

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project, California

LONG TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
EAST BAY MUNICIPAL UTILITY DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE AMERICAN RIVER DIVISION

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 EAST BAY MUNICIPAL UTILITY DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM THE AMERICAN RIVER DIVISION

10 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
11 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30,  
16 1992 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law,  
17 between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States,  
18 and EAST BAY MUNICIPAL UTILITY DISTRICT, hereinafter referred to as the Contractor, a  
19 public agency of the State of California, duly organized, existing, and acting pursuant to the laws  
20 thereof;

21 WITNESSETH, That:

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EXPLANATORY RECITALS

[1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2<sup>nd</sup>] WHEREAS, the United States constructed Folsom Dam and Reservoir and appurtenant facilities, hereinafter collectively referred to as the American River Division facilities, which will be used in part for the furnishing of this supplemental supply of water to the Contractor pursuant to the terms of this Contract; and

[3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-5183A, dated December 22, 1970, hereinafter referred to as the Original Contract, which established terms for the delivery to the Contractor of a supplemental supply of Project Water from the American River Division, of up to 150,000 acre-feet per year of Project Water from a point on the Folsom South Canal at Station 666+50; and

[4.1] WHEREAS, Contract No. 14-06-200-5183A was superseded by Amendatory Contract No. 14-06-200-5183A-1, dated July 20, 2001, hereinafter referred to as the Existing Contract; and

[5<sup>th</sup>] Omitted; and

44 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the Central Valley Project Improvement Act  
45 (CVPIA) provides for long-term renewal of the Existing Contract following completion of  
46 appropriate environmental documentation, including a programmatic environmental impact  
47 statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) analyzing the  
48 direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of  
49 all existing contracts for Project Water; and

50 [7<sup>th</sup>] WHEREAS, the United States has completed the PEIS and all other appropriate  
51 environmental review necessary to provide for long-term renewal of the Existing Contract; and

52 [8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing  
53 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws  
54 of the State of California, for water service from the Project; and

55 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
56 of its obligations under the Existing Contract; and

57 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
58 Contracting Officer projected future demand for water use such that the Contractor has the  
59 capability and expects to utilize fully for reasonable and beneficial use the quantity of Project  
60 Water to be made available to it pursuant to this Contract; and

61 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and  
62 agricultural areas within California for more than 50 years, and is considered by the Contractor  
63 as an essential portion of its water supply; and

64 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the  
65 Contractor's, depend upon the continued availability of water, including water service from the

66 Project; and

67 [12.1] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28,  
68 2000, the United States and the State of California adopted a general target of continuously  
69 improving Delta water quality for all uses. The CALFED Agencies' target for providing safe,  
70 reliable, and affordable drinking water in a cost-effective way, is to achieve either: (a) average  
71 concentrations at Clifton Court Forebay and other southern and central Delta drinking water  
72 intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of  
73 public health protection using a cost-effective combination of alternative source waters, source  
74 control and treatment technologies; and

75 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
76 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
77 Project for all Project purposes; and

78 [13.1] WHEREAS, the Contractor and the water users in its Service Area have improved  
79 and will continue to improve water use efficiency through water conservation, water  
80 reclamation, and other Best Management Practices. Implementation of these measures has  
81 reduced and will continue to reduce the ability of the Contractor and the water users in its  
82 Service Area to withstand a Condition of Shortage; and

83 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
84 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
85 repayment of the Project as required by law; to guard reasonably against Project Water  
86 shortages; to achieve a reasonable balance among competing demands for use of Project Water;  
87 and to comply with all applicable environmental statutes, all consistent with the legal obligations

88 of the United States relative to the Project; and

89 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
90 relationship in order to achieve their mutual goals; and

91 [16<sup>th</sup>] Omitted; and

92 [17<sup>th</sup>] Omitted; and

93 [18<sup>th</sup>] WHEREAS, in recognition of dry year considerations, the Contractor is willing to  
94 forego deliveries in certain years when the Central Valley Project system faces operational limits  
95 and the Contractor has sufficient carryover storage under its exclusive control; and

96 [19<sup>th</sup>] WHEREAS, it is the mutual interest of the parties to encourage the development  
97 by the Contractor of additional water storage capacity, including conjunctive use and  
98 groundwater storage programs; and

99 [20<sup>th</sup>] WHEREAS, in this instance, “historic use” of Project Water is not an appropriate  
100 basis for calculating the supply of Project Water to be made available to the Contractor during  
101 years in which Project Water shortages are being imposed on Project Contractors north of the  
102 Sacramento/San Joaquin River Delta (“Delta”), and therefore this Contract must incorporate a  
103 different methodology for calculating the amount of Project Water to be made available to the  
104 Contractor during water short years; and

105 [21<sup>st</sup>] WHEREAS, it is understood that this Contract and any renewal thereof, will be  
106 the basis of substantial capital investments by the Contractor in new diversion and conveyance  
107 facilities, which are intended to reduce the frequency and severity of customer deficiencies  
108 within the Contractor’s water service area, and may provide available excess capacity for the use  
109 and benefit of the United States, the environment, and other Project Contractors; and

110 [22<sup>nd</sup>] WHEREAS, the Contractor, in accordance with the terms and conditions of the

111 original contract, has paid substantial sums to the United States, and has not taken any  
112 substantial deliveries under its original contract. Said payment has reduced potential deficit  
113 obligations to the Contractor and has likely resulted in lower water rates paid by other Project  
114 Contractors; and

115 [23<sup>rd</sup>] WHEREAS, The United States and the Contractor agreed in the Existing Contract  
116 that the terms and conditions for long-term renewal thereof shall be as set forth in the Existing  
117 Contract, and the United States and the Contractor are willing to enter into this long-term  
118 renewal Contract on the terms and conditions set forth below.

119 NOW, THEREFORE, in consideration of the mutual and dependent covenants  
120 herein contained, it is hereby mutually agreed by the parties hereto as follows:

121 DEFINITIONS

122 1. When used herein unless otherwise distinctly expressed, or manifestly  
123 incompatible with the intent of the parties as expressed in this Contract, the term:

124 (a) "Calendar Year" shall mean the period January 1 through December 31,  
125 both dates inclusive;

126 (b) "Charges" shall mean the payments required by Federal Reclamation law  
127 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined  
128 annually by the Contracting Officer pursuant to this Contract;

129 (c) "Condition of Shortage" shall mean a condition respecting the Project  
130 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet  
131 the Contract Total;

132 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly

133 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
134 or regulation;

135 (e) "Contract Total" shall mean either the maximum amount of 133,000  
136 acre-feet of water to which the Contractor is entitled under subdivision (a)(1) of Article 3 of this  
137 Contract; or, the maximum amount of 150,000 acre-feet of water to which the Contractor is  
138 entitled in any given year under subdivision (a)(2) or (a)(3), whichever subdivision is the  
139 then-operative provision, of Article 3 of this Contract;

140 (f) "Contractor's Service Area" shall mean the area to which the Contractor is  
141 permitted to provide Project Water under this Contract as described in Exhibit "A" attached  
142 hereto, which may be modified from time to time in accordance with Article 35 of this Contract  
143 without amendment of this Contract;

144 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title  
145 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

146 (h-i) Omitted;

147 (j) "Full Cost Rate" shall mean an annual rate as determined by the  
148 Contracting Officer that shall amortize the expenditures for construction properly allocable to the  
149 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M  
150 deficits funded, less payments, over such periods as may be required under Federal Reclamation  
151 law or applicable contract provisions. Interest will accrue on both the construction expenditures  
152 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the  
153 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated  
154 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full-Cost Rate includes

