account (based on the percentage that such City's and/or County's MOU Proportional Allocable Share represents of the total amount in such account) through the date the Escrow Agent is notified by the State that such City and/or County has obtained the status of Eligible City or Eligible County and the Escrow

Agent may deduct such charges from the amount such City and/or County is due when the Escrow Agent is notified by the State that such City and/or County has obtained the status of Eligible City or Eligible County.

(bb) Any dispute between the State, the City/County Steering Committee, and/or any City and/or County as to whether a City and/or a County has obtained the status as an Eligible City and/or Eligible County shall be submitted to, and shall continue to be under, the jurisdiction of the J.C.C.P. 4041. The State shall instruct the Escrow Agent to deposit the MOU Proportional Allocable Share of any such City and/or County to which such dispute pertains into the City/County Account established pursuant to section 4.B.(2)(ii)(aa) of this Agreement. Any City and/or County that is adjudged by the J.C.C.P. 4041 Court to be an Eligible City and/or Eligible County pursuant to this subparagraph shall immediately notify the State of such ruling by providing the State with a copy of the order or judgment of the J.C.C.P. 4041 Court. The State within twenty four (24) hours, or the next business day, which ever is later, of receipt of such order or judgment of eligibility shall forward such eligibility information to the Escrow Agent. Any City and/or County that is adjudged by the J.C.C.P. 4041 Court not to be an Eligible City and/or Eligible County pursuant to this subparagraph shall have a 90 day grace period to cure any deficiency that has prevented it from becoming an Eligible City and/or Eligible County.

(cc) The State shall provide the Escrow Agent with additional instructions as follows: If prior to the later of June 30, 2001, or the expiration of any grace period specified in paragraph 4.B.(2)(ii)(bb) above, the Escrow Agent receives written notification from the State that such City and/or County has attained the status of Eligible City and/or Eligible County, the Escrow Agent shall promptly disburse to such newly Eligible City and/or Eligible County all funds representing such newly Eligible City's and/or Eligible County's MOU Proportional Allocable Share which had previously been placed in the separate City/County account established in accordance with Section 4.B.(2)(ii)(aa) (including any interest generated therefrom), after deducting the appropriate Escrow Agent's charges as allowed by such Section.

(dd) The State shall further instruct the Escrow Agent that upon receipt of notification from the State that such City and/or County has attained the status of Eligible City and/or Eligible County, all MOU Proportional Allocable Shares for such City and/or County which are to be disbursed after the date of notification that such City/County has obtained the status of Eligible City or Eligible County shall be disbursed to such Eligible City and/or Eligible County in accordance with Section 4.B.(2)(i).

(iii) If the Escrow Agent has not received written notification from the State that a City or County has obtained the status of Eligible City and/or Eligible County, by the later of June 30, 2001, or the expiration of any grace period specified in subparagraph (dd) below:

(aa) The State shall instruct the Escrow Agent that all funds previously placed in the City/County account pursuant to Section 4.B.(2)(ii)(aa) (including any interest generated therefrom), shall be deducted from such account and shall be transferred to the California Account, from which it is to be distributed to the State and the Eligible Cities and Eligible Counties in the manner set forth in Section 3.C.(2).

(bb) It is understood by the parties to this Agreement that until such time as the Escrow Agent receives notice from the State that such City and/or County has attained the status of Eligible City and/or Eligible County, all MOU Proportional Allocable Shares of any such City and/or County that are to be disbursed prior to the date of notification that such City/County has obtained the status of Eligible City or Eligible County shall continue to be disbursed to the State and to the Eligible Cities and Eligible Counties in accordance with Section 3.C.(2).

