

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

INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
THE CITY OF ROSEVILLE  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE AMERICAN RIVER DIVISION

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10 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2010, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, June 21, 1963 (77  
14 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050), as amended, and  
15 Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred to  
16 as Federal Reclamation law, between THE UNITED STATES OF AMERICA, hereinafter referred to  
17 as the United States, and THE CITY OF ROSEVILLE, hereinafter referred to as the Contractor, a  
18 public agency of the State of California, duly organized, existing, and acting pursuant to the laws  
19 thereof,

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood

24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other  
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the  
27 San Joaquin River and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed Folsom Dam and Reservoir, hereinafter  
29 collectively referred to as the American River Division, which will be used in part for the furnishing  
30 of water to the Contractor pursuant to the terms of this Contract; and

31 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant  
32 to California law for operation of the Project; and

33 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
34 No. 14-06-200-3474A, dated September 9, 1967, which contract was amended on November 30,  
35 1976 and is hereinafter referred to as the Existing Contract, which established terms for the annual  
36 delivery of up to 32,000 af to the Contractor of Project Water from the American River Division  
37 from January 1, 1971, through December 31, 2010; and

38 [5<sup>th</sup>] WHEREAS, the United States and the Contractor have, subsequently entered into a  
39 binding agreement, identified as Binding Agreement No. 14-06-200-3474A-BA, which sets out the  
40 terms pursuant to which the Contractor agreed to renew the Existing Contract before its expiration  
41 date after completion of a Programmatic Environmental Impact Statement (PEIS) and other  
42 appropriate environmental documentation and negotiation of a renewal contract, and which also sets  
43 out the consequences of a subsequent decision not to renew; and

44 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the Central Valley Project Improvement Act (CVPIA)  
45 provides for long-term renewal of the Existing Contract following completion of appropriate  
46 environmental documentation, including the PEIS, which was required by Section 3409 of the  
47 CVPIA, pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect  
48 impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts

49 for Project Water; and

50 [6.1] Omitted; and

51 [7<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
52 its obligations under the Existing Contract; and

53 [8<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
54 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
55 beneficial use and/or has demonstrated projected future demand for water use such that the  
56 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the  
57 quantity of Project Water to be made available to it pursuant to this Contract; and

58 [9<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban areas  
59 within California for more than 50 years, and is considered by the Contractor as an essential portion  
60 of its water supply; and

61 [10<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's,  
62 depend upon the continued availability of water, including water service from the Project; and

63 [10.1] WHEREAS, in the California Bay-Delta Authority (CALFED) Programmatic Record  
64 of Decision, dated August 28, 2000, the United States and the State of California adopted a general  
65 target of continuously improving Delta water quality for all uses. The CALFED Agencies' target for  
66 providing safe, reliable, and affordable drinking water in a cost-effective way, is to achieve either:  
67 "(a) average concentrations at Clifton Court Forebay and other southern and central Delta drinking  
68 water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of  
69 public health protection using a cost-effective combination of alternative source waters, source  
70 control and treatment technologies;" and

71 [11<sup>th</sup>] WHEREAS, the Secretary of the Interior (Secretary) intends through coordination,  
72 cooperation, and partnerships to pursue measures to improve water supply, water quality, and  
73 reliability of the Project for all Project purposes; and

74 [11.1] WHEREAS, the Contractor and the water users in its Service Area have improved and  
75 will continue to improve water use efficiency through water conservation, water reclamation, and  
76 other Best Management Practices; however, implementing these measures have reduced and continue  
77 to reduce the ability of the Contractor and the water users in its Service Area to withstand a  
78 Condition of Shortage; and

79 [12<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
80 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment  
81 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a  
82 reasonable balance among competing demands for use of Project Water; and to comply with all  
83 applicable environmental statutes, all consistent with the legal obligations of the United States  
84 relative to the Project; and

85 [13<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
86 relationship in order to achieve their mutual goals; and

87 [13.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated April  
88 14, 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply for the  
89 Sacramento region's economic health and planned development through the year 2030, and  
90 (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American River; and

91 [13.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the  
92 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate actions  
93 that they could take to implement the objectives of the Water Forum Agreement, which, if agreed to,  
94 would be the subject of a separate agreement between them; and

95 [13.3] WHEREAS, in order to continue water service provided under Project water service  
96 contracts that expire prior to the completion of all appropriate environmental documentation, the  
97 United States intends to execute interim renewal contracts pursuant to Section 3404(c)(1) of the  
98 CVPIA , for a period not to exceed three (3) Years in length, and for successive interim periods of

99 not more than two (2) Years in length, until such appropriate environmental documentation, is finally  
100 completed, at which time the Secretary shall, pursuant to Federal Reclamation law, upon request of  
101 the Contractor, enter into a long-term renewal contract for a period of forty (40) Years; and may  
102 thereafter renew such long-term renewal contracts for successive periods not to exceed forty (40)  
103 Years each; and

104 [14<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into and execute  
105 this Interim Renewal (hereinafter "Contract") consistent with the provisions of section 3404(c) of  
106 the CVPIA and pursuant to Federal Reclamation law on the terms and conditions set forth below.