155 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules  
156 and Regulations for the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as  
157 amended, (RRA);

158 (k-l) Omitted;

159 (m) "Irrigation Water" shall mean water made available from the Project that is  
160 used primarily in the production of agricultural crops or livestock, including domestic use  
161 incidental thereto, and watering of livestock;

162 (n) Omitted;

163 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other  
164 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for  
165 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)  
166 which are kept for personal enjoyment or water delivered to land holdings operated in units of  
167 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer  
168 that the use of water delivered to any such landholding is a use described in subdivision (m) of  
169 this Article;

170 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to  
171 the delivery of M&I Water;

172 (q) "Operation and Maintenance" or "O&M" shall mean normal and  
173 reasonable care, control, operation, repair, replacement (other than capital replacement), and  
174 maintenance of Project facilities;

175 (r) Omitted;

176 (s) "Project" shall mean the Central Valley Project owned by the United

177 States and managed by the Department of the Interior, Bureau of Reclamation;

178 (t) "Project Contractors" shall mean all parties who have water service  
179 contracts for Project Water from the Project with the United States pursuant to Federal  
180 Reclamation law;

181 (u) "Project Water" shall mean all water that is developed, diverted, stored, or  
182 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
183 accordance with the terms and conditions of water rights acquired pursuant to California law;

184 (v) "Rates" shall mean the payments determined annually by the Contracting  
185 Officer in accordance with the then-current applicable water ratesetting policies for the Project,  
186 as described in subdivision (a) of Article 7 of this Contract;

187 (w) "Recent Historic Average" shall mean the most recent five-year average of  
188 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its  
189 preceding contract(s);

190 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
191 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
192 through any agency of the Department of the Interior;

193 (y) "Tiered Pricing Component" shall be the incremental amount to be paid  
194 for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

195 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted  
196 for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

197 (z.1) "Total System Storage" shall mean the quantity of untreated water stored  
198 in Pardee, Camanche, San Pablo, Upper San Leandro, Briones, Lafayette and Chabot Reservoirs,

199 and any quantity of water that has been moved from said reservoirs to other untreated water  
200 storage facilities operated for the benefit of Contractor in the same Year;

201 (aa) "Water Made Available" shall mean the estimated amount of Project  
202 Water that can be delivered to the Contractor for the upcoming Year as declared by the  
203 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

204 (bb) "Water Scheduled" shall mean Project Water made available to the  
205 Contractor for which times and quantities for delivery have been established by the Contractor  
206 and Contracting Officer, pursuant to subdivision (b) of Article 4(a) of this Contract; and

207 (cc) "Year" shall mean the period from and including March 1 of each  
208 Calendar Year through the last day of February of the following Calendar Year.

209 TERM OF CONTRACT

210 2. (a) This Contract shall be effective March 1, 2005, through February 28,  
211 2045, and supersedes the Existing Contract. In the event the Contractor wishes to renew the  
212 Contract beyond February 28, 2045, the Contractor shall submit a request for renewal in writing  
213 to the Contracting Officer no later than two years prior to the date this Contract expires.

214 (b) Omitted.

215 (c) This Contract shall be renewed for successive periods of up to 40 years  
216 each, which periods shall be consistent with then-existing Reclamation-wide policy, under terms  
217 and conditions mutually agreeable to the parties and consistent with Federal and State law. The  
218 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the  
219 proposed adoption and application of any revised policy applicable to the delivery of Project  
220 M&I Water that would limit the term of any subsequent renewal contract with the Contractor for

221 the furnishing of M&I Water to less than 40 years.

222 (d) The Contracting Officer shall make a determination ten years after the  
223 date of execution of this Contract, and every five years thereafter during the term of this  
224 Contract, of whether a conversion to a contract under subsection 9(c)(1) of the Reclamation  
225 Project Act of 1939 can be accomplished. The Contracting Officer anticipates that during the  
226 term of this Contract, all authorized Project construction expected to occur will have occurred,  
227 and on that basis the Contracting Officer agrees upon such completion to allocate all costs that  
228 are properly assignable to the Contractor, and agrees further that, at any time after such  
229 allocation is made, and subject to satisfaction of the conditions set out in this subdivision, this  
230 Contract shall, at the request of the Contractor, be converted to a contract under subsection  
231 9(c)(1) of the Reclamation Project Act of 1939, subject to applicable Federal law and under  
232 stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A  
233 condition for such conversion to occur shall be a determination by the Contracting Officer that,  
234 account being taken of the amount credited to return by the Contractor as provided for under  
235 Federal Reclamation law, the remaining amount of construction costs assignable for ultimate  
236 return by the Contractor can probably be repaid to the United States within the term of a contract  
237 under subsection 9(c)(1). If the remaining amount of costs that are properly assignable to the  
238 Contractor cannot be determined during the term of this Contract, the Contracting Officer shall  
239 notify the Contractor, and provide the reason(s) why such a determination could not be made.  
240 Further, the Contracting Officer shall make such a determination as soon thereafter as possible  
241 so as to permit, upon request of the Contractor and satisfaction of the conditions set out above,  
242 conversion to a contract under subsection 9(c)(1). In the event such determination of costs has  
243 not been made at a time which allows conversion of this Contract during the term of this

244 Contract or the Contractor has not requested conversion of this Contract within such term, the  
245 parties shall incorporate in any subsequent renewal contract as described in subdivision (c) of  
246 this Article a provision that carries forth in substantially identical terms the provisions of this  
247 subdivision.

248 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

249 3. (a) During each Year, consistent with all applicable State water rights,  
250 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of  
251 this Contract, the Contracting Officer shall make available for delivery to the Contractor, Project  
252 Water pursuant to either subdivision (1), (2), or (3) below:

253 (1) At Freeport on the Sacramento River, the Contractor shall be  
254 entitled to take delivery of up to a total of 133,000 acre-feet of Project Water for M&I purposes  
255 in any Year in which the Contractor's March 1 forecast of its October 1 Total System Storage, as  
256 revised monthly through May 1 is less than 500,000 acre-feet based on a 50 percent exceedance,  
257 or any different reasonable exceedance used by the Contractor to declare rationing within the  
258 Contractor's Water Service Area, or as otherwise agreed to by the parties (referred to as the TSS  
259 forecast). Said entitlement shall not exceed a total of 165,000 acre-feet of Water delivered in  
260 any three consecutive Year period that the Contractor's Total System Storage forecast remains  
261 below 500,000 acre-feet.

262 (2) At Site 5 on the lower American River as described in  
263 subdivision (a)(2) of Article 5 of this Contract, the Contractor shall be entitled to take delivery of  
264 up to a total of 150,000 acre-feet of Project Water for M&I purposes in any Year, provided that  
265 conditions in Article 5(a)(2) are satisfied.

266 (3) At Station 666+50 on the Folsom South Canal, the Contractor shall

267 be entitled to take delivery of up to a total of 150,000 acre-feet of Project Water for M&I  
268 purposes in any Year, only under the terms and conditions of Article 5(a)(3).

269 The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be  
270 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

271 (b) Because the capacity of the Project to deliver Project Water has been  
272 constrained in recent years and may be constrained in the future due to many factors including  
273 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
274 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this  
275 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the  
276 PEIS, projected that the Contract Total set forth in this Contract will not be available to the  
277 Contractor in many years. During the five years immediately preceding execution of the  
278 Existing

279 Contract, the average amount of water made available under the Original Contract was 75,000  
280 acre-feet based on contract minimum quantities. Nothing in subdivision (b) of this Article shall  
281 affect the rights and obligations of the parties under any provision of this Contract.