(cc) The State shall instruct the Escrow Agent that upon receipt of notification from the State that such City and/or County has attained the status of Eligible City and/or Eligible County, all MOU Proportional Allocable Shares for such City and/or County that are to be disbursed after the date of notification that such City/County has obtained the status of Eligible City and/or Eligible County, shall be disbursed to such Eligible City and/or Eligible County in accordance with Section 3.C.(2). Provided, however, that the parties to this Agreement, recognize that the State shall further instruct the Escrow Agent that if prior to attaining the status of Eligible City and/or Eligible County, a City and/or County obtains a settlement or judgment that causes a reduction of payments into the escrow account pursuant to Section XII(a)(4)(B) of the MSA and the amount of that reduction in payments exceeds the amount of escrow payments that the City and/or County in question has foregone pursuant to subparagraphs (aa) and (bb) directly above, then an amount equal to the reduction in escrow payments pursuant to section 6.a.ii of the MOU minus the amounts foregone by the City and/or County pursuant to subparagraphs (aa) and (bb) directly above shall be deducted from the future escrow payments owing which would otherwise be paid to the City and/or County in question and such amount(s) shall be transferred to the State and to the other Eligible Cities and/or Eligible Counties, in the same manner as the Claim Over Offset described in section 4.C below.

- (dd) Any dispute between the State, the City/County Steering Committee, and/or any City and/or County as to whether a City and/or a County has obtained the status of an Eligible City and/or Eligible County shall be submitted to, and shall continue to be under, the jurisdiction of the J.C.C.P. 4041 Court. If any such dispute is submitted to the J.C.C.P. 4041 Court, the State shall instruct the Escrow Agent to deposit the MOU Proportional Allocable Share of any such City and/or County to which such dispute pertains into the City/County Account established pursuant to section 4.B.(2)(ii)(aa) of this Agreement. The State shall not submit any additional instructions regarding the disbursement of such funds while a dispute as to eligibility is pending before the J.C.C.P. 4041 Court. Any City and/or County that is adjudged by the J.C.C.P. 4041 Court to be an Eligible City and/or Eligible County pursuant to this subparagraph (dd) shall immediately notify the State of such ruling by providing the State with a copy of the order or judgment of the J.C.C.P. 4041 Court. The State within twenty four (24) hours of receipt or the next business day, which ever is later, of such order or judgment of eligibility shall forward such eligibility information to the Escrow Agent and instruct the Escrow Agent to disburse all funds allocated to such newly Eligible City or newly Eligible County. Any City and/or County that is adjudged by the J.C.C.P. 4041 Court not to be an Eligible City and/or Eligible County pursuant to this subparagraph (dd) shall have a 90 day grace period to cure any deficiency that has prevented it from becoming an Eligible City and/or Eligible County.
- (iv) The State shall instruct the Escrow Agent that it is not to disburse funds to any City or County that has not attained the status of Eligible City or Eligible County.
- (v) Upon obtaining the status of Eligible City or Eligible County, each Eligible City and each Eligible County shall, if it has not already done so, notify the State of the names and addresses of their City Designees and County designees.
- (vi) The State shall provide to the Escrow Agent, as far in advance of the next actual disbursement date as possible, the transfer instructions for the next transfer of funds from the California Account and shall provide at the same time to each Eligible City Designee and Eligible County Designee of whom the State is aware, by sending by facsimile or other electronic transmission to each such City Designee and County Designee, a copy of the transfer instructions the State is providing to the Escrow Agent.

C. In the event that Section XII(a)(4)(A) of the MSA does not relieve an Original Participating Manufacturer of all liability and Section XII(a)(4)(B) of the MSA is invoked resulting in an Original Participating Manufacturer receiving a continuing dollar-for-dollar offset for any amounts paid by such Original Participating Manufacturer (or by any person or entity that is a Released Party by virtue of its relation to any Original Participating Manufacturer) on any liability against such Original Participating Manufacturer's share, determined as described in step E of Section IX(j)(7)(E) of the MSA, owing to the State (and because of the MOU, to the Cities and Counties), up to the full amount of such Original Participating Manufacturer's share of such Allocated Payment each year, until all such amounts paid on such liability have been offset ("Claim Over Offset Amount"), it is the intent of the State and the Cities and Counties that the California Account be operated so as to be reflective of the rights and duties of the State and the Eligible Cities and Eligible Counties under the MOU, and that, in accordance with the MOU, all benefits and burdens that affect the California Account, or affect how the money in the account may be spent, will be borne equally by the State on one hand, and the Eligible Cities and Eligible Counties on the other. (The State shall inform the Escrow Agent of such intent of the parties to this Agreement.) If the actions described above in this paragraph occur:

