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

CONTRACT BETWEEN THE UNITED STATES
AND
EAST BAY MUNICIPAL UTILITY DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
AND FACILITIES REPAYMENT

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1 THIS CONTRACT, made this 28TH day of FEBRUARY, 20 20,
2 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
3 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
4 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
5 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
6 October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992
7 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act
8 (Public Law 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all collectively
9 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF
10 AMERICA, hereinafter referred to as the United States, represented by the officer executing this
11 Contract, hereinafter referred to as the Contracting Officer, and EAST BAY MUNICIPAL
12 UTILITY DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
13 California, duly organized, existing, and acting pursuant to the laws thereof;

14 WITNESSETH, That:

15 EXPLANATORY RECITALS

16 [1ST] WHEREAS, the United States has constructed and is operating the Central Valley
17 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for
18 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection

16 EXPLANATORY RECITALS

17 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
18 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for
19 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
20 and restoration, generation and distribution of electric energy, salinity control, navigation and
21 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
22 and the San Joaquin River and their tributaries; and

23 [2nd] WHEREAS, the United States constructed Folsom Dam and Reservoir and
24 appurtenant facilities, hereinafter collectively referred to as the American River Division
25 facilities, which will be used in part for the furnishing of this supplemental supply of water to the
26 Contractor pursuant to the terms of this Contract; and

27 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
28 pursuant to California law for operation of the Project; and

29 [4th] WHEREAS, the Contractor and the United States entered into Contract
30 No. 14-06-200-5183A, dated December 22, 1970, hereinafter referred to as the Original
31 Contract, which established terms for the delivery to the Contractor of a supplemental supply of
32 Project Water from the American River Division, of up to 150,000 acre-feet per year of Project
33 Water from a point on the Folsom South Canal at Station 666+50; and

34 [4.1] WHEREAS, Contract No. 14-06-200-5183A was superseded by Amendatory
35 Contract No. 14-06-200-5183A-1, dated July 20, 2001; and

36 [4.2] WHEREAS, Amendatory Contract No. 14-06-200-5183A-1 was superseded by

37 Long Term Renewal Contract No. 14-06-200-5183A-LTR1, dated April 10, 2006, hereinafter
38 referred to as the Existing Contract; and

39 [5th] Omitted; and

40 [6th] WHEREAS, on December 16, 2016, the 114th Congress of the United States of
41 America enacted the WIIN Act; and

42 [7th] WHEREAS, WIIN Act, Section 4011(a)(1) provides that “upon request of the
43 contractor, the Secretary of the Interior shall convert any water service contract in effect on the
44 date of enactment of this subtitle and between the United States and a water users’ association
45 [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under
46 mutually agreeable terms and conditions.”; and

47 [8th] WHEREAS, WIIN Act, Section 4011(a)(1) further provides that “the manner of
48 conversion under this paragraph shall be as follows: (A) Water service contracts that were
49 entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under
50 this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat.
51 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of section 9
52 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be
53 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

54 [8.1] WHEREAS, WIIN Act, Section 4011(a)(4)(C) further provides all contracts
55 entered into pursuant to WIIN Act, Section 4011(a)(1), (2), and (3) shall “not modify other water
56 service, repayment, exchange and transfer contractual rights between the water users’ association
57 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the

58 water users’ association [Contractor] and their landowners as provided under State law.”; and

59 [8.2] WHEREAS, WIIN Act, Section 4011(d)(3) and (4) provides that
60 “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water
61 service or repayment contractor to receive water; or (4) except as expressly provided in this
62 section, any obligations under the reclamation law, including the continuation of Restoration
63 Fund charges pursuant to section 3407(d) (Public Law 102-575), of the water service and
64 repayment contractors making prepayments pursuant to this section.”; and

65 [8.3] WHEREAS, upon the request of the Contractor, the WIIN Act directs the
66 Secretary to convert municipal and industrial (M&I) water service contracts into repayment
67 contracts, amend existing repayment contracts, and allow contractors to prepay their construction
68 cost obligations pursuant to applicable Federal Reclamation law; and

69 [8.4] WHEREAS, the Contracting Officer and the Contractor agree to amend and
70 convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal
71 Reclamation law with the execution of this amended Contract on the terms and conditions set
72 forth below; and

73 [8.5] WHEREAS, the Contracting Officer and the Contractor agree that this Contract
74 complies with WIIN Act, Section 4011; and

75 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
76 of its obligations under the Existing Contract; and

77 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
78 Contracting Officer projected future demand for water use such that the Contractor has the

79 capability and expects to utilize fully for reasonable and beneficial use the quantity of Project
80 Water to be made available to it pursuant to this Contract; and

81 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
82 agricultural areas within California for more than 50 years, and is considered by the Contractor
83 as an essential portion of its water supply; and

84 [12th] WHEREAS, the economies of regions within the Project, including the
85 Contractor's, depend upon the continued availability of water, including water service from the
86 Project; and

87 [12.1] WHEREAS, in the California Bay-Delta Authority (CALFED) Programmatic
88 Record of Decision, dated August 28, 2000, the United States and the State of California adopted
89 a general target of continuously improving Delta water quality for all uses. The CALFED
90 Agencies' target for providing safe, reliable, and affordable drinking water in a cost-effective
91 way, is to achieve either: (a) average concentrations at Clifton Court Forebay and other southern
92 and central Delta drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon,
93 or (b) an equivalent level of public health protection using a cost-effective combination of
94 alternative source waters, source control and treatment technologies; and

95 [13th] WHEREAS, the Secretary of the Interior (Secretary) intends through
96 coordination, cooperation, and partnerships to pursue measures to improve water supply, water
97 quality, and reliability of the Project for all Project purposes; and

98 [13.1] WHEREAS, the Contractor and the water users in its Service Area have improved
99 and will continue to improve water use efficiency through water conservation, water reclamation,

100 and other Best Management Practices. Implementation of these measures has reduced and will
101 continue to reduce the ability of the Contractor and the water users in its Service Area to
102 withstand a Condition of Shortage; and