282 (c) The Contractor shall utilize the Project Water in accordance with all  
283 applicable legal requirements.

284 (d) The Contractor shall make reasonable and beneficial use of all water  
285 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),  
286 groundwater banking programs, surface water storage programs, and other similar programs

287 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
288 Contractor's Service Area which are consistent with applicable State law and result in use  
289 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge  
290 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to  
291 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates  
292 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,  
293 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in  
294 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater  
295 banking programs, surface water storage programs, and other similar programs utilizing Project  
296 Water or other water furnished pursuant to this Contract conducted outside the Contractor's  
297 Service Area may be permitted upon written approval of the Contracting Officer, which approval  
298 will be based upon environmental documentation, Project Water rights, and Project operational  
299 concerns. The Contracting Officer will address such concerns in regulations, policies, or  
300 guidelines.

301 (e) The Contractor shall comply with requirements applicable to the  
302 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
303 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),  
304 as amended, that are within the Contractor's legal authority to implement. Nothing herein shall  
305 be construed to prevent the Contractor from challenging or seeking judicial relief in a court of  
306 competent jurisdiction with respect to any biological opinion or other environmental  
307 documentation referred to in this Article.

308 (f) Following the declaration of Water Made Available under Article 4 of this

309 Contract, the Contracting Officer will make a determination whether Project Water, or other  
310 water available to the Project, can be made available to the Contractor in addition to the Contract  
311 Total under Article 3 of this Contract during the Year without adversely impacting other Project  
312 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
313 Contractor prior to making such a determination. If the Contracting Officer determines that  
314 Project Water, or other water available to the Project, can be made available to the Contractor,  
315 the Contracting Officer will announce the availability of such water and shall so notify the  
316 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor  
317 and other Project Contractors capable of taking such water to determine the most equitable and  
318 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such  
319 water, the Contracting Officer shall make such water available to the Contractor in accordance  
320 with applicable statutes, regulations, guidelines, and policies.

321 (g) The Contractor may request permission to reschedule for use during the  
322 subsequent Year some or all of the Water Made Available to the Contractor during the current  
323 Year referred to as "carryover." The Contractor may request permission to use during the current  
324 Year a quantity of Project Water which may be made available by the United States to the  
325 Contractor during the subsequent Year referred to as "preuse." The Contracting Officer's written  
326 approval may permit such uses in accordance with applicable statutes, regulations, guidelines,  
327 and policies.

328 (h) The Contractor's right pursuant to Federal Reclamation law and applicable  
329 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract

330 during the term thereof and any subsequent renewal Contracts, as described in Article 2 of this  
331 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all  
332 of its obligations under this Contract and any renewals thereof. Nothing in the preceding  
333 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or  
334 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal  
335 Contracts.

336 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
337 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract  
338 upon written approval by the Contracting Officer in accordance with the terms and conditions of  
339 such approval.

340 (j) The Contracting Officer shall make reasonable efforts to protect the water  
341 rights necessary for the Project and to provide the water available under this Contract. The  
342 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
343 extent permitted by law, in administrative proceedings related to the Project Water rights;  
344 Provided, That the Contracting Officer retains the right to object to the substance of the  
345 Contractor's position in such a proceeding; Provided further, That in such proceedings the  
346 Contracting Officer shall recognize the Contractor has a legal right under the terms of this  
347 Contract to use Project Water.

348 TIME FOR DELIVERY OF WATER

349 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer  
350 shall announce the Contracting Officer's expected declaration of the Water Made Available.  
351 Such declaration will be expressed in terms of both Water Made Available and the Recent

352 Historic Average and will be updated monthly, and more frequently if necessary, based on then-  
353 current operational and hydrologic conditions and a new declaration with changes, if any, to the  
354 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project  
355 operations and the basis of the estimate, with relevant supporting information, upon the written  
356 request of the Contractor. Concurrently with the declaration of the Water Made Available, the  
357 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

358 (b) On or before each March 1 and at such other times as necessary, the  
359 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the  
360 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the  
361 United States to the Contractor pursuant to this Contract for the Year commencing on such  
362 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water  
363 according to the approved schedule for the Year commencing on such March 1.

364 (c) The Contractor shall not schedule Project Water in excess of the quantity  
365 of Project Water the Contractor intends to put to reasonable and beneficial use within the  
366 Contractor's Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract  
367 during any year.

368 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this  
369 Contract, the United States shall deliver Project Water to the Contractor in accordance with the  
370 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any  
371 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable  
372 time prior to the date(s) on which the requested change(s) is/are to be implemented.

373 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

374 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this

375 Contract shall be delivered to the Contractor at one of the following points of delivery; Provided,  
376 that any necessary consultation under Section 7 of the Endangered Species Act, and compliance  
377 with NEPA, as applicable, has been completed prior to any diversions:

378 (1) A point of delivery on the Sacramento River at Freeport (Freeport).

379 It is the intent of the parties to pursue this point of delivery in cooperation with City and County  
380 of Sacramento and the Sacramento County Water Agency. The parties acknowledge that the  
381 point of delivery identified above, is included as an authorized point of delivery under the water  
382 rights for the Project if it is sited consistent with the State Water Resources Control Board  
383 (SWRCB) Order of July 29, 1999, pertaining to Permits 11315 and 11316 or other existing  
384 appropriate SWRCB permits. If it is not, Project Water will not be delivered to this point of  
385 delivery unless and until such point is added to the water rights permits of the Project. Subject to  
386 reimbursement of costs pursuant to Article 25 of this Contract the Contracting Officer will  
387 petition the California SWRCB to include the necessary points of delivery to the water rights for  
388 the Project, and the Contractor shall cooperate with and assist the Contracting Officer in  
389 prosecuting such petition in a timely manner. The Contracting Officer shall bear neither  
390 responsibility nor liability for existing and/or future constructed non-federal diversion or  
391 delivery facilities or the use thereof.

392 (2) A point of delivery identified as "Site 5" in the Environmental  
393 Impact Statement supporting the Existing Contract published in December 2000, subject to the  
394 following conditions: (i) prior to approval to divert from Site 5, the Contractor must complete  
395 and implement a water storage strategy, satisfactory to the Contracting Officer, which will allow  
396 the Contractor to meet Project purposes within the necessary flow pattern limitations  
397 accompanied by the appropriate environmental documentation; (ii) prior to the approval to divert

398 from Site 5 the Contractor must comply with all relevant State and Federal laws and regulations  
399 including but not limited to the California Wild and Scenic Rivers Act; (iii) the Contractor will  
400 not divert at a rate higher than 155 cfs, or when the American River flow rates are below those  
401 specified in the decision of Judge Richard Hodge in Alameda Superior Court on January 2, 1990;  
402 (iv) the Contractor will not divert unless the point of delivery is an authorized point of diversion  
403 for the associated Project Water rights.

404 (3) Deliveries of water diverted from Nimbus Dam are hereby  
405 prohibited; Provided, however, if the permitting and necessary agreements for a diversion at  
406 either Freeport or Site 5 are not completed by July 31, 2002, or another date agreed to by the  
407 parties, deliveries shall be made, without further amendment of the Contract, at Station 666+50  
408 on the Folsom South Canal provided that the Contractor makes good faith efforts and devotes  
409 adequate resources to obtain the necessary permits and agreements.

410 Such deliveries shall be made in accordance with the decision of Judge Richard  
411 Hodge, dated January 2, 1990, in Alameda County Superior Court Action No. 425955. Once a  
412 diversion project for delivery of water under this Contract is constructed at Freeport or Site 5 and  
413 is fully operational, diversion of water at Nimbus Dam shall no longer be an alternative source  
414 for delivery of Project or non-Project water to Contractor under this Contract.