(1) The State shall notify the Escrow Agent, the City/County Steering Committee, and the Responsible Entity that Section XII(a)(4)(B) of the MSA has been invoked, and provide the Escrow Agent, the City/County Steering Committee, and the Responsible Entity with written instructions stating the Claim Over Offset Amount and the identity of the Responsible Entity and instruct the Escrow Agent as follows:

(a) That the amounts otherwise allocable to the Responsible Entity shall thereafter be reduced dollar-for-dollar until the full Claim Over Offset Amount has been deducted from the MOU Proportional Allocable Share owed to the Responsible Entity. These adjustments to the allocation set forth under this Agreement are done with the understanding of the State and the Cities and Counties that the Responsible Entity will have its MOU Proportional Allocable Share likewise reduced dollar-for-dollar until the full Claim Over Offset Amount of the Original Participating Manufacturer's share owing to the State, and because of the MOU to the Cities and Counties (other than the Responsible Entity), which has been offset by the Original Participating Manufacturer, has been deducted from the MOU Proportional Allocable Share owing to the Responsible Entity and the amount deducted from the MOU Proportional Allocable Share owing to the Responsible Entity has been distributed, pursuant to the terms of the MOU, to the State and the other Eligible Cities and Eligible Counties which did not bring the original action against the non-Released Party or non-Released Retailer.

(b) That the Responsible Entity shall be responsible for the interest on the Claim Over Offset Amount at the annual rate equal to the available daily rate of return earned by the California Pooled Money Investment Account from the actual date of disbursement of the reduced share to the State and to the Eligible Cities and Eligible Counties. The amount deducted from the Responsible Entity's MOU

Proportional Allocable Share shall be distributed 50% to the State and 50% to the Eligible Cities and Eligible Counties (other than the Responsible Entity). Interest owed is determined from the date the funds are released to the date of actual disbursement to the State/Eligible Cities/Eligible Counties.

(2) If a member of the City/County Steering Committee or the entity the State has identified as the Responsible Entity does not take action as described in section 4.C.(3) below to contest the amount the State has identified as the appropriate Claim Over Offset Amount and/or to contest the State's identification of the correct Responsible Entity, the following shall occur:

(a) If the Claim Over Offset Amount is less than the MOU Proportional Allocable Share of the Responsible Entity, the State shall instruct the Escrow Agent that the Claim Over Offset Amount shall be deducted and credited as follows:

(i) If the Responsible Entity is the State, in the manner set forth in the mathematical example attached hereto as Appendix J, to wit:

(aa) An amount equal to one-half of the offset shall be deducted from the State's 50% share and shall be credited to the Cities'/Counties' 50% share.

(bb) Any amounts credited to the Cities'/Counties' share pursuant to this subparagraph shall be allocated among and disbursed to the Eligible Cities and Eligible Counties as provided in Section 3.J of this Agreement and the State, in notifying the Escrow Agent of distribution amounts to be made to the State and to each Eligible City and Eligible County, shall modify the instructions it gives to the Escrow Agent to accurately reflect such deductions and credits.

(ii) If the Responsible Entity is a City or County, in the manner set forth in the mathematical example attached hereto as Appendix K, to wit:

(aa) An amount equal to one-half of the offset shall be deducted from the Responsible Entity's MOU Proportional Allocable Share and shall be credited to the State share.

(bb) After making the deduction described in paragraph (aa), the remaining one-half of the offset shall be deducted from the Responsible Entity's MOU Proportional Allocable Share, and shall be reallocated to each Eligible City and Eligible County (including

the Responsible Entity) pursuant to its MOU Proportional Allocable Share in the manner provided in Section 3.J of this Agreement. The State, in notifying the Escrow Agent of distribution amounts to be made to the State and to each Eligible City and Eligible County, shall modify the instructions it gives to the Escrow Agent to accurately reflect such deductions and credits.