103 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
104 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
105 repayment of the Project as required by law; to guard reasonably against Project Water
106 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
107 and to comply with all applicable environmental statutes, all consistent with the legal obligations
108 of the United States relative to the Project; and

109 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
110 relationship in order to achieve their mutual goals; and

111 [16th] Omitted; and

112 [17th] Omitted; and

113 [18th] WHEREAS, in recognition of dry year considerations, the Contractor is willing to
114 forego deliveries in certain years when the Project system faces operational limits and the
115 Contractor has sufficient carryover storage under its exclusive control; and

116 [19th] WHEREAS, it is the mutual interest of the parties to encourage the development
117 by the Contractor of additional water storage capacity, including conjunctive use and ground-
118 water storage programs; and

119 [20th] WHEREAS, in this instance, “historic use” of Project Water is not an appropriate
120 basis for calculating the supply of Project Water to be made available to the Contractor during

121 years in which Project Water shortages are being imposed on Project Contractors north of the
122 Sacramento/San Joaquin River Delta (“Delta”), and therefore this Contract must incorporate a
123 different methodology for calculating the amount of Project Water to be made available to the
124 Contractor during water short years; and

125 [21st] WHEREAS, it is understood that this Contract will be the basis of substantial
126 capital investments by the Contractor in new diversion and conveyance facilities, which are
127 intended to reduce the frequency and severity of customer deficiencies within the Contractor’s
128 water service area, and may provide available excess capacity for the use and benefit of the
129 United States, the environment, and other Project Contractors; and

130 [22nd] WHEREAS, the Contractor, in accordance with the terms and conditions of the
131 original contract, has paid substantial sums to the United States, and has not taken any
132 substantial deliveries under its original contract. Said payment has reduced potential deficit
133 obligations to the Contractor and has likely resulted in lower water rates paid by other Project
134 Contractors.

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

137 DEFINITIONS

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

140 (a) “Calendar Year” shall mean the period January 1 through December 31,
141 both dates inclusive;

142 (b) “Charges” shall mean the payments required by Federal Reclamation law

143 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined
144 annually by the Contracting Officer pursuant to this Contract;

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

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

151 (e) "Contract Total" shall mean either the maximum amount of
152 133,000 acre-feet of water to which the Contractor is entitled under subdivision (a)(1) of Article
153 3 of this Contract; or, the maximum amount of 150,000 acre-feet of water to which the
154 Contractor is entitled in any given year under subdivision (a)(2) or (a)(3), whichever subdivision
155 is the then-operative provision, of Article 3 of this Contract;

156 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
157 permitted to provide Project Water under this Contract as described in Exhibit "A" attached
158 hereto, which may be modified from time to time in accordance with Article 34 of this Contract
159 without amendment of this Contract;

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

162 (h-i) Omitted;

163 (j) "Full Cost Rate" shall mean an annual rate as determined by the
164 Contracting Officer that shall amortize the expenditures for construction properly allocable to the

165 Project irrigation or municipal and industrial (M&I) functions, as appropriate, of facilities in
166 service including all operation and maintenance (O&M) deficits funded, less payments, over
167 such periods as may be required under Federal Reclamation law or applicable contract
168 provisions. Interest will accrue on both the construction expenditures and funded O&M deficits
169 from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of
170 costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
171 subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of October 12, 1982 (RRA).
172 The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with
173 Section 426.2 of the Rules and Regulations for the RRA (96 Stat. 1263), as amended;

174 (k-l) Omitted;

175 (m) "Irrigation Water" shall mean the use of Project Water to irrigate land
176 primarily for the production of commercial agricultural crops or livestock, and domestic and
177 other uses that are incidental thereto;

178 (n) Omitted;

179 (o) "Municipal and Industrial Water" (M&I Water) shall mean the use of
180 Project Water for municipal, industrial, and miscellaneous other purposes not falling under the
181 definition of Irrigation Water or within another category of water use under an applicable Federal
182 authority.

183 Water uses established before March 1, 2020 and known to the Contracting Officer and the
184 Contractor are deemed to be authorized uses of M&I Water;

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

187 (q) "Operation and Maintenance" or "O&M" shall mean normal and
188 reasonable care, control, operation, repair, replacement (other than capital replacement), and

189 maintenance of Project facilities;

190 (r) Omitted;

191 (s) "Project" shall mean the Project owned by the United States and managed
192 by the Department of the Interior, Bureau of Reclamation;

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

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

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

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

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

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

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

213 (z.1) "Total System Storage" shall mean the quantity of untreated water stored
214 in Pardee, Camanche, San Pablo, Upper San Leandro, Briones, Lafayette, and Chabot
215 Reservoirs, and any quantity of water that has been moved from said reservoirs to other untreated
216 water storage facilities operated for the benefit of Contractor in the same Year;

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

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

223 (cc) "Year" shall mean the period from and including March 1 of each
224 Calendar Year through the last day of February of the following Calendar Year;

225 (dd) "Additional Capital Obligation" shall mean construction costs or other
226 capitalized costs incurred after March 1, 2020 or not reflected in the Existing Capital Obligation
227 as defined herein and in accordance with WIIN Act, Section 4011, subsection (a)(3)(B);

228 (ee) "Existing Capital Obligation" shall mean the remaining amount of
229 construction costs or other capitalized costs allocated to the Contractor as described in Section
230 4011, subsection (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project

231 Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, dated
232 December 9, 2019, as adjusted to reflect payments not reflected in such schedule. The
233 Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in
234 Exhibit C, which is incorporated herein by reference; and

235 (ff) "Repayment Obligation" shall mean the amount due and payable to the
236 United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act.