415 (b) Omitted.

416 (c) The Contractor shall not deliver Project Water outside the Contractor's  
417 Service Area unless approved in advance by the Contracting Officer.

418 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
419 measured and recorded with equipment furnished, installed, operated, and maintained by the

420 Contractor, or any other appropriate entity as designated by the Contracting Officer (hereafter  
421 “other appropriate entity”) at the point or points of delivery established pursuant to subdivision  
422 (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall  
423 investigate the accuracy of such measurements and shall take any necessary steps to adjust any  
424 errors appearing therein. For any period of time when accurate measurements have not been  
425 made, the Contracting Officer shall consult with the Contractor prior to making a final  
426 determination of the quantity delivered for that period of time.

427 (e) The Contracting Officer shall not be responsible for the control, carriage,  
428 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this  
429 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor  
430 shall indemnify the United States, its officers, employees, agents, and assigns on account of  
431 damage or claim of damage of any nature whatsoever for which there is legal responsibility,  
432 including property damage, personal injury, or death arising out of or connected with the control,  
433 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery  
434 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting  
435 Officer or any of its officers, employees, agents, or assigns with the intent of creating the  
436 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or  
437 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or  
438 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a  
439 malfunction of facilities owned and/or operated by the United States.

440 (f) The parties agree that for the purposes of taking delivery of water under

441 this Contract, at Freeport on the Sacramento River or at Site 5 on the Lower American River, the  
442 Contractor shall have the right to construct a facility which connects to and extends from or near  
443 the existing terminus of the Folsom South Canal or at any other points of delivery set forth in  
444 Article 5(a) to the Mokelumne Aqueducts. The Contractor shall also have the right to use the  
445 Folsom South Canal as a conveyance facility for Project Water that may be delivered to the  
446 Contractor at any location and pumped back to the Folsom South Canal through a pipeline to be  
447 constructed and operated by the Contractor at its expense and which will connect to the Folsom  
448 South Canal at a point located northerly of Grant Line Road at Station 522+81 to accommodate  
449 the Site 5 option, or at a location in the vicinity of Grant Line Road at approximately Station  
450 666+50 to accommodate the Freeport East option or other location as mutually agreed to, in  
451 writing, by the parties. Prior to the construction of connection facilities to the Folsom South  
452 Canal, or from the Folsom South Canal to the Mokelumne Aqueducts for any project different  
453 than the project described in the Record of Decision, the Contractor shall submit any necessary  
454 further plans, specifications and environmental documentation for making such connections to  
455 the Contracting Officer for review and written approval. The Contracting Officer shall cooperate  
456 with the Contractor in the development of such further plans, specifications and environmental  
457 documentation. All such design and construction costs shall be at the Contractor's expense. The  
458 Contracting Officer's approval of such further plans, specifications, and environmental  
459 documentation shall not be unreasonably withheld. The Contractor shall pay all reasonable  
460 costs, including overhead, incurred by the Contracting Officer in (1) the development, review  
461 and approval of any further plans, specifications and environmental documentation and (2)  
462 inspection and oversight costs related to any construction. The United States shall hold the

463 Contractor harmless from any liability arising from the negligence or willful misconduct of the  
464 United States, or any of its officers, employees, agents, or assigns, in the conveyance of Project  
465 Water through the Folsom South Canal; Provided that, such liability has not arisen from  
466 performance or  
467 lack thereof of the Contractor under terms and conditions of any approvals related to the  
468 Contractor's connection facilities, this Contract or any subsequent amendment or renewal  
469 thereof.

470 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

471 6. (a) The parties acknowledge that the Contractor has equipped all surface  
472 water delivery systems within its boundaries with water measuring devices at each M&I water  
473 service connection of a type acceptable to the Contracting Officer. The Contractor shall be  
474 responsible for installing, operating, and maintaining and repairing all such measuring devices  
475 and implementing all such water measuring methods at no cost to the United States. The  
476 Contractor shall use the information obtained from such water measuring devices or water  
477 measuring methods to ensure its proper management of the water, to bill water users for water  
478 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by  
479 customer class as defined in the Contractor's water conservation plan provided for in Article 26  
480 of this Contract. Nothing herein contained, however, shall preclude the Contractor from  
481 establishing and collecting any charges, assessments, or other revenues authorized by California  
482 law. The Contractor shall include a summary of all its annual surface water deliveries in the  
483 annual report described in subdivision (c) of Article 26 of this Contract.

484                   (b)     To the extent the information has not otherwise been provided, upon  
485 execution of this Contract, the Contractor shall provide to the Contracting Officer a written  
486 report describing the measurement devices or water measuring methods being used or to be used  
487 to implement subdivision (a) of this Article and identifying the M&I service connections or  
488 alternative measurement programs approved by the Contracting Officer, at which such  
489 measurement devices or water measuring methods are being used, and, if applicable, identifying  
490 the locations at which such devices and/or methods are not yet being used including a time  
491 schedule for implementation at such locations. The Contracting Officer shall advise the  
492 Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any,  
493 of the measuring devices or water measuring methods identified in the Contractor's report and if  
494 the Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
495 Contracting Officer notifies the Contractor that the measuring devices or methods are  
496 inadequate, the parties shall within 60 days following the Contracting Officer's response,  
497 negotiate in good faith the earliest practicable date by which the Contractor shall modify said  
498 measuring devices and/or measuring methods as required by the Contracting Officer to ensure  
499 compliance with subdivision (a) of this Article.

500                   (c)     All new surface water delivery systems installed within the Contractor's  
501 Service Area after the effective date of this Contract shall also comply with the measurement  
502 provisions described in subdivision (a) of this Article.

503                   (d)     The Contractor shall inform the Contracting Officer and the State of  
504 California in writing by April 30 of each Year of the monthly volume of surface water delivered  
505 within the Contractor's Service Area during the previous Year.

506 (e) The Contractor shall inform the Contracting Officer on or before the 20th  
507 calendar day of each month of the quantity of M&I Water taken during the preceding month.

508 RATES AND METHOD OF PAYMENT FOR WATER

509 7. (a) The Contractor shall pay the United States as provided in this Article for  
510 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in  
511 accordance with: (i) the Secretary's then-existing ratesetting policy for M&I Water. Such  
512 ratesetting policy shall be amended, modified, or superceded only through a public notice and  
513 comment procedure; (ii) applicable Federal Reclamation law and associated rules and  
514 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be  
515 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to  
516 in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing  
517 Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit  
518 "B," as may be revised annually.

519 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,  
520 and Tiered Pricing Component as follows:

521 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
522 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
523 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
524 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months  
525 to review and comment on such estimates. On or before September 15 of each Calendar Year,  
526 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect  
527 during the period October 1 of the current Calendar Year, through September 30, of the

528 following Calendar Year, and such notification shall revise Exhibit "B."