(b) If the Claim Over Offset Amount is equal to or greater than the MOU Proportional Allocable Share of the Responsible Entity, the State shall instruct the Escrow Agent that such Claim Over Offset Amount shall be deducted and credited as follows:

(i) If the Responsible Entity is the State, in the manner set forth in the mathematical example attached hereto as Appendix L, to wit:

(aa) The entire MOU Proportional Allocable Share of the State shall be credited to the Cities'/Counties' share until the Claim Over Offset Amount has been repaid in full, including interest as described in Section 4.C.(1)(b) of this Agreement.

(bb) Once any remaining Claim Over Offset Amount, including any interest as described in Section 4.C.(1)(b), is less than the Responsible Entity's MOU Proportional Allocable Share during any payment period, Section 4.C.(2)(a) shall govern distribution and allocation.

(cc) Any amounts credited to the Cities'/Counties' share pursuant to this Section 4.C.(2)(b) shall be disbursed among the Cities and Counties as provided in Section 3.J of this Agreement.

(dd) The State in notifying the Escrow Agent of distribution amounts to be made to the State and to each Eligible City and Eligible County, other than the Responsible Entity, shall modify the instructions it gives the Escrow Agent to accurately reflect such deductions and credits as set forth in this Section 4.C.(2)(b).

(ii) If the Responsible Entity is a City or County, in the manner set forth in the mathematical example attached hereto as Appendix M, to wit:

(aa) The entire MOU Proportional Allocable Share of the Responsible Entity shall be credited 50% to the State share and 50% to the Cities'/Counties' share until the Claim Over Offset Amount has been repaid in full, including interest as described in Section 4.C.(1)(b) of this Agreement. The Responsible Entity's MOU Proportional Allocable Share of any amounts redistributed to the Cities'/Counties' share under this paragraph (aa) shall be

credited 50% to the State and 50% pro rata to the remaining Cities and Counties (excluding the Responsible Entity) based on their MOU Proportional Allocable Shares.

(bb) At such time as any remaining Claim Over Offset Amount, including any interest as described in Section 4.C.(1)(b), is less than the Responsible Entity's MOU Proportional Allocable Share during any payment period then Section 4.C.(2)(a) shall govern distribution and allocation.

(cc) The State in notifying the Escrow Agent of distribution amounts to be made to the State and to each Eligible City and Eligible County, other than the Responsible Entity, shall modify the instructions it gives to the Escrow Agent to accurately reflect such deductions and credits as set forth in this Section 4.C.(2)(b).

(3) If any member of the City/County Steering Committee or the entity the State has identified as the Responsible Entity do not agree that the State has identified the appropriate Claim Over Offset Amount or the correct Responsible Entity, the State, any member of the City/County Steering Committee, or the identified Responsible Entity may petition the J.C.C.P. 4041 Court for a ruling and if any such party does, the State shall instruct the Escrow Agent to establish a Disputed Claims Account to hold such disputed amounts pending subsequent notification by the State which directs the manner of disposition to be made of the disputed amount. If, in response to a petition in which the State is not a named party, the J.C.C.P. 4041 Court issues an order or judgment that directs the manner of disposition to be made of the disputed amount, the Responsible Entity or the City/County Steering Committee member that has filed the petition shall, upon entry of such order or judgment by the J.C.C.P. 4041 Court, immediately notify the State of such ruling by providing the State with a copy of the order or judgment. The State, within twenty four (24) hours of receipt or the next business day, which ever is later, of such order or judgment, shall instruct the Escrow Agent as to the manner of disposition to be made of the disputed amount. Any such decision of the J.C.C.P. 4041 Court is appealable; however, no such appeal shall delay distribution of the disputed amounts absent a court order to the contrary from the appropriate California court.

(4) The parties to this Agreement agree that the Escrow Agent shall be entitled to rely upon the State's identification of the Responsible Entity and the Claim Over Offset Amount in allocating and distributing funds.