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

109 DEFINITIONS

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

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

114 (b) "Charges" shall mean the payments required by Federal Reclamation law in  
115 addition to the Rates as determined annually by the Contracting Officer pursuant to this Contract;

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

119 (d) "Contracting Officer" shall mean the Secretary's duly authorized  
120 representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

121 (e) "Contract Total" shall mean the maximum amount of water to which the  
122 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

123 (f) "Contractor's Service Area" shall mean the area to which the Contractor is

124 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,  
125 which may be modified from time to time in accordance with Article 35 of this Contract without  
126 amendment of this Contract;

127 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title  
128 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

129 (h-i) Omitted;

130 (j) “Full Cost Rate” shall mean an annual rate as determined by the Contracting  
131 Officer that shall amortize the expenditures for construction properly allocable to the Project  
132 Irrigation or municipal and industrial (M&I) functions, as appropriate, of facilities in service  
133 including all operation and maintenance (O&M) deficits funded, less payments, over such periods as  
134 may be required under Federal Reclamation law or applicable contract provisions. Interest will  
135 accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on  
136 costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to  
137 October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the  
138 Reclamation Reform Act of 1982 (RRA). The Full-Cost Rate includes actual operation,  
139 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for  
140 the RRA;

141 (k-l) Omitted;

142 (m) “Irrigation Water” shall mean water made available from the Project that is  
143 used primarily in the production of agricultural crops or livestock, including domestic use incidental  
144 thereto, and watering of livestock;

145 (n) Omitted;

146 (o) “Municipal and Industrial Water” or “M&I Water” shall mean Project Water,  
147 other than Irrigation Water, made available to the Contractor. M&I Water shall include water used  
148 for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)

149 which are kept for personal enjoyment or water delivered to land holdings operated in units of less  
150 than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the  
151 use of water delivered to any such landholding is a use described in subdivision (m) of this Article;

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

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

157 (r) Omitted;

158 (s) "Project" shall mean the Central Valley Project owned by the United States  
159 and managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

168 (w) "Recent Historic Average" shall mean the most recent five year average of the  
169 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding  
170 contract(s).

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

- 174 (y) Omitted
- 175 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for  
176 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;
- 177 (aa) "Water Made Available" shall mean the estimated amount of Project Water  
178 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,  
179 pursuant to subdivision (a) of Article 4 of this Contract;
- 180 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor  
181 for which times and quantities for delivery have been established by the Contractor and Contracting  
182 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and
- 183 (cc) "Year" shall mean the period from and including March 1 of each Calendar  
184 Year through the last day of February of the following Calendar Year.

185 TERM OF CONTRACT

186 2. (a) This Contract shall be effective from January 1, 2011 and shall remain in  
187 effect through February 28, 2013, and thereafter will be renewed as described in this Article. Except  
188 as provided in subdivision (b) of this Article, until completion of all appropriate environmental  
189 review, and provided that the Contractor has complied with all the terms and conditions of the  
190 interim renewal contract in effect for the period immediately preceding the requested successive  
191 interim renewal contract, this Contract will be renewed, upon request of the Contractor, for  
192 successive interim periods each of which shall be no more than two (2) Years in length. Also, except  
193 as provided in subdivision (b) of this Article, in order to promote orderly and cost effective contract  
194 administration, the terms and conditions in subsequent interim renewal contracts shall be identical to  
195 the terms and conditions in the interim renewal contract immediately preceding the subsequent  
196 interim renewal contract: Provided, however, That each party preserves the right to propose  
197 modification(s) in any interim renewal contract other than those described in subdivision (b) of this  
198 Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be

199 included in any successive interim renewal contracts. Said modification(s) of each successive  
200 interim renewal contract shall be agreed upon within a reasonable time prior to the expiration of the  
201 then existing interim renewal contract. Nothing in this Article shall in any way alter the obligation  
202 that, upon final completion of any necessary supplemental environmental documentation, the  
203 Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a  
204 long-term renewal contract for a period of forty (40) Years and may thereafter renew such long-term  
205 renewal contracts for successive periods not to exceed forty (40) Years each.