529                   (2) Prior to October 1 of each Calendar Year, the Contracting Officer  
530 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component  
531 for Project Water for the following Year and the computations and cost allocations upon which  
532 those Rates are based. The Contractor shall be allowed not less than two months to review and  
533 comment on such computations and cost allocations. By December 31 of each Calendar Year,  
534 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing  
535 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

536                   (c) At the time the Contractor submits the initial schedule for the delivery of  
537 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
538 Contractor shall make an advance payment to the United States equal to the total amount payable  
539 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
540 scheduled to be delivered pursuant to this Contract during the first two calendar months of the  
541 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
542 Contractor shall make an advance payment to the United States, at the Rate(s) set under  
543 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
544 during the second month immediately following. Adjustments between advance payments for  
545 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of  
546 the following month; Provided, That any revised schedule submitted by the Contractor pursuant  
547 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this  
548 Contract during any month shall be accompanied with appropriate advance payment, at the Rates  
549 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such

550 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to  
551 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no  
552 additional Project Water shall be delivered to the Contractor unless and until an advance  
553 payment at the Rates then in effect for such additional Project Water is made. Final adjustment  
554 between the advance payments for the Water Scheduled and payments for the quantities of  
555 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
556 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water  
557 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by  
558 the last day of February.

559 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
560 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the  
561 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
562 month of delivery. The payments shall be consistent with the quantities of M&I Water  
563 Delivered as shown in the water delivery report for the subject month prepared by the by the  
564 Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges  
565 and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment  
566 or underpayment of Charges shall be made through the adjustment of payments due to the  
567 United States for Charges for the next month. Any amount to be paid for past due payment of  
568 Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this  
569 Contract.

570 (e) The Contractor shall pay for any Water Delivered under subdivision (a),  
571 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to

572 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting  
573 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this

574 Contract shall be no more than the otherwise applicable Rate for M&I Water under subdivision  
575 (a) of this Article.

576 (f) Payments to be made by the Contractor to the United States under this  
577 Contract may be paid from any revenues available to the Contractor.

578 (g) All revenues received by the United States from the Contractor relating to  
579 the delivery of Project Water or the delivery of non-Project water through Project facilities shall  
580 be allocated and applied in accordance with Federal Reclamation law and the associated rules or  
581 regulations, and the then-current Project ratesetting policies for M&I Water.

582 (h) The Contracting Officer shall keep its accounts pertaining to the  
583 administration of the financial terms and conditions of its long-term Contracts, in accordance  
584 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
585 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
586 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
587 disposition of all Project and Contractor revenues, and a summary of all water delivery  
588 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
589 to resolve any discrepancies or disputes relating to accountings, reports, or information.

590 (i) The parties acknowledge and agree that the efficient administration of this  
591 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
592 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,

593 and/or for making and allocating payments, other than those set forth in this Article may be in  
594 the mutual best interest of the parties, it is expressly agreed that the parties may enter into  
595 agreements to modify the mechanisms, policies, and procedures for any of those purposes while  
596 this Contract is in effect without amending this Contract; Provided, that such modification does  
597 not unreasonably shift costs to other Project Contractors.

598 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
599 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
600 delivery the Contractor shall make an additional payment to the United States equal to the  
601 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
602 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of  
603 the Contract Total, shall equal one-half of the difference between the Rate established under  
604 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing  
605 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total  
606 shall equal the difference between (i) the Rate established under subdivision (a) of this Article  
607 and (ii) the M&I Full Cost Water Rate.

608 (2) Omitted.

609 (3) For purposes of determining the applicability of the Tiered Pricing  
610 Component pursuant to this Article, Water Delivered shall include Project Water that the  
611 Contractor transfers to others but shall not include Project Water transferred to the Contractor,  
612 nor shall it include the additional water provided to the Contractor under the provisions of  
613 subdivision (f) of Article 3 of this Contract.

614 (k) For the term of this Contract, Rates under the M&I ratesetting policy will

615 be established to recover only reimbursable O&M (including any deficits) and capital costs of  
616 the Project, as those terms are used in the then-current Project M&I ratesetting policy, and  
617 interest, where appropriate, except in instances where a minimum Rate is applicable in  
618 accordance with the relevant Project ratesetting policy. Changes of significance in practices  
619 which implement the Contracting Officer's ratesetting policies will not be implemented until the  
620 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
621 impact of the proposed change.

622 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
623 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
624 adjusted upward or downward to reflect the changed costs (if any) incurred by the Contracting  
625 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in  
626 accordance with the then applicable Project ratesetting policy.

627 (m) Omitted.

628 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is  
629 not legally obligated to pay any Project deficits claimed by the United States to have accrued as  
630 of the date of this Contract or deficit-related interest charges thereon. By entering into this  
631 Contract, the Contractor does not waive any legal rights or remedies which it may have with  
632 respect to such disputed issues. Notwithstanding the execution of this Contract and payments  
633 made hereunder, the Contractor may challenge in the appropriate administrative or judicial  
634 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the  
635 term of the Original and the Existing Contracts; (2) interest accruing on any such deficits; (3) the  
636 inclusion of any such deficit charges or interest in the Rates; (4) the application by the United

637 States of payments made by the Contractor under its Original and the Existing Contracts; and (5)  
638 the application of such payments in the Rates. The Contracting Officer agrees that the  
639 Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any  
640 Project M&I Contractor on any of these issues, and credits for payments heretofore made;  
641 Provided that the basis for such ruling is applicable to the Contractor.

642 8. Omitted.

643 SALES, TRANSFERS, OR EXCHANGES OF WATER

644 9. (a) The right to receive Project Water provided for in this Contract may be  
645 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
646 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
647 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
648 Water under this Contract may take place without the prior written approval of the Contracting  
649 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or  
650 exchanges shall be approved absent completion of all appropriate environmental documentation,  
651 including but not limited to documents prepared pursuant to the NEPA and the ESA. Such  
652 environmental documentation should include, as appropriate, an analysis of groundwater impacts  
653 and economic and social effects, including environmental justice, of the proposed water transfers  
654 on both the transferor and transferee.

655 (b) In order to facilitate efficient water management by means of water  
656 transfers of the type historically carried out among Project Contractors located within the same  
657 geographical area and to allow the Contractor to participate in an accelerated water transfer  
658 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,

659 all necessary environmental documentation including, but not limited to, documents prepared  
660 pursuant to NEPA and ESA analyzing annual transfers within such geographical areas, and the  
661 Contracting Officer shall determine whether such transfers comply with applicable law.  
662 Following the completion of the environmental documentation, such transfers addressed in such  
663 documentation shall be conducted with advance notice to the Contracting Officer, but shall not  
664 require prior written approval by the Contracting Officer. Such environmental documentation  
665 and the Contracting Officer's compliance determination shall be reviewed every five years and  
666 updated, as necessary, prior to the expiration of the then existing five-year period. All  
667 subsequent environmental documentation shall include an alternative to evaluate not less than  
668 the quantity of Project Water historically transferred within the same geographical area.

669 (c) For a water transfer to qualify under subdivision (b) of this Article, such  
670 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three  
671 years, for M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead  
672 to land conversion; and be delivered to established cropland, wildlife refuges, groundwater  
673 basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a  
674 willing buyer; (iv) convey water through existing facilities with no new construction or  
675 modifications to facilities and be between existing Project Contractors and/or the Contractor and  
676 the United States, Department of the Interior; and (v) comply with all applicable Federal, State,  
677 and local or tribal laws and requirements imposed for protection of the environment and Indian  
678 Trust Assets, as defined under Federal law.

679 APPLICATION OF PAYMENTS AND ADJUSTMENTS

680 10. (a) The amount of any overpayment by the Contractor of the Contractor's

681 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current  
682 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of  
683 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount  
684 of such overpayment, at the option of the Contractor, may be credited against amounts to become  
685 due to the United States by the Contractor. With respect to overpayment, such refund or  
686 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to  
687 have the right to the use of any of the Project Water supply provided for herein. All credits and  
688 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining  
689 direction as to how to credit or refund such overpayment in response to the notice to the  
690 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

691 (b) All advances for miscellaneous costs incurred for work requested by the  
692 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs  
693 when the work has been completed. If the advances exceed the actual costs incurred, the  
694 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's  
695 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

696 (c) Nothing in this Contract shall be construed to require or prohibit the  
697 Contractor from making voluntary payments for retiring or avoiding any O&M deficit. Such  
698 voluntary payments would be the same as, or similar to, participation in the existing Contracting  
699 Officer's Voluntary Payment Program.