D. In the event of a conflict between the mathematical examples contained in Appendices J through M and the words contained in Sections 4.C.(1) through 4.C.(3) of this Agreement, the procedures set forth in the mathematical examples contained in Appendices J through M shall govern over words contained in Sections 4.C.(1) through 4.C.(3) of this Agreement.

- E.** In the event the Escrow Agent is required to establish a Disputed Claims Account pursuant to instructions given by the State pursuant to any provision of this Agreement, the State shall instruct the Escrow Agent that such account shall be established in the name of the Responsible Entity (i.e., "Disputed Claims Account of -----) and that the Escrow Agent may charge each such Responsible Entity its normal charges for establishing and maintaining each such Disputed Claims Account. Provided, however that the State shall further instruct the Escrow Agent that: (i) if the J.C.C.P. 4041 Court finds, in response to a petition filed by the Responsible Entity or a member of the City/County Steering Committee, that the State has identified an amount which exceeds the appropriate Claim Over Offset Amount and/or that the State has not identified the correct Responsible Entity, the State shall be responsible for payment of the Escrow Agent's charges for establishing and maintaining the specific Disputed Claims Account in question; or (ii) if the J.C.C.P. 4041 Court finds, in response to a petition filed by the Responsible Entity or a member of the City/County Steering Committee, that the State has correctly identified the appropriate Claim Over Offset Amount and that the State has identified the correct Responsible Entity, those members of the City/County Steering Committee that filed the petition shall be responsible for payment of the Escrow Agent's charges for establishing and maintaining the specific Disputed Claims Account in question, and if the Responsible Entity filed the petition, the Responsible Entity shall be responsible for payment of the Escrow Agent's charges for establishing and maintaining the specific Disputed Claims Account in question. The Escrow Agent may, upon notice received from the State as to who is liable for the Escrow Agent's charges, deduct its charges from the amount due the State, the Responsible Entity, or those members of the City/County Steering Committee that filed the petition at the next distribution.
- F.** In the event of a conflict between Section 3.J and Section 4.C of this Agreement, the provisions of Section 4.C shall govern over the provisions of Section 3.J.
- G.** On the first Business Day after disbursing any funds from the California Account, the Escrow Agent shall deliver to the State a written statement showing the amount disbursed to the State and the amount disbursed to each Eligible City/Eligible County and the date of such transfer. As soon as practical after receipt of such information from the Escrow Agent, but in no event more than 24 hours after receipt of such information, or the next business day after receipt of such information, which ever is later, the State shall give notice to each City Designee and County Designee of which the State is aware, by sending by facsimile or other electronic transmission to each such City Designee and County Designee, a copy of the information the State has received from the Escrow Agent.
- H.** Any dispute(s) between the State and/or any California City and/or California County regarding this Agreement or the MOU, including any dispute as to the appropriate Claim Over Offset Amount, or the identity of the correct Responsible Entity, shall be submitted to, and shall continue to be under, the jurisdiction of the J.C.C.P. 4041 Court, as set forth in Section 2 of this Agreement.