237 TERM OF CONTRACT

238 2. (a) This Contract shall be effective March 1, 2020 ("Effective Date") and
239 shall continue so long as the Contractor pays applicable Rates and Charges under this Contract,
240 consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable,
241 and applicable law;

242 (1) Provided, That the Contracting Officer shall not seek to terminate
243 this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor,
244 unless the Contracting Officer has first provided at least sixty (60) calendar days written notice
245 to the Contractor of such failure to pay and Contractor has failed to cure such failure to pay, or to
246 diligently commence and maintain full curative payments satisfactory to the Contracting Officer
247 within the sixty (60) calendar days' notice period;

248 (2) Provided further, That the Contracting Officer shall not seek to
249 suspend making water available or declaring Water Made Available pursuant to this Contract for
250 non-compliance by the Contractor with the terms of this Contract or Federal law, unless the
251 Contracting Officer has first provided at least thirty (30) calendar days written notice to the
252 Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence

253 curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully
254 cured within the thirty (30) calendar days' notice period. If the Contracting Officer has
255 suspended making water available pursuant to this paragraph, upon cure of such noncompliance
256 satisfactory to the Contracting Officer, the Contracting Officer shall resume making water
257 available and declaring Water Made Available pursuant to this Contract;

258 (3) Provided further, That this Contract may be terminated at any time
259 by mutual consent of the parties hereto.

260 (b) Upon complete payment of the Repayment Obligation by the Contractor,
261 and notwithstanding any Additional Capital Obligation that may later be established, the acreage
262 limitations, reporting, and the Full Cost pricing provisions of the Reclamation Reform Act of
263 1982 shall no longer be applicable to the Contractor pursuant to this Contract.

264 (c) Omitted.

265 (d) Notwithstanding any provision of this Contract, the Contractor reserves
266 and shall have all rights and benefits, under the Act of June 21, 1963 (77.Stat. 68), to the extent
267 allowed by law.

268 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

273 (1) At Freeport on the Sacramento River, the Contractor shall be
274 entitled to take delivery of up to a total of 133,000 acre-feet of Project Water for M&I purposes

275 in any Year in which the Contractor's March 1 forecast of its October 1 Total System Storage, as
276 revised monthly through May 1 is less than 500,000 acre-feet based on a 50 percent exceedance,
277 or any different reasonable exceedance used by the Contractor to declare rationing within the
278 Contractor's Water Service Area, or as otherwise agreed to by the parties (referred to as the TSS
279 forecast). Said entitlement shall not exceed a total of 165,000 acre-feet of Water delivered in any
280 three consecutive Year period that the Contractor's Total System Storage forecast remains below
281 500,000 acre-feet.

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

286 (3) At Station 666+50 on the Folsom South Canal, the Contractor shall
287 be entitled to take delivery of up to a total of 150,000 acre-feet of Project Water for M&I
288 purposes in any Year, only under the terms and conditions of Article 5(a)(3). The quantity of
289 Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and
290 paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

291 (b) Because the capacity of the Project to deliver Project Water has been
292 constrained in recent years and may be constrained in the future due to many factors including
293 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
294 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
295 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the

296 programmatic environmental impact statement (PEIS) required by Section 3409 of the CVPIA,
297 projected that the Contract Total set forth in this Contract will not be available to the Contractor
298 in many years. During the five years immediately preceding execution of the Amendatory
299 Contract No. 14-06-200-5183A-1, dated July 20, 2001, the average amount of water made
300 available under the Original Contract was 75,000 acre-feet based on contract minimum
301 quantities. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the
302 parties under any provision of this Contract.

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

305 (d) The Contractor shall make reasonable and beneficial use of all water
306 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
307 ground-water banking programs, surface water storage programs, and other similar programs
308 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
309 Contractor's Service Area which are consistent with applicable State law and result in use
310 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
311 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
312 Article 25 of this Contract; Provided, further, That such water conservation plan demonstrates
313 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
314 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
315 compliance with Federal Reclamation law. Ground-water recharge programs, ground-water
316 banking programs, surface water storage programs, and other similar programs utilizing Project

317 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
318 Service Area may be permitted upon written approval of the Contracting Officer, which approval
319 will be based upon environmental documentation, Project Water rights, and Project operational
320 concerns. The Contracting Officer will address such concerns in regulations, policies, or
321 guidelines.

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

329 (f) Following the declaration of Water Made Available under Article 4 of this
330 Contract, the Contracting Officer will make a determination whether Project Water, or other
331 water available to the Project, can be made available to the Contractor in addition to the Contract
332 Total under Article 3 of this Contract during the Year without adversely impacting other Project
333 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
334 Contractor prior to making such a determination. If the Contracting Officer determines that
335 Project Water, or other water available to the Project, can be made available to the Contractor,
336 the Contracting Officer will announce the availability of such water and shall so notify the
337 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor

338 and other Project Contractors capable of taking such water to determine the most equitable and
339 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
340 water, the Contracting Officer shall make such water available to the Contractor in accordance
341 with applicable statutes, regulations, guidelines, and policies.

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

349 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
350 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract shall
351 not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates
352 and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4,
353 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall
354 affect the Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of
355 Article 12 of this Contract.

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

359 such approval.

360 (j) The Contracting Officer shall make reasonable efforts to protect the water
361 rights necessary for the Project and to provide the water available under this Contract. The
362 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
363 extent permitted by law, in administrative proceedings related to the Project Water rights;
364 Provided, That the Contracting Officer retains the right to object to the substance of the
365 Contractor's position in such a proceeding; Provided further, That in such proceedings the
366 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
367 Contract to use Project Water.

368

369 TIME FOR DELIVERY OF WATER

370 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
371 shall announce the Contracting Officer's expected declaration of the Water Made Available.

372 Such declaration will be expressed in terms of both Water Made Available and the Recent
373 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
374 current operational and hydrologic conditions and a new declaration with changes, if any, to the
375 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
376 operations and the basis of the estimate, with relevant supporting information, upon the written
377 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
378 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

389 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
390 Contract, the United States shall deliver Project Water to the Contractor in accordance with the

391 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
392 written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable
393 time prior to the date(s) on which the requested change(s) is/are to be implemented.