700 TEMPORARY REDUCTIONS--RETURN FLOWS

701 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
702 requirements of Federal law; and (ii) the obligations of the United States under existing

703 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting  
704 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as  
705 provided in this Contract.

706 (b) The Contracting Officer may temporarily discontinue or reduce the  
707 quantity of Water Delivered to the Contractor as herein provided for the purposes of  
708 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or  
709 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as  
710 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary  
711 discontinuance or reduction, except in case of emergency, in which case no notice need be given;  
712 Provided, That the United States shall use its best efforts to avoid any discontinuance or  
713 reduction in such service. Upon resumption of service after such reduction or discontinuance,  
714 and if requested by the Contractor, the United States will, if possible, deliver the quantity of  
715 Project Water which would have been delivered hereunder in the absence of such discontinuance  
716 or reduction.

717 (c) The United States reserves the right to all seepage and return flow water  
718 derived from Water Delivered to the Contractor hereunder which escapes or is discharged  
719 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for  
720 the United States any right as seepage or return flow being put to reasonable and beneficial use  
721 pursuant to this Contract within the Contractor's Service Area by the Contractor or those  
722 claiming by, through, or under the Contractor.

723 CONSTRAINTS ON THE AVAILABILITY OF WATER

724 12. (a) In its operation of the Project, the Contracting Officer will use all

725 reasonable means to guard against a Condition of Shortage in the quantity of water to be made  
726 available to the Contractor pursuant to this Contract. In the event the Contracting Officer  
727 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
728 Contractor of said determination as soon as practicable.

729 (b) If there is a Condition of Shortage because of errors in physical operations  
730 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
731 actions taken by the Contracting Officer to meet legal obligations then, except as provided in  
732 subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or  
733 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

734 (c) Omitted.

735 (d) In any Year in which there may occur a shortage for any of the reasons  
736 specified in subdivision (b) above, the Contracting Officer shall apportion the available Project  
737 Water supply among the Contractor and others entitled, under existing contracts and future  
738 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of  
739 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the  
740 contractual obligations of the United States and consistent with the then-current M&I Water  
741 Shortage Policy for the Central Valley Project or any modifications or replacement thereof;  
742 Provided, that the 133,000 acre-feet of Project Water referenced in Article 3(a) shall be used as  
743 the base amount (equivalent to the term "historic use" applied in the M&I Water Shortage Policy  
744 for the Central Valley Project, dated February 17, 1994) for the purpose of calculating Project  
745 Water shortages applicable to the Contractor. Such Policy shall be amended, modified, or  
746 superseded only through a public notice and comment procedure.

747 (e) By entering into this Contract, the Contractor does not waive any legal  
748 rights or remedies it may have to file or participate in any administrative or judicial proceeding  
749 contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy  
750 adopted after the effective date of this Contract was promulgated; (ii) the substance of such a  
751 policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting  
752 Officer does not waive any legal defenses or remedies that it may then have to assert in such a  
753 proceeding.

754 13. Omitted.

755 RULES AND REGULATIONS

756 14. The parties agree that the delivery of M&I Water or use of Federal facilities pursuant  
757 to this Contract is subject to the applicable provisions of Federal Reclamation law and any  
758 applicable rules and regulations promulgated by the Secretary of the Interior under such law.

759 WATER AND AIR POLLUTION CONTROL

760 15. The Contractor, in carrying out this Contract, shall comply with all applicable  
761 water and air pollution laws and regulations of the United States and the State of California, and  
762 shall obtain all required permits or licenses from the appropriate Federal, State, or local  
763 authorities.

764 QUALITY OF WATER

765 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant  
766 to this Contract shall be operated and maintained to enable the United States to deliver Project  
767 Water to the Contractor in accordance with the water quality standards specified in subsection  
768 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of  
769 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no

770 obligation to construct or furnish water treatment facilities to maintain or to improve the quality  
771 of Water Delivered to the Contractor pursuant to this Contract. The United States does not  
772 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

773 (b) The O&M of Project facilities shall be performed in such manner as is  
774 practicable to maintain the quality of raw water made available through such facilities at the  
775 highest level reasonably attainable as determined by the Contracting Officer.

776 WATER ACQUIRED BY THE CONTRACTOR  
777 OTHER THAN FROM THE UNITED STATES

778 17. (a) Omitted.

779 (b) Water or water rights now owned or hereafter acquired by the Contractor,  
780 other than from the United States, may be stored, conveyed and/or diverted through Project  
781 facilities, subject to the completion of appropriate environmental documentation, with the  
782 approval of the Contracting Officer and the execution of any contract determined by the  
783 Contracting Officer to be necessary, consistent with the following provisions:

784 (1) The Contractor may introduce non-Project water into Project  
785 facilities and deliver said water within the Contractor's Service Area, subject to payment to the  
786 United States of an appropriate rate as determined by the applicable Project ratesetting policy  
787 and the Project use power policy, if such Project use power policy is applicable, each as  
788 amended, modified or superceded from time to time.

789 (2) Delivery of such non-Project water in and through Project facilities  
790 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project

791 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water  
792 available to other Project Contractors; (iii) interfere with the delivery of contractual  
793 water entitlements to any other Project Contractors; or (iv) interfere with the physical  
794 maintenance of the Project facilities.

795 (3) The United States shall not be responsible for control, care or  
796 distribution of the non-Project water before it is introduced into or after it is delivered from the  
797 Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United  
798 States, and its officers, agents, and employees, from any claim for damage to persons or  
799 property, direct or indirect, resulting from the acts of the Contractor, its officers', employees',  
800 agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii)  
801 diverting such non-Project water into Project facilities.

802 (4) Diversion of such non-Project water into Project facilities shall be  
803 consistent with all applicable laws, and if involving groundwater, consistent with any applicable  
804 groundwater management plan for the area from which it was extracted.

805 (5) After Project purposes are met, as determined by the Contracting  
806 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity  
807 of the facilities declared to be available by the Contracting Officer for conveyance and  
808 transportation of non-Project water prior to any such remaining capacity being made available to  
809 non-Project Contractors.

810 (6) The provisions of this Article 17 shall not apply to water conveyed  
811 through the Folsom South Canal consistent with Article 5.

812 OPINIONS AND DETERMINATIONS



835 Project financial matters including, but not limited to, budget issues. The communication,  
836 coordination, and cooperation provided for hereunder shall extend to all provisions of this  
837 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,  
838 and determinations to be made by the respective party.

839 (b) Within 120 days following the effective date of this Contract, the  
840 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet  
841 with interested Project Contractors to develop a mutually agreeable, written Project-wide  
842 process, which may be amended as necessary separate and apart from this Contract. The goal of  
843 this process shall be to provide, to the extent practicable, the means of mutual communication  
844 and interaction regarding significant decisions concerning Project operation and management on  
845 a real-time basis.

846 (c) In light of the factors referred to in subdivision (b) of Article 3 of this  
847 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this  
848 intent:

849 (1) The Contracting Officer will, at the request of the Contractor,  
850 assist in the development of integrated resource management plans for the Contractor. Further,  
851 the Contracting Officer will, as appropriate, seek authorizations for implementation of  
852 partnerships to improve water supply, water quality, and reliability.