206 (b) The parties have engaged and if necessary will continue to engage in good  
207 faith negotiations intended to permit the execution of a forty (40) Year long-term renewal contract  
208 contemplated by Section 3404 (c) of the CVPIA, hereinafter referred to as a “long-term renewal  
209 contract”. The parties recognize the possibility that this schedule may not be met without further  
210 negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer have reached  
211 agreement on the terms of the Contractor’s long-term renewal contract or (ii) the Contractor and  
212 Contracting Officer have not completed the negotiations on the Contractor’s long-term renewal  
213 contract, believe that further negotiations on that contract would be beneficial, and mutually commit  
214 to continue to negotiate to seek to reach agreement, but (iii) all environmental documentation  
215 required to allow execution of the Contractor’s long-term renewal contract by both parties has not  
216 been completed in time to allow execution of the Contractor’s long-term renewal contract by  
217 February 28, 2013, then (iv), the parties will expeditiously complete the environmental  
218 documentation required of each of them in order to execute the Contractor’s long-term renewal  
219 contract at the earliest practicable date. In addition, the Contractor’s then-current interim renewal  
220 contract will be renewed without change upon the request of either party through the agreed-upon  
221 effective date of the Contractor’s long-term renewal contract or, in the absence of agreement on the  
222 terms of the Contractor’s long-term renewal contract, through the succeeding February 28.

223 (c) The omission of language in this Contract providing for conversion of this  
224 interim renewal contract or any subsequent renewals thereof to a repayment contract pursuant to  
225 subsection (c)(1) of Section 9 of the Reclamation Projects Act of 1939 (53 Stat. 1187), shall not  
226 prejudice the Contractor's right to assert a right to have such language included in subsequent  
227 renewals of this Contract or to exercise such conversion, all as provided by law, or to negotiate the  
228 language regarding such conversion to be included in subsequent renewal contracts.

229 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

230 3. (a) During each Year, consistent with all applicable State water rights, permits,  
231 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this  
232 Contract, the Contracting Officer shall make available for delivery to the Contractor up to 32,000  
233 acre-feet of Project Water for M&I purposes. Provided, however, during the two (2) month period of  
234 January and February of 2011, the Contracting Officer shall make available for delivery to the  
235 Contractor that portion of the 2010 allocation of Project Water unused by the Contractor under the  
236 Existing Contract. Water Delivered to the Contractor in accordance with this subdivision shall be  
237 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

238 (b) Because the capacity of the Project to deliver Project Water has been  
239 constrained in recent years and may be constrained in the future due to many factors including  
240 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor  
241 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given  
242 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the  
243 Contract Total set forth in this Contract will not be available to the Contractor in many years. During  
244 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor  
245 was 30,400 acre feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations  
246 of the parties under any provision of this Contract.

247 (c) The Contractor shall utilize the Project Water in accordance with all applicable

248 legal requirements.

249 (d) The Contractor shall make reasonable and beneficial use of all water furnished  
250 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), ground-water  
251 banking programs, surface water storage programs, and other similar programs utilizing Project  
252 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
253 Area which are consistent with applicable State law and result in use consistent with Federal  
254 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in  
255 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,  
256 further, That such water conservation plan demonstrates sufficient lawful uses exist in the  
257 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is  
258 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.  
259 Ground-water recharge programs, groundwater banking programs, surface water storage programs,  
260 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract  
261 conducted outside the Contractor's Service Area may be permitted upon written approval of the  
262 Contracting Officer, which approval will be based upon environmental documentation, Project Water  
263 rights, and Project operational concerns. The Contracting Officer will address such concerns in  
264 regulations, policies, or guidelines.

265 (e) The Contractor shall comply with requirements applicable to the Contractor in  
266 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
267 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are  
268 within the Contractor's legal authority to implement. The Existing Contract, which evidences in  
269 excess of 30 years of diversions for M&I purposes of the quantities of water provided in subdivision  
270 (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for the  
271 biological assessment prepared pursuant to the ESA, and any other needed environmental review.  
272 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial

273 relief in a court of competent jurisdiction with respect to any biological opinion or other  
274 environmental documentation referred to in this Article.

275 (f) Following the declaration of Water Made Available under Article 4 of this  
276 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
277 available to the Project, can be made available to the Contractor in addition to the Contract Total  
278 under Article 3 of this Contract during the Year without adversely impacting other Project  
279 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
280 Contractor prior to making such a determination. If the Contracting Officer determines that Project  
281 Water, or other water available to the Project, can be made available to the Contractor, the  
282 Contracting Officer will announce the availability of such water and shall so notify the Contractor as  
283 soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project  
284 Contractors capable of taking such water to determine the most equitable and efficient allocation of  
285 such water. If the Contractor requests the delivery of any quantity of such water, the Contracting  
286 Officer shall make such water available to the Contractor in accordance with applicable statutes,  
287 regulations, guidelines, and policies.