394 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

395 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
396 Contract shall be delivered to the Contractor at one of the following points of delivery; Provided,
397 That any necessary consultation under Section 7 of the ESA, and compliance with NEPA, as
398 applicable, has been completed prior to any diversions:

399 (1) A point of delivery on the Sacramento River at Freeport (Freeport).
400 It is the intent of the parties to pursue this point of delivery in cooperation with City and County
401 of Sacramento and the Sacramento County Water Agency. The parties acknowledge that the
402 point of delivery identified above, is included as an authorized point of delivery under the water
403 rights for the Project if it is sited consistent with the State Water Resources Control Board
404 (SWRCB) Order of July 29, 1999, pertaining to Permits 11315 and 11316 or other existing
405 appropriate SWRCB permits. If it is not, Project Water will not be delivered to this point of
406 delivery unless and until such point is added to the water rights permits of the Project. Subject to
407 reimbursement of costs pursuant to Article 24 of this Contract the Contracting Officer will
408 petition the California SWRCB to include the necessary points of delivery to the water rights for
409 the Project, and the Contractor shall cooperate with and assist the Contracting Officer in
410 prosecuting such petition in a timely manner. The Contracting Officer shall bear neither
411 responsibility nor liability for existing and/or future constructed non-Federal diversion or
412 delivery facilities or the use thereof.

413 (2) A point of delivery identified as “Site 5” in the Environmental
414 Impact Statement supporting the Existing Contract published in December 2000, subject to the
415 following conditions: (i) prior to approval to divert from Site 5, the Contractor must complete
416 and implement a water storage strategy, satisfactory to the Contracting Officer, which will allow
417 the Contractor to meet Project purposes within the necessary flow pattern limitations
418 accompanied by the appropriate environmental documentation; (ii) prior to the approval to divert
419 from Site 5 the Contractor must comply with all relevant State and Federal laws and regulations
420 including but not limited to the California Wild and Scenic Rivers Act; (iii) the Contractor will
421 not divert at a rate higher than 155 cfs, or when the American River flow rates are below those
422 specified in the decision of Judge Richard Hodge in Alameda Superior Court on January 2, 1990;
423 (iv) the Contractor will not divert unless the point of delivery is an authorized point of diversion
424 for the associated Project Water rights.

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

431 (4) Such deliveries shall be made in accordance with the decision of
432 Judge Richard Hodge, dated January 2, 1990, in Alameda County Superior Court Action No.
433 425955. Once a diversion project for delivery of water under this Contract is constructed at

434 Freeport or Site 5 and is fully operational, diversion of water at Nimbus Dam shall no longer be
435 an alternative source for delivery of Project or non-Project water to Contractor under this
436 Contract.

437 (b) Omitted.

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

440 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
441 measured and recorded with equipment furnished, installed, operated, and maintained by the
442 Contractor, or any other appropriate entity as designated by the Contracting Officer (hereafter
443 "other appropriate entity") at the point or points of delivery established pursuant to subdivision
444 (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall
445 investigate the accuracy of such measurements and shall take any necessary steps to adjust any
446 errors appearing therein. For any period of time when accurate measurements have not been
447 made, the Contracting Officer shall consult with the Contractor prior to making a final
448 determination of the quantity delivered for that period of time.

449 (e) The Contracting Officer shall not be responsible for the control, carriage,
450 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
451 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor
452 shall indemnify the United States, its officers, employees, agents, and assigns on account of
453 damage or claim of damage of any nature whatsoever for which there is legal responsibility,
454 including property damage, personal injury, or death arising out of or connected with the control,

455 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery
456 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting
457 Officer or any of its officers, employees, agents, or assigns with the intent of creating the
458 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
459 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or
460 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a
461 malfunction of facilities owned and/or operated by the United States.

462 (f) The parties agree that for the purposes of taking delivery of water under
463 this Contract, at Freeport on the Sacramento River or at Site 5 on the Lower American River, the
464 Contractor shall have the right to construct a facility which connects to and extends from or near
465 the existing terminus of the Folsom South Canal or at any other points of delivery set forth in
466 Article 5(a) to the Mokelumne Aqueducts. The Contractor shall also have the right to use the
467 Folsom South Canal as a conveyance facility for Project Water that may be delivered to the
468 Contractor at any location and pumped back to the Folsom South Canal through a pipeline to be
469 constructed and operated by the Contractor at its expense and which will connect to the Folsom
470 South Canal at a point located northerly of Grant Line Road at Station 522+81 to accommodate
471 the Site 5 option, or at a location in the vicinity of Grant Line Road at approximately Station
472 666+50 to accommodate the Freeport East option or other location as mutually agreed to, in
473 writing, by the parties. Prior to the construction of connection facilities to the Folsom South
474 Canal, or from the Folsom South Canal to the Mokelumne Aqueducts for any project different
475 than the project described in the Record of Decision, the Contractor shall submit any necessary

476 further plans, specifications and environmental documentation for making such connections to
477 the Contracting Officer for review and written approval. The Contracting Officer shall cooperate
478 with the Contractor in the development of such further plans, specifications and environmental
479 documentation. All such design and construction costs shall be at the Contractor's expense. The
480 Contracting Officer's approval of such further plans, specifications, and environmental
481 documentation shall not be unreasonably withheld. The Contractor shall pay all reasonable
482 costs, including overhead, incurred by the Contracting Officer in (1) the development, review,
483 and approval of any further plans, specifications, and environmental documentation and (2)
484 inspection and oversight costs related to any construction. The United States shall hold the
485 Contractor harmless from any liability arising from the negligence or willful misconduct of the
486 United States, or any of its officers, employees, agents, or assigns, in the conveyance of Project
487 Water through the Folsom South Canal; Provided, That such liability has not arisen from
488 performance or lack thereof of the Contractor under terms and conditions of any approvals
489 related to the Contractor's connection facilities, this Contract or any subsequent amendment or
490 renewal thereof.

491 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

492 6. (a) The parties acknowledge that the Contractor has equipped all surface
493 water delivery systems within its boundaries with water measuring devices at each M&I water
494 service connection of a type acceptable to the Contracting Officer. The Contractor shall be
495 responsible for installing, operating, and maintaining and repairing all such measuring devices
496 and implementing all such water measuring methods at no cost to the United States. The

497 Contractor shall use the information obtained from such water measuring devices or water
498 measuring methods to ensure its proper management of the water, to bill water users for water
499 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by
500 customer class as defined in the Contractor's water conservation plan provided for in Article 25
501 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
502 establishing and collecting any charges, assessments, or other revenues authorized by California
503 law. The Contractor shall include a summary of all its annual surface water deliveries in the
504 annual report described in subdivision (c) of Article 25 of this Contract.