**SECTION 5.
ATTORNEYS' FEES.**

As provided under the MOU, Private Outside Counsel for the Represented Cities and Counties will make their best efforts to obtain their fees and costs from the Original Participating Manufacturers as provided for in the MSA. Any attorneys' fees and costs obtained shall be credited against the amounts owed to Private Outside Counsel under their contingency fee agreements. To the extent, if any, that an arbitration award is insufficient to satisfy the outstanding contingency fee contracts, and to the extent, if any, private counsel seek to enforce such contracts, all Cities and Counties receiving "MOU Proportional Allocable Share" will share the risk that attorneys' fees and costs may be due and owing to Private Outside Counsel who prosecuted the tobacco actions on behalf of the Represented Cities and Represented Counties. By executing this Agreement, each City and County covenants and agrees that: (1) to the extent that any of the Represented Cities and Counties pay attorneys' fees to their Private Outside Counsel, in any year, to compensate Private Outside Counsel for work done in the Represented Cities' and Counties' suits against the Participating Manufacturers, the "MOU Proportional Allocable Share" to be paid to the Eligible Cities and Eligible Counties in that year (or as soon thereafter as possible) will be decreased by an offset equal to the "Proportional Share Percentage" of the sum of fees and costs paid by any Represented City or Represented County; (2) The amount of the offset shall be added to the settlement proceeds to be paid to the Represented City or County that made the private counsel fee payment, provided however, that no Represented City or County shall be subject to an offset for attorneys' fees or costs paid by any other Represented City or County to Private Outside Counsel. For the purpose of this paragraph, "Proportional Share Percentage" shall mean the allocation percentage of the total amount payable to California local governments (as determined by the allocation formula set forth in paragraph 3.J of Section 6 of the MOU calculated as of the year of the fee payment in question), multiplied by the amount of the fee payment made by the Represented City or County in question; (3) A separate offset will be calculated for and paid to each Represented City and County that makes a fee payment to private counsel in any given year; and (4) In the event that any Represented City or Represented County makes any payment under such contingency fee contracts, such Represented City and/or Represented County shall notify the State of the amount of such attorney fee payment. The State shall thereafter instruct the Escrow Agent to make all appropriate offsets and credits pursuant to this section.

**SECTION 6.
FAILURE OF ESCROW AGENT TO RECEIVE INSTRUCTIONS.**

The parties to this Agreement agree that in the event that the Escrow Agent fails to receive any written instructions contemplated by this Agreement, the Escrow Agent shall be fully protected in refraining from taking any action required under any Section of this Agreement.

SECTION 7.
INVESTMENT OF CALIFORNIA ACCOUNT FUNDS BY
THE ESCROW AGENT.

- A.** Notwithstanding the more permissive investments permitted in the National Escrow Agreement, the State shall instruct the Escrow Agent to invest and reinvest all amounts in the California Account in only the following:
- (1) Direct obligations of, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by, the United States of America or any agency thereof, maturing no more than one year after the date of acquisition thereof;
 - (2) Repurchase agreements fully collateralized by securities described in clause (1) above and with a counter party whose long-term debt securities are rated "AA" or higher by Standard & Poor's and "Aa" or higher by Moody's;
 - (3) Interest-bearing time or demand deposits with, or certificates of deposit maturing within 30 days of the acquisition thereof and issued by, any bank or trust company organized under the laws of the United States of America or of any of the 50 States thereof and having combined capital, surplus and undistributed profits in excess of \$500,000,000 whose long-term unsecured debt is rated "AA" or higher by Standard & Poor's and "Aa" or higher by Moody's;
 - (4) Commercial paper rated (on the date of acquisition thereof) at least A-1 and P-1 or equivalent by Standard & Poor's and Moody's, respectively, maturing not more than 180 days from the date of creation thereof; and
 - (5) Other investments specified by written instructions from all of the Original Participating Manufacturers, Settling States having Allocable Shares aggregating at least 66 2/3%, and the State.
- B.** Each reference herein to a rating from Standard & Poor's or Moody's shall be construed as an equivalent rating by another nationally recognized credit rating agency of similar standing if neither of such corporations is then in the business of rating debt, and if one (but not both) of Standard & Poor's and Moody's is not then in the business of rating debt, the rating from the corporation still in such business shall suffice for purposes of this Section 7.
- C.** The State shall further instruct the Escrow Agent that to the extent practicable, monies credited to the California Account shall be invested in such a manner so as to be available for use at the times specified in writing by the Independent Auditor as the times when monies are expected to be disbursed by the Escrow Agent and charged to such California Account. Obligations purchased as an investment of monies credited to the California Account shall be deemed at all times to be a part of such California Account and the income or interest earned, profits realized, or losses suffered with respect to such

investments (including, without limitation, any penalty for any liquidation of an investment required to fund a disbursement to be charged equally between the State and the Eligible Cities and Eligible Counties), shall be credited or charged to the California Account and shall be for the benefit of, or be borne by, each governmental entity entitled to payment from such California Account.