288 (g) The Contractor may request permission to reschedule for use during the  
289 subsequent Year some or all of the Water Made Available to the Contractor during the current Year  
290 referred to as “carryover.” The Contractor may request permission to use during the current Year a  
291 quantity of Project Water which may be made available by the United States to the Contractor during  
292 the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may permit  
293 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

294 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable  
295 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the  
296 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during  
297 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations

298 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the  
299 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of  
300 this Contract or applicable provisions of any subsequent renewal contracts.

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

305 (j) The Contracting Officer shall make reasonable efforts to protect the water  
306 rights necessary for the Project and to provide the water available under this Contract. The  
307 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
308 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,  
309 That the Contracting Officer retains the right to object to the substance of the Contractor's position in  
310 such a proceeding; Provided further, That in such proceedings the Contracting Officer shall recognize  
311 the Contractor has a legal right under the terms of this Contract to use Project Water.

312 TIME FOR DELIVERY OF WATER

313 4 (a) On or about February 20 of each Calendar Year, the Contracting Officer shall  
314 announce the Contracting Officer's expected declaration of the Water Made Available. Such  
315 declaration will be expressed in terms of both Water Made Available and the Recent Historic  
316 Average and will be updated monthly, and more frequently if necessary, based on then-current  
317 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made  
318 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the  
319 basis of the estimate, with relevant supporting information, upon the written request of the  
320 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer  
321 shall provide the Contractor with the updated Recent Historic Average.

322 (b) On or before each March 1 and at such other times as necessary, the Contractor

323 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,  
324 showing the monthly quantities of Project Water to be delivered by the United States to the  
325 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting  
326 Officer shall use all reasonable means to deliver Project Water according to the approved schedule  
327 for the Year commencing on such March 1.

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

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

336 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

337 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
338 Contract shall be delivered to the Contractor at the outlet from the 84-inch pipeline leading from  
339 Folsom pumping plant to the Hinkle Wye and any additional point or points of delivery either on  
340 Project facilities or another location or locations mutually agreed to in writing by the Contracting  
341 Officer and the Contractor.

342 (b) Omitted.

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

345 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
346 measured and recorded with equipment furnished, installed, operated, and maintained by the United  
347 States, or other appropriate entity as designated by the Contracting Officer (hereafter "other

348 appropriate entity”) at the point or points of delivery established pursuant to subdivision (a) of this  
349 Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or  
350 cause to be investigated, the accuracy of such measurements and shall take any necessary steps to  
351 adjust any errors appearing therein. For any period of time when accurate measurements have not  
352 been made, the Contracting Officer shall consult with the Contractor prior to making a final  
353 determination of the quantity delivered for that period of time.

354 (e) The Contracting Officer shall not be responsible for the control, carriage,  
355 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract  
356 beyond the delivery points specified in subdivision (a) of this Article. The Contractor shall  
357 indemnify the United States, its officers, employees, agents, and assigns on account of damage or  
358 claim of damage of any nature whatsoever for which there is legal responsibility, including property  
359 damage, personal injury, or death arising out of or connected with the control, carriage, handling, use,  
360 disposal, or distribution of such Water Delivered beyond such delivery points, except for any damage  
361 or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers,  
362 employees, agents, or assigns with the intent of creating the situation resulting in any damage or  
363 claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or  
364 assigns;  
365 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns; or  
366 (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United  
367 States.

368 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

369 6. (a) The Contractor shall ensure that, unless the Contractor establishes an  
370 alternative measurement program satisfactory to the Contracting Officer, all surface water delivered  
371 for M&I purposes is measured at each M&I service connection. The water measuring devices or  
372 water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.

373 The Contractor shall be responsible for installing, operating, and maintaining and repairing all such  
374 measuring devices and implementing all such water measuring methods at no cost to the United  
375 States. The Contractor shall use the information obtained from such water measuring devices or  
376 water measuring methods to ensure its proper management of the water, to bill water users for water  
377 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by  
378 customer class as defined in the Contractor's water conservation plan provided for in Article 26 of  
379 this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing  
380 and collecting any charges, assessments, or other revenues authorized by California law. The  
381 Contractor shall include a summary of all its annual surface water deliveries in the annual report  
382 described in subdivision (c) of Article 26.