505 (b) To the extent the information has not otherwise been provided, upon
506 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
507 report describing the measurement devices or water measuring methods being used or to be used
508 to implement subdivision (a) of this Article and identifying the M&I service connections or
509 alternative measurement programs approved by the Contracting Officer, at which such
510 measurement devices or water measuring methods are being used, and, if applicable, identifying
511 the locations at which such devices and/or methods are not yet being used including a time
512 schedule for implementation at such locations. The Contracting Officer shall advise the
513 Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any,
514 of the measuring devices or water measuring methods identified in the Contractor's report and if
515 the Contracting Officer does not respond in such time, they shall be deemed adequate. If the
516 Contracting Officer notifies the Contractor that the measuring devices or methods are
517 inadequate, the parties shall within 60 days following the Contracting Officer's response,

518 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
519 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
520 compliance with subdivision (a) of this Article.

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

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

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

529 RATES, METHOD OF PAYMENT FOR WATER AND
530 ACCELERATED REPAYMENT OF FACILITIES

531 7. (a) Notwithstanding the Contractor's full prepayment of the Repayment
532 Obligation pursuant to Section 4011, subsection (a)(3)(A) of the WIIN Act, as set forth in
533 Exhibit C, and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act,
534 to reflect the adjustment for the final cost allocation as described in this Article, subsection (b),
535 the Contractor's Project construction and other cost obligations shall be determined in
536 accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and
537 the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act;
538 and such ratesetting policies shall be amended, modified, or superseded only through a public
539 notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and

540 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
541 made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed
542 to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered
543 Pricing Component applicable to the Contractor upon execution of this Contract are set forth in
544 Exhibit “B,” as may be revised annually.

545 (1) The Contractor shall pay the United States as provided for in this
546 Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing Component
547 determined in accordance with policies for M&I Water. The Contractor’s Rates shall be
548 established to recover its estimated reimbursable costs included in the operation & maintenance
549 component of the Rate and amounts established to recover deficits and other charges, if any,
550 including construction costs as identified in the following subdivisions.

551 (2) In accordance with the WIIN Act, the Contractor’s allocable share
552 of Project construction costs will be repaid pursuant to the provisions of this Contract.

553 (A) The amount due and payable to the United States,
554 pursuant to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has
555 been computed by the Contracting Officer in a manner consistent with the WIIN Act and is set
556 forth as a lump sum payment as set forth in Exhibit C. The Repayment Obligation is due in lump
557 sum within 60 days of the effective date of this Contract as provided by the WIIN Act.

558 Notwithstanding any Additional Capital Obligation that may later be established, receipt of the
559 Contractor’s payment of the Repayment Obligation to the United States shall fully and
560 permanently satisfy the Existing Capital Obligation.

561 (B) Additional Capital Obligations that are not reflected
562 in the schedules referenced in Exhibit C and are properly assignable to the Contractor shall be
563 repaid as prescribed by the WIIN Act without interest except as required by law. Consistent with
564 Federal Reclamation law, interest shall continue to accrue on the M&I portion of the Additional
565 Capital Obligation assigned to the Contractor until such costs are paid. Increases or decreases in
566 the Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment
567 of the Additional Capital Obligation assigned to each Project Contractor by the Secretary shall
568 not be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B),
569 however, such increases or decreases will be considered under subdivision (b) of this Article. A
570 separate agreement shall be established by the Contractor and the Contracting Officer to
571 accomplish repayment of the Additional Capital Obligation assigned to the Contractor within the
572 timeframe prescribed by the WIIN Act, subject to the following:

573 (1) If the collective Additional Capital
574 Obligation properly assignable to the contractors exercising conversion under Section 4011 of
575 the WIIN Act is less than five million dollars (\$5,000,000), then the portion of such costs
576 properly assignable to the Contractor shall be repaid not more than five (5) years after the
577 Contracting Officer notifies the Contractor of the Additional Capital Obligation; Provided, That
578 the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any
579 other context.

580 (2) If the collective Additional Capital
581 Obligation properly assignable to the contractors exercising conversion under Section 4011 of

582 the WIIN Act is equal to or greater than five million dollars (\$5,000,000), then the portion of
583 such costs properly assignable to the Contractor shall be repaid as provided by applicable Federal
584 Reclamation law and Project ratesetting policy; Provided, That the reference to the amount of
585 five million dollars (\$5,000,000) shall not be a precedent in any other context.

586 (b) In the event that the final cost allocation referenced in Section 4011(b) of
587 the WIIN Act determines that the costs properly assignable to the Contractor are greater than
588 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining
589 allocated costs. The term of such additional repayment contract shall be not less than one (1)
590 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate
591 of repayment of such amount may be developed by the Contractor and Contracting Officer. In
592 the event that the final cost allocation indicates that the costs properly assignable to the
593 Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such
594 overpayment as an offset against any outstanding or future obligations of the Contractor, with the
595 exception of Restoration Fund charges pursuant to Section 3407(d) of Public Law 102-575.

596 (c) The Contracting Officer shall notify the Contractor of the Rates, Charges,
597 and Tiered Pricing Component as follows:

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

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

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

613 (d) At the time the Contractor submits the initial schedule for the delivery of
614 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
615 Contractor shall make an advance payment to the United States equal to the total amount payable
616 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
617 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
618 Year. Before the end of the first month and before the end of each calendar month thereafter, the
619 Contractor shall make an advance payment to the United States, at the Rate(s) set under
620 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
621 during the second month immediately following. Adjustments between advance payments for
622 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
623 the following month; Provided, That any revised schedule submitted by the Contractor pursuant

624 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
625 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
626 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
627 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
628 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
629 additional Project Water shall be delivered to the Contractor unless and until an advance
630 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
631 between the advance payments for the Water Scheduled and payments for the quantities of Water
632 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
633 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
634 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
635 day of February.