853 (2) The Secretary will, as appropriate, pursue program and project  
854 implementation and authorization in coordination with Project Contractors to improve the water  
855 supply, water quality, and reliability of the Project for all Project purposes.

856 (3) The Secretary will coordinate with Project Contractors and the  
857 State of California to seek improved water resource management.

858 (4) The Secretary will coordinate actions of agencies within the  
859 Department of the Interior that may impact the availability of water for Project purposes.

860 (5) The Contracting Officer shall periodically, but not less than  
861 annually, hold division level meetings to discuss Project operations, division level water  
862 management activities, and other issues as appropriate.

863 (d) Without limiting the contractual obligations of the Contracting Officer  
864 under the other Articles of this Contract, nothing in this Article shall be construed to limit or  
865 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the  
866  
867 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to  
868 protect health, safety, physical integrity of structures or facilities.

869 CHARGES FOR DELINQUENT PAYMENTS

870 20. (a) The Contractor shall be subject to interest, administrative and penalty  
871 charges on delinquent installments or payments. When a payment is not received by the due  
872 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond  
873 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an  
874 administrative charge to cover additional costs of billing and processing the delinquent payment.  
875 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional  
876 penalty charge of six percent (6%) per year for each day the payment is delinquent beyond the  
877 due date. Further, the Contractor shall pay any fees incurred for debt collection services  
878 associated with a delinquent payment.

879 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
880 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
881 interest rate of one-half of one percent (0.5%) per month prescribed by Section 6 of the Reclamation  
882 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
883 date and remain fixed for the duration of the delinquent period.

884 (c) When a partial payment on a delinquent account is received, the amount  
885 received shall be applied, first to the penalty, second to the administrative charges, third to the  
886 accrued interest, and finally to the overdue payment.

887 EQUAL OPPORTUNITY

888 21. During the performance of this Contract, the Contractor agrees as follows:

889 (a) The Contractor will not discriminate against any employee or applicant for  
890 employment because of race, color, religion, sex, or national origin. The Contractor will take  
891 affirmative action to ensure that applicants are employed, and that employees are treated during  
892 employment, without regard to their race, color, religion, sex, or national origin. Such action  
893 shall include, but not be limited to, the following: Employment, upgrading, demotion, or  
894 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other  
895 forms of compensation; and selection for training, including apprenticeship. The Contractor  
896 agrees to post in conspicuous places, available to employees and applicants for employment,  
897 notices to be provided by the Contracting Officer setting forth the provisions of this  
898 nondiscrimination clause.

899 (b) The Contractor will, in all solicitations or advertisements for employees  
900 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
901 consideration for employment without discrimination because of race, color, religion, sex, or  
902 national origin.

903 (c) The Contractor will send to each labor union or representative of workers  
904 with which it has a collective bargaining agreement or other contract or understanding, a notice,  
905 to be provided by the Contracting Officer, advising the said labor union or workers'  
906 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of  
907 September 24, 1965, and shall post copies of the notice in conspicuous places available to  
908 employees and applicants for employment.

909 (d) The Contractor will comply with all provisions of Executive Order  
910 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders  
911 of the Secretary of Labor.

912 (e) The Contractor will furnish all information and reports required by said  
913 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
914 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting  
915 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with  
916 such rules, regulations, and orders.

917 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
918 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
919 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared  
920 ineligible for further Government contracts in accordance with procedures authorized in said  
921 amended Executive Order, and such other sanctions may be imposed and remedies invoked as  
922 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as  
923 otherwise provided by law.

924 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
925 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
926 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
927 provisions will be binding upon each subcontractor or vendor. The Contractor will take such  
928 action with respect to any subcontract or purchase order as may be directed by the Secretary of  
929 Labor as a means of enforcing such provisions, including sanctions for noncompliance:  
930 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,  
931 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request  
932 the United States to enter into such litigation to protect the interests of the United States.

933 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

934 22. (a) The obligation of the Contractor to pay the United States as provided in  
935 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
936 obligation may be distributed among the Contractor's water users and notwithstanding the default  
937 of individual water users in their obligations to the Contractor.

938 (b) The payment of charges becoming due hereunder is a condition precedent  
939 to receiving benefits under this Contract. The United States shall not make water available to the  
940 Contractor through Project facilities during any period in which the Contractor may be in arrears  
941 in the advance payment of water rates due the United States. The Contractor shall not furnish  
942 water made available pursuant to this Contract for lands or parties which are in arrears in the  
943 advance payment of water rates levied or established by the Contractor.

944 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
945 obligation to require advance payment for water rates which it levies.

946 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

947 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
948 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
949 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights

950 laws, as well as with their respective implementing regulations and guidelines imposed by the  
951 U.S. Department of the Interior and/or Bureau of Reclamation.

952 (b) These statutes require that no person in the United States shall, on the  
953 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be  
954 denied the benefits of, or be otherwise subjected to discrimination under any program or activity  
955 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the  
956 Contractor agrees to immediately take any measures necessary to implement this obligation,  
957 including permitting officials of the United States to inspect premises, programs, and documents.

958 (c) The Contractor makes this agreement in consideration of and for the purpose  
959 of obtaining any and all Federal grants, loans, Contracts, property discounts, or other Federal  
960 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,  
961 including installment payments after such date on account of arrangements for Federal financial  
962 assistance which were approved before such date. The Contractor recognizes and agrees that such  
963 Federal assistance will be extended in reliance on the representations and agreements made in this  
964 Article, and that the United States reserves the right to seek judicial enforcement thereof.

965 24. Omitted.

966 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

967 25. In addition to all other payments to be made by the Contractor pursuant to this  
968 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
969 detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
970 of direct cost incurred by the United States for work requested by the Contractor associated with  
971 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies  
972 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed  
973 to in writing in advance by the Contractor. This Article shall not apply to costs for routine  
974 Contract administration.

975 WATER CONSERVATION

976 26. (a) The Contractor has developed and is implementing an effective water  
977 conservation program based on the Contractor's water conservation plan that has been reviewed

978 by the Contracting Officer and determined to meet the conservation and efficiency criteria  
979 established under Federal law. The water conservation and efficiency program contains certain  
980 definite water conservation objectives, appropriate economically feasible water conservation  
981 measures, and time schedules for meeting those objectives. Continued Project Water delivery  
982 pursuant to this Contract shall be contingent upon the Contractor's continued implementation of  
983 such water conservation program. In the event the Contractor's water conservation plan or any  
984 revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this  
985 Contract have not yet been determined by the Contracting Officer to meet such criteria, due to  
986 circumstances which the Contracting Officer determines are beyond the control of the  
987 Contractor, water deliveries shall be made under this Contract so long as the Contractor  
988 diligently works with the Contracting Officer to obtain such determination at the earliest  
989 practicable date, and thereafter the Contractor immediately begins implementing its water  
990 conservation and efficiency program in accordance with the time schedules therein.

991 (b) The Contractor shall implement the Best Management Practices identified by  
992 the time frames issued by the California Urban Water Conservation Council for such M&I Water  
993 unless any such practice is determined by the Contracting Officer to be inappropriate for the  
994 Contractor.

995 (c) The Contractor shall submit to the Contracting Officer a report on the status of  
996 its implementation of the water conservation plan on the reporting dates specified in the then  
997 existing conservation and efficiency criteria established under Federal law.

998 (d) At five-year intervals, the Contractor shall revise its water conservation  
999 plan to reflect the then-current conservation and efficiency criteria for evaluating water

1000 conservation plans established under Federal law and submit such revised water management  
1001 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then  
1002 determine if the water conservation plan meets Reclamation's then-current conservation and  
1003 efficiency criteria for evaluating water conservation plans established under Federal law.