383 (b) To the extent the information has not otherwise been provided, upon execution  
384 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing  
385 the measurement devices or water measuring methods being used or to be used to implement  
386 subdivision (a) of this Article and identifying the M&I service connections or alternative  
387 measurement programs approved by the Contracting Officer, at which such measurement devices or  
388 water measuring methods are being used, and, if applicable, identifying the locations at which such  
389 devices and/or methods are not yet being used including a time schedule for implementation at such  
390 locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the  
391 adequacy and necessary modifications, if any, of the measuring devices or water measuring methods  
392 identified in the Contractor's report and if the Contracting Officer does not respond in such time, they  
393 shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring  
394 devices or methods are inadequate, the parties shall within 60 days following the Contracting  
395 Officer's response, commence to negotiate in good faith how, and the earliest practicable date by  
396 which, the Contractor shall modify said measuring devices and/or measuring methods as required by  
397 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

406 RATES AND METHOD OF PAYMENT FOR WATER

407 7. (a) The Contractor shall pay the United States as provided in this Article for all  
408 Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's then-  
409 existing ratesetting policy for M&I Water, which ratesetting policy shall be amended, modified, or  
410 superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation  
411 law and associated rules and regulations, or policies; and (iii) other applicable provisions of this  
412 Contract. Payments shall be made by cash transaction, electronic funds transfer, or any other  
413 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates  
414 and Charges applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B,"  
415 as may be revised annually.

416 (b) The Contracting Officer shall notify the Contractor of the Rates and Charges,  
417 as follows:

418 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
419 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period  
420 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and  
421 the basis for such estimate. The Contractor shall be allowed not less than two months to review and  
422 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting

423 Officer shall notify the Contractor in writing of the Charges to be in effect during the period  
424 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and  
425 such notification shall revise Exhibit "B."

426 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall  
427 make available to the Contractor an estimate of the Rates for Project Water for the following Year  
428 and the computations and cost allocations upon which those Rates are based. The Contractor shall be  
429 allowed not less than two months to review and comment on such computations and cost allocations.  
430 By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with  
431 the final Rates to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

432 (c) At the time the Contractor submits the initial schedule for the delivery of  
433 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
434 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
435 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
436 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
437 of the first month and before the end of each calendar month thereafter, the Contractor shall make an  
438 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the  
439 Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
440 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
441 for Water Delivered shall be made before the end of the following month; Provided, That any revised  
442 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
443 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
444 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
445 to the Contractor in advance of such payment. In any month in which the quantity of Water  
446 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid  
447 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and

448 until an advance payment at the Rates then in effect for such additional Project Water is made. Final  
449 adjustment between the advance payments for the Water Scheduled and payments for the quantities  
450 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
451 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water  
452 carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the  
453 last day of February.

454 (d) The Contractor shall also make a payment in addition to the Rate(s) in  
455 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in effect,  
456 before the end of the month following the month of delivery. The payments shall be consistent with  
457 the quantities of M&I Water Delivered as shown in the water delivery report for the subject month  
458 prepared by the Contracting Officer. The water delivery report shall be deemed a bill for the  
459 payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of Charges  
460 shall be made through the adjustment of payments due to the United States for Charges for the next  
461 month. Any amount to be paid for past due payment of Charges shall be computed pursuant to  
462 Article 20 of this Contract.

463 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or  
464 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
465 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;  
466 Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this Contract shall  
467 be no more than the otherwise applicable Rate for M&I Water under subdivision (a) of this Article.

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

470 (g) All revenues received by the United States from the Contractor relating to the  
471 delivery of Project Water or the delivery of non-Project water through Project facilities shall be  
472 allocated and applied in accordance with Federal Reclamation law and the associated rules or

473 regulations, and the then-current Project ratesetting policy for M&I Water.

474 (h) The Contracting Officer shall keep its accounts pertaining to the administration  
475 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal  
476 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer  
477 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all  
478 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,  
479 and a summary of all water delivery information. The Contracting Officer and the Contractor shall  
480 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,  
481 reports, or information.

482 (i) The parties acknowledge and agree that the efficient administration of this  
483 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
484 policies, and procedures used for establishing Rates and Charges, and/or for making and allocating  
485 payments, other than those set forth in this Article may be in the mutual best interest of the parties, it  
486 is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies,  
487 and procedures for any of those purposes while this Contract is in effect without amending this  
488 Contract.

489 (j) (1-3) Omitted

490 (k) For the term of this Contract, Rates under the respective ratesetting policies  
491 will be established to recover only reimbursable O&M (including any deficits) and capital costs of  
492 the Project, as those terms are used in the then-current Project ratesetting policies, and interest, where  
493 appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant  
494 Project ratesetting policy. Changes of significance in practices which implement the Contracting  
495 Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the  
496 Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

497 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,

498 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted  
499 upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the  
500 delivery of the transferred Project Water to the transferee's point of delivery in accordance with the  
501 then-applicable Project ratesetting policy.

502 (m) Omitted.

503 (n) Omitted.

504 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

505 8. Omitted.