- D.** In choosing among the investment options for the California Account described in subclauses (1) through (5) of this Section 7.A, the Escrow Agent shall comply with any instructions received from time to time from (i) the State and/or (ii) the State Investment Manager designated by the State pursuant to Section 10 of the Investment Management Agreement attached to the National Escrow Agreement. In the event of a conflict, instructions given pursuant to clause (i) of the preceding sentence shall govern over instructions given pursuant to clause (ii) of the preceding sentence. In the event of conflict, the Escrow Agent may seek confirmation from the designated State representative using established industry practices such as confirmation by phone or by facsimile or other electronic transmission. In the absence of such instructions or in the event of unresolved conflicting instructions, the Escrow Agent shall invest in accordance with subclause (1) of this Section 7.A.
- E.** The parties to this Agreement agree that the Escrow Agent shall have the right to liquidate any investments held hereunder in order to provide the funds necessary to make required payments from the California Account under this Agreement. The State shall instruct the Escrow Agent that to the extent practicable the Escrow Agent shall equally distribute the liquidation between the State and the Eligible Cities/Eligible Counties. The Escrow Agent hereunder shall not have any liability for any loss sustained as a result of any investment made pursuant to instructions received hereunder or as a result of any liquidation of any investment prior to its maturity in order to make a payment required under this Agreement.
- F.** The parties to this Agreement agree that the first Business Day after a liquidation has taken place, the Escrow Agent shall provide notice to the State of the amounts of the liquidation, the source of the liquidated securities, the current mark-to-market worth of the California Account, and the book value of the California Account. As soon as practical after receipt of such information from the Escrow Agent, but in no event more than 24 hours after receipt of such information, or the next business day after receipt of such information, which ever is later, the State shall give notice to each City Designee and County Designee of whom the State is aware, by sending by facsimile or other electronic transmission to each such City Designee and County Designee, a copy of the information the State has received from the Escrow Agent.

SECTION 8.
SUBSTITUTE FORM W-9; QUALIFIED SETTLEMENT FUND.

Pursuant to the National Escrow Agreement, the State and each Eligible City and each Eligible County shall provide, if it has not already done so, the Escrow Agent with a correct taxpayer identification number on a substitute Form W-9, or if it does not have such a number, a statement evidencing its status as an entity exempt from back-up withholding, within 30 days of the date of this Agreement (and, if it supplies a Form W-9, indicate thereon that it is not subject to backup withholding). A copy of the Form-W-9 is attached hereto as Appendix G. The Escrow established pursuant to the National Escrow Agreement and pursuant to this Agreement, is intended to be treated as a Qualified Settlement Fund for federal tax purposes pursuant to Treas. Reg. § 1.468B-1. The Escrow Agent shall comply with all applicable tax filing, payment and reporting requirements, including, without limitation, those imposed under Treas. Reg. § 1.468B made known to it by any Escrow Party or the Independent Auditor, and if requested to do so shall join in the making of the relation-back election under such regulation.

SECTION 9.
DUTIES AND LIABILITIES OF ESCROW AGENT.

- A.** The parties to this Agreement agree that the Escrow Agent shall have no duty or obligation hereunder other than to take such specific actions as are required of it from time to time under the provisions of the National Escrow Agreement, and it shall incur no liability hereunder or in connection herewith for anything whatsoever other than any liability resulting from its own gross negligence or willful misconduct. The Escrow Agent shall not be bound in any way by any agreement or contract between the Participating Manufacturers and the State, or the State and any California local government units (whether or not the Escrow Agent has knowledge thereof) other than under the National Escrow Agreement, and the only duties and responsibilities of the Escrow Agent shall be the duties and obligations specifically set forth in the National Escrow Agreement.
- B.** The parties to this Agreement agree that the Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice or instruction furnished to it hereunder appearing on its face to have been sent by a person entitled hereunder to deliver such notice and reasonably believed by the Escrow Agent to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall be under no duty to inquire into or investigate the validity, accuracy or content of any such document. In the administration of the Escrow, the Escrow Agent may execute any of its powers and perform its duties hereunder directly or through agents or attorneys and may consult with counsel, accountants and other professional persons to be selected and retained by it.