636 (e) The Contractor shall also make a payment in addition to the Rate(s) in
637 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the
638 appropriate Tiered Pricing Component then in effect, before the end of the month following the
639 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered
640 as shown in the water delivery report for the subject month prepared by the Contracting Officer.
641 The water delivery report shall be deemed a bill for the payment of Charges and the applicable
642 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment
643 of Charges shall be made through the adjustment of payments due to the United States for
644 Charges for the next month. Any amount to be paid for past due payment of Charges and the

645 Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

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

652 (g) Payments to be made by the Contractor to the United States under this
653 Contract may be paid from any revenues available to the Contractor.

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

658 (i) The Contracting Officer shall keep its accounts pertaining to the
659 administration of the financial terms and conditions of its long-term Contracts, in accordance
660 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
661 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
662 Contractor a detailed accounting of all Project and Contractor expense allocations, the
663 disposition of all Project and Contractor revenues, and a summary of all water delivery
664 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
665 to resolve any discrepancies or disputes relating to accountings, reports, or information.

666 (j) The parties acknowledge and agree that the efficient administration of this
667 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
668 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,
669 and/or for making and allocating payments, other than those set forth in this Article may be in
670 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
671 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
672 this Contract is in effect without amending this Contract.

673 (k) 1. Beginning at such time as deliveries of Project Water in a Year
674 exceed 80 percent of the Contract Total, then before the end of the month following the month of
675 delivery the Contractor shall make an additional payment to the United States equal to the
676 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
677 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
678 Contract Total, shall equal one-half of the difference between the Rate established under
679 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing
680 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
681 shall equal the difference between (i) the Rate established under subdivision (a) of this Article
682 and (ii) the M&I Full Cost Water Rate.

683 (2) Omitted.

684 (3) For purposes of determining the applicability of the Tiered Pricing
685 Component pursuant to this Article, Water Delivered shall include Project Water that the
686 Contractor transfers to others but shall not include Project Water transferred to the Contractor,

687 nor shall it include the additional water provided to the Contractor under the provisions of
688 subdivision (f) of Article 3 of this Contract.

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

696 (m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
697 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
698 adjusted upward or downward to reflect the changed costs (if any) incurred by the Contracting
699 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
700 accordance with the then-applicable Project ratesetting policy.

701 (n) Omitted.

702 (o) With respect to the Rates for M&I Water, the Contractor asserts that it is
703 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
704 of the date of this Contract or deficit-related interest charges thereon. By entering into this
705 Contract, the Contractor does not waive any legal rights or remedies which it may have with
706 respect to such disputed issues. Notwithstanding the execution of this Contract and payments
707 made hereunder, the Contractor may challenge in the appropriate administrative or judicial

708 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
709 term of the Original and the Existing Contracts; (2) interest accruing on any such deficits; (3) the
710 inclusion of any such deficit charges or interest in the Rates; (4) the application by the United
711 States of payments made by the Contractor under its Original and the Existing Contracts; and
712 (5) the application of such payments in the Rates. The Contracting Officer agrees that the
713 Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any
714 Project M&I Contractor on any of these issues, and credits for payments heretofore made;
715 Provided, That the basis for such ruling is applicable to the Contractor.

716 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

717 8. Omitted.

718 SALES, TRANSFERS, OR EXCHANGES OF WATER

719 9. (a) The right to receive Project Water provided for in this Contract may be
720 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
721 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
722 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
723 Water under this Contract may take place without the prior written approval of the Contracting
724 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
725 exchanges shall be approved absent completion of all appropriate environmental documentation,
726 including but not limited to documents prepared pursuant to the NEPA and the ESA. Such
727 environmental documentation should include, as appropriate, an analysis of ground-water
728 impacts and economic and social effects, including environmental justice, of the proposed water

729 transfers on both the transferor and transferee.

730 (b) In order to facilitate efficient water management by means of water
731 transfers of the type historically carried out among Project Contractors located within the same
732 geographical area and to allow the Contractor to participate in an accelerated water transfer
733 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
734 all necessary environmental documentation including, but not limited to, documents prepared
735 pursuant to NEPA and ESA analyzing annual transfers within such geographical areas, and the
736 Contracting Officer shall determine whether such transfers comply with applicable law.
737 Following the completion of the environmental documentation, such transfers addressed in such
738 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
739 require prior written approval by the Contracting Officer. Such environmental documentation
740 and the Contracting Officer's compliance determination shall be reviewed every five years and
741 updated, as necessary, prior to the expiration of the then existing five-year period. All
742 subsequent environmental documentation shall include an alternative to evaluate not less than the
743 quantity of Project Water historically transferred within the same geographical area.

744 (c) For a water transfer to qualify under subdivision (b) of this Article, such
745 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
746 years, for M&I use, ground-water recharge, water banking, or fish and wildlife resources; not
747 lead to land conversion; and be delivered to established cropland, wildlife refuges, ground-water
748 basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a
749 willing buyer; (iv) convey water through existing facilities with no new construction or

750 modifications to facilities and be between existing Project Contractors and/or the Contractor and
751 the United States, Department of the Interior; and (v) comply with all applicable Federal, State,
752 and local or tribal laws and requirements imposed for protection of the environment and Indian
753 Trust Assets, as defined under Federal law.

754

755 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

767 (b) All advances for miscellaneous costs incurred for work requested by the
768 Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs
769 when the work has been completed. If the advances exceed the actual costs incurred, the
770 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
771 advances, the Contractor will be billed for the additional costs pursuant to Article 24.

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

776 TEMPORARY REDUCTIONS--RETURN FLOWS

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

782 (b) The Contracting Officer may temporarily discontinue or reduce the
783 quantity of Water Delivered to the Contractor as herein provided for the purposes of
784 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
785 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
786 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
787 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
788 Provided, That the United States shall use its best efforts to avoid any discontinuance or
789 reduction in such service. Upon resumption of service after such reduction or discontinuance,
790 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
791 Project Water which would have been delivered hereunder in the absence of such discontinuance
792 or reduction.

793 (c) The United States reserves the right to all seepage and return flow water
794 derived from Water Delivered to the Contractor hereunder which escapes or is discharged
795 beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for
796 the United States any right as seepage or return flow being put to reasonable and beneficial use

797 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
798 claiming by, through, or under the Contractor.