506 SALES, TRANSFERS, OR EXCHANGES OF WATER

507 9. (a) The right to receive Project Water provided for in this Contract may be sold,  
508 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if  
509 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable  
510 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this  
511 Contract may take place without the prior written approval of the Contracting Officer, except as  
512 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be  
513 approved absent all appropriate environmental documentation, including but not limited to,  
514 documents prepared pursuant to the National Environmental Policy Act (NEPA) and ESA. Such  
515 environmental documentation should include, as appropriate, an analysis of ground-water impacts  
516 and economic and social effects, including environmental justice, of the proposed water transfers on  
517 both the transferor and transferee.

518 (b) In order to facilitate efficient water management, among Project Contractors  
519 located within the same geographical area, by means of water transfers and to allow the Contractor to  
520 participate in an accelerated water transfer program during the term of this Contract, the Contracting  
521 Officer shall prepare, as appropriate, all necessary environmental documentation including, but not  
522 limited to, documents prepared pursuant to NEPA and ESA analyzing annual transfers within such

523 geographical areas and the Contracting Officer shall determine whether such transfers comply with  
524 applicable law. Following the completion of the environmental documentation, such transfers  
525 addressed in such documentation shall be conducted with advance notice to the Contracting Officer,  
526 but shall not require prior written approval by the Contracting Officer. Such environmental  
527 documentation and the Contracting Officer's compliance determination shall be reviewed every five  
528 years and updated, as necessary, prior to the expiration of the then-existing five-year period. All  
529 subsequent environmental documentation shall include an alternative to evaluate not less than the  
530 quantity of Project Water historically transferred within the same geographical area.

531 (c) For a water transfer to qualify under subdivision (b) of this Article, such water  
532 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for  
533 M&I use, ground-water recharge, water banking or similar groundwater activities, surface water  
534 storage or fish and wildlife resources, not lead to land conversion; and be delivered to established  
535 cropland, wildlife refuges, ground-water basins or M&I use, or for fish and wildlife purposes; (ii)  
536 occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water  
537 through existing Project facilities with no new construction or modifications to Project facilities and  
538 be between existing Project Contractors and/or the Contractor and the United States, Department of  
539 the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and  
540 requirements imposed for protection of the environment and Indian Trust Assets, as defined under  
541 Federal law.

542 (d) Solely for the purpose of determining whether Section 3405(a)(1)(M) of the  
543 CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting  
544 Officer acknowledges that the Contractor is within a county, watershed or other area of origin, as  
545 those terms are utilized under California law, of water that constitutes the natural flow of the  
546 American River and its tributaries above the confluence of the American and Sacramento Rivers.

547 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

564                                   TEMPORARY REDUCTIONS--RETURN FLOWS

565           11.   (a)    Subject to: (i) the authorized purposes and priorities of the Project and the  
566 requirements of Federal law and (ii) the obligations of the United States under existing contracts, or  
567 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make  
568 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this  
569 Contract.

570           (b)    The Contracting Officer may temporarily discontinue or reduce the quantity of  
571 Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection,  
572 maintenance, repair, or replacement of any of the Project facilities or any part thereof necessary for

573 the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer will give  
574 the Contractor due notice in advance of such temporary discontinuance or reduction, except in case  
575 of emergency, in which case no notice need be given; Provided, That the United States shall use its  
576 best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service  
577 after such reduction or discontinuance, and if requested by the Contractor, the United States will, if  
578 possible, deliver the quantity of Project Water which would have been delivered hereunder in the  
579 absence of such discontinuance or reduction.

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

586 CONSTRAINTS ON THE AVAILABILITY OF WATER

587  
588 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable  
589 means to guard against a Condition of Shortage in the quantity of water to be made available to the  
590 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a  
591 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said  
592 determination as soon as practicable.

593  
594 (b) If there is a Condition of Shortage because of errors in physical operations of  
595 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions  
596 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)  
597 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,  
598 agents, or employees for any damage, direct or indirect, arising therefrom.

599 (c) Omitted.

600 (d) Project Water furnished under this Contract will be allocated in accordance  
601 with the then-existing Project M&I Water Shortage Policy. Such policy shall be amended, modified,  
602 or superseded only through a public notice and comment procedure.

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

609 UNAVOIDABLE GROUNDWATER PERCOLATION

610 13. Omitted.

611 RULES, REGULATIONS AND DETERMINATIONS

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

615 WATER AND AIR POLLUTION CONTROL

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

619 QUALITY OF WATER

620 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
621 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
622 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
623 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
624 3050), or other existing Federal laws. The United States is under no obligation to construct or  
625 furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the  
626 Contractor pursuant to this Contract. The United States does not warrant the quality of Water  
627 Delivered to the Contractor pursuant to this Contract.