1004 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1005 shall be described in the Contractor's water conservation plan.

1006 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1007 27. Except as specifically provided in Article 17 of this Contract, the provisions of  
1008 this Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1009 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1010 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1011 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or  
1012 any water user within the Contractor's Service Area acquires or has available under any other  
1013 Contract pursuant to Federal Reclamation law.

1014 28. Omitted.

1015 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1016 29. The expenditure or advance of any money or the performance of any obligation of  
1017 the United States under this Contract shall be contingent upon appropriation or allotment of  
1018 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1019 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1020 not appropriated or allotted.

1021 BOOKS, RECORDS, AND REPORTS

1022 30. (a) The Contractor shall establish and maintain accounts and other books and

1023 records pertaining to administration of the terms and conditions of this Contract, including: the  
1024 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1025 agreements; water use data; and other matters that the Contracting Officer may require. Reports  
1026 thereon shall be furnished to the Contracting Officer in such form and on such date or dates as  
1027 the Contracting Officer may require. Subject to applicable Federal laws and regulations, each  
1028 party to this Contract shall have the right during office hours to examine and make copies of the  
1029 other party's books and records relating to matters covered by this Contract.

1030 (b) Notwithstanding the provisions of subdivision (a) of this Article, no  
1031 books, records, or other information shall be requested from the Contractor by the Contracting  
1032 Officer unless such books, records, or information are reasonably related to the administration or  
1033 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1034 time within which to provide the requested books, records, or information.

1035 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1036 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1037 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1038 therein shall be valid until approved in writing by the Contracting Officer.

1039 (b) The assignment of any right or interest in this Contract by either party  
1040 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1041 written concurrence of said other party.

1042 (c) The Contracting Officer shall not unreasonably condition or withhold  
1043 approval of any proposed assignment.

1044 SEVERABILITY

1045 32. In the event that a person or entity who is neither (i) a party to a Project contract,  
1046 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)  
1047 an association or other form of organization whose primary function is to represent parties to  
1048 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or

1049 enforceability of a provision included in this Contract and said person, entity, association, or  
1050 organization obtains a final court decision holding that such provision is legally invalid or  
1051 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1052 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such  
1053 final court decision identify by mutual agreement the provisions in this Contract which must be  
1054 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).  
1055 The time periods specified above may be extended by mutual agreement of the parties. Pending  
1056 the completion of the actions designated above, to the extent it can do so without violating any  
1057 applicable provisions of law, the United States shall continue to make the quantities of Project  
1058 Water specified in this Contract available to the Contractor pursuant to the provisions of this  
1059 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1060 RESOLUTION OF DISPUTES

1061 33. Should any dispute arise concerning any provisions of this Contract, or the  
1062 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1063 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1064 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1065 30 days' written notice of the intent to take such action; Provided, That such notice shall not be  
1066 required where a delay in commencing an action would prejudice the interests of the party that  
1067 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer  
1068 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,  
1069 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the  
1070 United States may have.

1071 OFFICIALS NOT TO BENEFIT

1072 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1073 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1074 manner as other water users or landowners.

1075 CHANGES IN CONTRACTOR'S SERVICE AREA

1076 35. (a) While this Contract is in effect, no change may be made in the  
1077 Contractor's Service Area by inclusion or exclusion of lands, dissolution, consolidation, merger,  
1078 or otherwise, except upon the Contracting Officer's written consent.

1079 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1080 Officer will notify the Contractor of any additional information required by the Contracting  
1081 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1082 schedule for timely completion of the process. Such process will analyze whether the proposed  
1083 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;  
1084 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or  
1085 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)  
1086 have an impact on any Project Water rights applications, permits, or licenses. In addition, the  
1087 Contracting Officer shall comply with NEPA and ESA. The Contractor will be responsible for  
1088 all costs incurred by the Contracting Officer in this process, and such costs will be paid in  
1089 accordance with Article 25 of this Contract.

1090 FEDERAL LAWS

1091 36. By entering into this Contract, the Contractor does not waive its rights to contest  
1092 the validity or application in connection with the performance of the terms and conditions of this  
1093 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with

1094 the terms and conditions of this Contract unless and until relief from application of such Federal  
1095 law or regulation to the implementing provision of the Contract is granted by a court of  
1096 competent jurisdiction.

1097 NOTICES

1098 37. Any notice, demand, or request authorized or required by this Contract shall be  
1099 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1100 delivered to Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California  
1101 95630-1799, and on behalf of the United States, when mailed, postage prepaid, to Board of  
1102 Directors, East Bay Municipal Utility District, P. O. Box 24055, Oakland, California 94623-  
1103 1055, or delivered to Board of Directors, East Bay Municipal Utility District, 375 Eleventh  
1104 Street, Oakland, California 94607. The designation of the addressee or the address may be  
1105 changed by notice given in the same manner as provided in this Article for other notices.

1106 CONFIRMATION OF CONTRACT

1107 38. The Contractor, after the execution of this Contract, shall furnish to the  
1108 Contracting Officer evidence that pursuant to the laws of the State of California, the Contractor  
1109 is a legally constituted entity and the Contract is lawful, valid, and binding on the Contractor.  
1110 This Contract shall not be binding on the United States until such evidence has been provided to  
1111 the Contracting Officer's satisfaction.

1112                   IN WITNESS WHEREOF, the parties hereto have executed this Contract as of  
1113 the day and year first above written.

1114                   THE UNITED STATES OF AMERICA

1115                   By: \_\_\_\_\_  
1116                   Regional Director, Mid-Pacific Region  
1117                   Bureau of Reclamation

1118 (SEAL)

1119                   EAST BAY MUNICIPAL UTILITY DISTRICT

1120                   By: \_\_\_\_\_  
1121                   President of the Board of Directors

1122 Attest:

1123 By: \_\_\_\_\_  
1124                   Secretary of the Board of Directors

1125 (H:\pub 440\LTRC\Folosm Final Draft LTRC's\10-25-04 EBMUD Final Draft Contract with  
1126 exhibits.doc)

Contract No. 14-06-200-5183A-LTR1

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B  
 [Initial Rates and Charges]  
 EAST BAY MUNICIPAL UTILITY DISTRICT

|  | <u>2004 Rates Per Acre-Foot</u><br><u>M&amp;I</u> |
|--|---|
| O&M AND COST-OF-SERVICE RATES:   |   |
| Capital Rate:  | \$21.99   |
| O&M Rate:  | \$16.71   |
| Water Marketing  | \$5.01  |
| Storage  | 6.38  |
| Conveyance   | 5.32  |
| CFO/PFR Adjustment Rate  | \$ 1.18   |
| Deficit Rate: *  | \$70.68   |
| TOTAL COST-OF-SERVICE (COS) RATE:  | \$110.55  |
| TIERED PRICING COMPONENT >80% ≤90% OF<br>CONTRACT TOTAL (M&I Full Cost Rate - COS rate / 2):   |   |
|  | \$6.57  |
| TIERED PRICING COMPONENT > 90% OF<br>CONTRACT TOTAL (M&I Full Cost Rate - COS rate):   |   |
|  | \$13.13   |
| M&I FULL COST RATE:  |   |
| Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in Section 202 (3) (B) and (C) of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended; |   |
|  | \$123.68  |
| SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND**  |   |
| Restoration Payments [3407(d)(2)(A)]   | \$15.64   |

\* See subdivision (n) of Article 7.

\*\* The surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1 -9/30).