799 CONSTRAINTS ON THE AVAILABILITY OF WATER

800 12. (a) In its operation of the Project, the Contracting Officer will use all
801 reasonable means to guard against a Condition of Shortage in the quantity of Project Water to be
802 made available to the Contractor pursuant to this Contract. In the event the Contracting Officer
803 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
804 Contractor of said determination as soon as practicable.

805 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting
806 or other similar operational errors affecting the Project; drought and other physical or natural
807 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer
808 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article
809 17, no liability shall accrue against the United States or any of its officers, agents, or employees
810 for any damage, direct or indirect, arising therefrom.

811 (c) Omitted.

812 (d) In any Year in which there may occur a shortage for any of the reasons
813 specified in subdivision (b) above, the Contracting Officer shall apportion the available Project
814 Water supply among the Contractor and others entitled, under existing contracts and future
815 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of
816 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the
817 contractual obligations of the United States and consistent with the then-current M&I Water
818 Shortage Policy for the Project or any modifications or replacement thereof; Provided, That the
819 133,000 acre-feet of Project Water referenced in Article 3(a) shall be used as the base amount
820 (equivalent to the term "historic use" applied in the M&I Water Shortage Policy for the Project,
821 dated February 17, 1994) for the purpose of calculating Project Water shortages applicable to the
822 Contractor. Such Policy shall be amended, modified, or superseded only through a public notice

823 and comment procedure.

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

831 UNAVOIDABLE GROUNDWATER PERCOLATION

832 13. Omitted.

833 RULES, REGULATIONS, AND DETERMINATIONS

834 14. (a) The parties agree that the delivery of Project Water or the use of Federal
835 facilities pursuant to this Contract is subject to Federal Reclamation law, as amended and
836 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under
837 Federal Reclamation law.

838 (b) The Contracting Officer shall have the right to make determinations necessary
839 to administer this Contract that are consistent with its expressed and implied provisions, the laws of
840 the United States and the State of California, and the rules and regulations promulgated by the
841 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

842 PROTECTION OF WATER AND AIR QUALITY

843 15. (a) The United States will care for, operate and maintain reserved works in a
844 manner that preserves the quality of the water at the highest level possible as determined by the
845 Contracting Officer. The United States does not warrant the quality of the water delivered to the
846 Contractor and is under no obligation to furnish or construct water treatment facilities to
847 maintain or improve the quality of water delivered to the Contractor.

848 (b) The Contractor will comply with all applicable water and air pollution
849 laws and regulations of the United States and the State of California; and will obtain all required

850 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
851 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
852 State, and local water quality standards applicable to surface and subsurface drainage and/or
853 discharges generated through the use of Federal or Contractor facilities or Project Water
854 provided by the Contractor within its Project Water Service Area.

855 WATER ACQUIRED BY THE CONTRACTOR
856 OTHER THAN FROM THE UNITED STATES

857 16. (a) Omitted.

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

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

868 (2) Delivery of such non-Project water in and through Project facilities
869 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
870 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
871 available to other Project Contractors; (iii) interfere with the delivery of contractual water
872 entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance
873 of the Project facilities.

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

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

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

889 (6) The provisions of this Article 16 shall not apply to water conveyed
890 through the Folsom South Canal consistent with Article 5.

891 OPINIONS AND DETERMINATIONS

892 17. (a) Where the terms of this Contract provide for actions to be based upon the
893 opinion or determination of either party to this Contract, said terms shall not be construed as
894 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

895 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
896 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
897 or unreasonable opinion or determination. Each opinion or determination by either party shall be
898 provided in a timely manner. Nothing in subdivision (a) of Article 17 of this Contract is
899 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
900 any opinion or determination implementing a specific provision of Federal law embodied in
901 statute or regulation.

902 COORDINATION AND COOPERATION

903 18. (a) In order to further their mutual goals and objectives, the Contracting
904 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
905 with other affected Project Contractors, in order to improve the O&M of the Project. The
906 communication, coordination, and cooperation regarding operations and management shall
907 include, but not be limited to, any action which will or may materially affect the quantity or
908 quality of Project Water supply, the allocation of Project Water supply, and Project financial
909 matters including, but not limited to, budget issues. The communication, coordination, and
910 cooperation provided for hereunder shall extend to all provisions of this Contract. Each party
911 shall retain exclusive decision making authority for all actions, opinion, and determinations to be
912 made by the respective party.

913 (b) Within 120 days following the effective date of this Contract, the
914 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
915 with interested Project Contractors to develop a mutually agreeable, written Project-wide
916 process, which may be amended as necessary separate and apart from this Contract. The goal of

917 this process shall be to provide, to the extent practicable, the means of mutual communication
918 and interaction regarding significant decisions concerning Project O&M on a real-time basis.

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

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

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

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

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

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

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

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

941 CHARGES FOR DELINQUENT PAYMENTS

942 19. (a) The Contractor shall be subject to interest, administrative and penalty
943 charges on delinquent payments. If a payment is not received by the due date, the Contractor
944 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
945 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
946 addition to the interest charge, an administrative charge to cover additional costs of billing and
947 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
948 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
949 payment is delinquent beyond the due date, based on the remaining balance of the payment due
950 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
951 collection services associated with a delinquent payment.

952 (b) The interest rate charged shall be the greater of either the rate prescribed
953 quarterly in the Federal Register by the Department of the Treasury for application to overdue
954 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined
955 as of the due date and remain fixed for the duration of the delinquent period.

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

959 EQUAL EMPLOYMENT OPPORTUNITY

960 20. During the performance of this Contract, the Contractor agrees as follows:

961 (a) The Contractor will not discriminate against any employee or applicant for
962 employment because of race, color, religion, sex, sexual orientation, gender identity, or national
963 origin. The Contractor will take affirmative action to ensure that applicants are employed, and
964 that employees are treated during employment, without regard to their race, color, religion, sex,
965 sexual orientation, gender identity, or national origin. Such action shall include, but not be
966 limited to, the following: employment, upgrading, demotion, or transfer; recruitment or
967 recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and
968 selection for training, including apprenticeship. The Contractor agrees to post in conspicuous
969 places, available to employees and applicants for employment, notices to be provided by the
970 Contracting Officer setting forth the provisions of this nondiscrimination clause.