628 (b) The O&M of Project facilities shall be performed in such manner as is  
629 practicable to maintain the quality of raw water made available through such facilities at the highest  
630 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be  
631 responsible for compliance with all State and Federal water quality standards applicable to surface  
632 and subsurface agricultural drainage discharges, if any, generated through the use of Federal or  
633 Contractor facilities or Project Water provided by the Contractor within the Contractor's Service  
634 Area.

635 (c) The Contracting Officer and the Contractor shall communicate, coordinate,  
636 and cooperate with each other with respect to the O&M of the Project by the United States in  
637 accordance with Articles 11 and 19 of this Contract.

638 WATER ACQUIRED BY THE CONTRACTOR  
639 OTHER THAN FROM THE UNITED STATES

640 17. (a) Omitted.

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

646 (1) The Contractor may introduce non-Project water into Project facilities  
647 and deliver said water to lands within the Contractor's Service Area, subject to payment to the United  
648 States of an appropriate rate as determined by the applicable Project ratesetting policy and the Project  
649 use power policy, if such Project use power policy is applicable, each as amended, modified, or  
650 superseded from time to time. In addition, if electrical power is required to pump non-Project water  
651 through the facilities, the Contractor shall be responsible for obtaining the necessary power and  
652 paying the necessary charges therefore.

653 (2) Delivery of such non-Project water in and through Project facilities

654 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as  
655 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other  
656 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other  
657 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities; Provided,  
658 that nothing in this Article is intended to preclude the United States from passing the Contractor's  
659 water rights water through Project storage facilities to the extent required to satisfy the Contractor's  
660 water rights that are senior to those of the Project under the applicable provisions of California water  
661 law. Provided further, that the United States has determined that the delivery of non-Project water in  
662 and through Project facilities pursuant to Warren Act Contract No. 02-WC-20-2217 between the  
663 United States and the Contractor, as it now exists and may be amended, extended, or renewed in the  
664 future, satisfies the requirements of this Article.

665 (3) The United States shall not be responsible for control, care, or  
666 distribution of the non-Project water before it is introduced into or after it is delivered from the  
667 Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United  
668 States and their respective officers, agents, and employees, from any claim for damage to persons or  
669 property, direct or indirect, resulting from the acts of the Contractor, or its officers, employees,  
670 agents or assigns, in (i) extracting or diverting non-Project water from any source, or (ii) diverting  
671 such non-Project water into Project facilities.

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

675 (5) After Project purposes are met, as determined by the Contracting  
676 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of  
677 the facilities declared to be available by the Contracting Officer for conveyance and transportation of  
678 non-Project water prior to any such remaining capacity being made available to non-Project

679 Contractors.

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OPINIONS AND DETERMINATIONS

18. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

COORDINATION AND COOPERATION

19. (a) In order to further their mutual goals and objectives, the Contracting Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected Project Contractors, in order to improve the operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision making

706 authority for all actions, opinion, and determinations to be made by the respective party.

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

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

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

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

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

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

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

729 (d) Without limiting the contractual obligations of the Contracting Officer under  
730 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the

731 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other  
732 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or  
733 the physical integrity of structures or facilities.

734 CHARGES FOR DELINQUENT PAYMENTS

735 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
736 on delinquent installments or payments. When a payment is not received by the due date, the  
737 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
738 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to  
739 cover additional costs of billing and processing the delinquent payment. When a payment is  
740 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per  
741 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay  
742 any fees incurred for debt collection services associated with a delinquent payment.

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

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

751 EQUAL OPPORTUNITY

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

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

762 (b) The Contractor will, in all solicitations or advertisements for employees placed  
763 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for  
764 employment without discrimination because of race, color, religion, sex, or national origin.  
765

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

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

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

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

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

796 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

801 (b) The payment of charges becoming due hereunder is a condition precedent to

802 receiving benefits under this Contract. The United States shall not make water available to the  
803 Contractor through Project facilities during any period in which the Contractor may be in arrears in  
804 the advance payment of water rates due the United States. The Contractor shall not furnish water  
805 made available pursuant to this Contract for lands or parties which are in arrears in the advance  
806 payment of water rates levied or established by the Contractor.

807  
808 (c) With respect to subdivision (b) of this Article, the Contractor shall have no  
809 obligation to require advance payment for water rates which it levies.

810 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

811 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
812 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age  
813 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), and any other applicable civil rights laws, as  
814 well as with their respective implementing regulations and guidelines imposed by the U.S.  
815 Department of the Interior and/or Bureau of Reclamation.

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

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

829 PRIVACY ACT COMPLIANCE

830 24. Omitted.