- C. The parties to this Agreement agree that in the event that the Escrow Agent shall be uncertain as to its duties or rights, or shall receive instructions, claims or demands which, in its reasonable opinion, conflict with any instructions it has received from the State, the Escrow Agent shall be entitled to refrain from taking any action other than investment and reinvestment in accordance with Section 7 and its sole obligation shall be to keep safe and invest in accordance with Section 7 all property held in escrow until it shall be directed otherwise in writing by the State.

SECTION 10. NOTICES.

All notices or other communications to the State or to any City/County or to the City/County Steering Committee shall be given in writing (including, but not limited to, facsimile or other electronic transmission, telex, telecopy or similar writing). Notices or other communication provided by the State to individual Cities and individual Counties, or by individual Cities or Counties or by the City/County Steering Committee to the State via facsimile or other electronic transmission shall also be given via mail to the individual City Designees and County Designees or to the State at the address(es) to be provided to the State by the City Designees and County Designees or by the State to the City Designees and County Designees.

SECTION 11. INTENDED BENEFICIARIES; SUCCESSORS.

No persons or entities other than the State and the Cities and Counties are intended beneficiaries of this Agreement, and only the State and the Cities and Counties shall be entitled to enforce the terms of this Agreement. The provisions of this Agreement shall be binding upon and inure to the benefit of the State and the Cities and Counties and their successors.

SECTION 12. GOVERNING LAW.

After such time as all events and conditions set forth in Section 3.C of the National Escrow Agreement have been satisfied and the funds are released to the State (and by virtue of the MOU to the Cities and Counties), this Agreement shall be construed in accordance with and governed by the laws of California, without regard to the conflicts of law rules of California.

**SECTION 13.
AMENDMENTS.**

This Agreement may be amended only by written instrument executed by all of the parties hereto that would be affected by the amendment, including any affected City or County and the State. The waiver of any rights conferred hereunder shall be effective only if made in a written instrument executed by the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous to this Agreement, nor shall such waiver be deemed to be or construed as a waiver by any other party.

**SECTION 14.
COUNTERPARTS.**

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Delivery by facsimile or other electronic transmission of a signed counterpart shall be deemed delivery for purposes of acknowledging acceptance hereof; however, one executed original Agreement must promptly thereafter be delivered to the State and another executed original must promptly thereafter be delivered to the Escrow Agent.

**SECTION 15.
CAPTIONS.**

The captions herein are included only for convenience of reference and shall be ignored in the construction and interpretation hereof.

**SECTION 16.
CONDITIONS TO EFFECTIVENESS.**

This Agreement shall become effective when the State and no fewer than four members of the City/County Steering Committee shall have signed a counterpart hereof and the J.C.C.P. 4041 Court has entered an order approving, and retaining continuing jurisdiction over this Agreement.

**SECTION 17.
ADDRESS FOR PAYMENT.**

The State, in conformance with the requirements of this Agreement, shall provide the Escrow Agent with written disbursement instructions, which shall include the address to which payment shall be sent to each Eligible City and Eligible County, so that when funds in the California Account are required to be disbursed pursuant to this Agreement, the Escrow Agent will be able to disburse such funds.

**SECTION 18.
REPORTING.**

The State shall instruct the Escrow Agent to submit a monthly report to the State detailing at minimum: all deposits, transfers, disbursements, and balances of the California Account, a mark-to-market valuation of the California Account, the book value of the California Account, the fees and expenses owed to the Escrow Agent, the transactions executed by the Escrow Agent, and copies of any directions received by the State Investment Manager. As soon as practical after receipt of such information from the Escrow Agent, but in no event more than 48 hours after receipt of such information, or the next business day after receipt of such information, which ever is later, the State shall give notice to each City Designee and County Designee of whom the State is aware, by sending by facsimile or other electronic transmission to each such City Designee and County Designee, a copy of the information the State has received from the Escrow Agent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of

_____, 2000.

[Signature Pages Follow.]