831 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

832 25. In addition to all other payments to be made by the Contractor pursuant to this  
833 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
834 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of

835 direct cost incurred by the United States for work requested by the Contractor associated with this  
836 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
837 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
838 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
839 administration.

840 WATER CONSERVATION

841  
842 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
843 constructed or Federally-financed facilities pursuant to this Contract, the Contractor shall be  
844 implementing an effective water conservation and efficiency program based on the Contractor's water  
845 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
846 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
847 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
848 economically feasible water conservation measures, and time schedules for meeting those objectives.  
849 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
850 continued implementation of such water conservation program. In the event the Contractor's water  
851 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
852 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such  
853 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the  
854 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently  
855 works with the Contracting Officer to obtain such determination at the earliest practicable date, and  
856 thereafter the Contractor immediately begins implementing its water conservation and efficiency  
857 program in accordance with the time schedules therein.

858 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of

859 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
860 the Best Management Practices identified by the time frames issued by the California Urban Water  
861 Conservation Council for such M&I Water unless any such practice is determined by the Contracting  
862 Officer to be inappropriate for the Contractor.

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

866 (d) At five-year intervals, the Contractor shall revise its water conservation plan to  
867 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans  
868 established under Federal law and submit such revised water management plan to the Contracting  
869 Officer for review and evaluation. The Contracting Officer will then determine if the water  
870 conservation plan meets the Bureau of Reclamation's then-current conservation and efficiency  
871 criteria for evaluating water conservation plans established under Federal law.

872 (e) If the Contractor is engaged in direct ground-water recharge, such activity  
873 shall be described in the Contractor's water conservation plan.

874 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

875 27. Except as specifically provided in Article 17 of this Contract, the provisions of this  
876 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter  
877 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such  
878 water shall not be considered Project Water under this Contract. In addition, this Contract shall not  
879 be construed as limiting or curtailing any rights which the Contractor or any water user within the  
880 Contractor's Service Area acquires or has available under any other contract pursuant to Federal  
881 Reclamation law.

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OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

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28. Omitted.

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CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

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BOOKS, RECORDS, AND REPORTS

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

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

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(c) Omitted.

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ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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913 concurrence of said other party.

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

916 SEVERABILITY

917 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
918 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
919 association or other form of organization whose primary function is to represent parties to Project  
920 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
921 enforceability of a provision included in this Contract and said person, entity, association, or  
922 organization obtains a final court decision holding that such provision is legally invalid or  
923 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
924 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
925 decision identify by mutual agreement the provisions in this Contract which must be revised and  
926 (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods  
927 specified above may be extended by mutual agreement of the parties. Pending the completion of the  
928 actions designated above, to the extent it can do so without violating any applicable provisions of  
929 law, the United States shall continue to make the quantities of Project Water specified in this  
930 Contract  
931 available to the Contractor pursuant to the provisions of this Contract which were not found to be  
932 legally invalid or unenforceable in the final court decision.

933 RESOLUTION OF DISPUTES

934 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
935 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
936 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
937 any matter to Department of Justice, the party shall provide to the other party 30-days' written notice

938 of the intent to take such action; Provided, That such notice shall not be required where a delay in  
939 commencing an action would prejudice the interests of the party that intends to file suit. During the  
940 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt  
941 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge  
942 any right or remedy that the Contractor or the United States may have.

943 OFFICIALS NOT TO BENEFIT

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

947 CHANGES IN CONTRACTOR'S SERVICE AREA

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

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

961 FEDERAL LAWS

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

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

968 NOTICES

969 37. Any notice, demand, or request authorized or required by this Contract shall be  
970 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
971 to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630-  
972 1799, and on behalf of the United States, when mailed, postage prepaid, or delivered to the City  
973 Council of the City of Roseville, 2005 Hilltop Circle, Roseville, California 95747. The designation  
974 of the addressee or the address may be changed by notice given in the same manner as provided in  
975 this Article for other notices.

976 CONFIRMATION OF CONTRACT

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

982 CONTRACT DRAFTING CONSIDERATIONS

983 39 This Contract has been, negotiated and reviewed by the parties hereto, each of whom  
984 is sophisticated in the matters to which this Contract pertains. Articles 1 through 39 of the contract  
985 have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to  
986 have drafted the stated articles.

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

989 Approved as to legal sufficiency.

THE UNITED STATES OF AMERICA

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

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

991  
992

Regional Director, Mid-Pacific Region  
Bureau of Reclamation

993 (SEAL)

994 Approved as to form.

THE CITY OF ROSEVILLE

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

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

996                    City Attorney

City Manager

997 Attest:

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

999                    City Clerk

EXHIBIT A

[Map or Description of Service Area]

DRAFT

EXHIBIT B  
2011 Rates and Charges  
(Placeholder)

DRAFT