971 (b) The Contractor will, in all solicitations or advertisements for employees
972 placed by or on behalf of the Contractor, state that all qualified applicants will receive
973 consideration for employment without regard to race, color, religion, sex, sexual orientation,
974 gender identity, or national origin.

975 (c) The Contractor will not discharge or in any other manner discriminate
976 against any employee or applicant for employment because such employee or applicant has
977 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
978 employee or applicant. This provision shall not apply to instances in which an employee who
979 has access to the compensation information of other employees or applicant as part of such
980 employee's essential job functions discloses the compensation of such other employees or
981 applicants to individuals who do not otherwise have access to such information unless such
982 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
983 proceeding, hearing, or action, including an investigation conducted by the employer, or is
984 consistent with the contractor's legal duty to furnish information.

985 (d) The Contractor will send to each labor union or representative of workers
986 with which it has a collective bargaining agreement or other contract or understanding, a notice,
987 to be provided by the Contracting Officer, advising the labor union or workers' representative of
988 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,
989 1965 and shall post copies of the notice in conspicuous places available to employees and
990 applicants for employment.

991 (e) The Contractor will comply with all provisions of Executive Order 11246
992 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

993 (f) The Contractor will furnish all information and reports required by
994 Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of
995 the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and
996 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to
997 ascertain compliance with such rules, regulations, and orders.

998 (g) In the event of the Contractor's noncompliance with the nondiscrimination
999 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
1000 canceled, terminated, or suspended in whole or in part and the Contractor may be declared
1001 ineligible for further Government contracts in accordance with procedures authorized in
1002 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
1003 remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 or by rule,
1004 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1005 (h) The Contractor will include the provisions of paragraphs (a) through (h) in
1006 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the

1007 Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September
1008 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The
1009 Contractor will take such action with respect to any subcontract or purchase order as may be
1010 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions
1011 for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or
1012 is threatened with, litigation with a subcontractor or vendor as a result of such direction, the
1013 Contractor may request the United States to enter into such litigation to protect the interests of
1014 the United States.

1015 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1016 21. (a) The obligation of the Contractor to pay the United States as provided in
1017 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1018 obligation may be distributed among the Contractor's water users and notwithstanding the
1019 default of individual water users in their obligation to the Contractor.

1020 (b) The payment of charges becoming due pursuant to this Contract is a
1021 condition precedent to receiving benefits under this Contract. The United States shall not make
1022 water available to the Contractor through Project facilities during any period in which the
1023 Contractor is in arrears in the advance payment of water rates due the United States. The
1024 Contractor shall not deliver water under the terms and conditions of this Contract for lands or
1025 parties that are in arrears in the advance payment of water rates as levied or established by the
1026 Contractor.

1027 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1028 obligation to require advance payment for water rates which it levies.

1029 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1030 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1031 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
1032 amended), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et
1033 seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. §
1034 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing
1035 regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of
1036 Reclamation.

1037 (b) These statutes prohibit any person in the United States from being
1038 excluded from participation in, being denied the benefits of, or being otherwise subjected to
1039 discrimination under any program or activity receiving financial assistance from the Bureau of
1040 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this

1041 Contract, the Contractor agrees to immediately take any measures necessary to implement this
1042 obligation, including permitting officials of the United States to inspect premises, programs, and
1043 documents.

1044 (c) The Contractor makes this Contract in consideration of and for the purpose of
1045 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
1046 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
1047 installment payments after such date on account of arrangements for Federal financial assistance
1048 which were approved before such date. The Contractor recognizes and agrees that such Federal
1049 assistance will be extended in reliance on the representations and agreements made in this article,
1050 and that the United States reserves the right to seek judicial enforcement thereof.

1051 (d) Complaints of discrimination against the Contractor shall be investigated by
1052 the Contracting Officer's Office of Civil Rights.

1053 PRIVACY ACT COMPLIANCE

1054 23. Omitted.

1055 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1056 24. In addition to all other payments to be made by the Contractor pursuant to this
1057 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1058 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1059 of direct cost incurred by the United States for work requested by the Contractor associated with
1060 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1061 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1062 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1063 Contract administration.

1064 WATER CONSERVATION

1065 25. (a) Prior to the delivery of water provided from or conveyed through federally
1066 constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop
1067 a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of

1068 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).
1069 Additionally, an effective water conservation and efficiency program shall be based on the
1070 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1071 the conservation and efficiency criteria for evaluating water conservation plans established under
1072 Federal law. The water conservation and efficiency program contains certain definite water
1073 conservation objectives, appropriate economically feasible water conservation measures, and
1074 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1075 Contract shall be contingent upon the Contractor's continued implementation of such water
1076 conservation program. In the event the Contractor's water conservation plan or any revised
1077 water conservation plan completed pursuant to subdivision (d) of Article 25 of this Contract have
1078 not yet been determined by the Contracting Officer to meet such criteria, due to circumstances
1079 which the Contracting Officer determines are beyond the control of the Contractor, water
1080 deliveries shall be made under this Contract so long as the Contractor diligently works with the
1081 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter
1082 the Contractor immediately begins implementing its water conservation and efficiency program
1083 in accordance with the time schedules therein.

1084 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1085 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1086 Contractor shall implement the Best Management Practices identified by the time frames issued
1087 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I
1088 Water unless any such practice is determined by the Contracting Officer to be inappropriate for

1089 the Contractor.

1090 (c) The Contractor shall submit to the Contracting Officer a report on the status
1091 of its implementation of the water conservation plan on the reporting dates specified in the
1092 then-existing conservation and efficiency criteria established under Federal law.

1093 (d) Prior to the expiration of the currently approved water conservation plan,
1094 and thereafter at five (5) year intervals, the Contractor shall revise its water conservation plan to
1095 reflect the then-existing conservation and efficiency criteria for evaluating water conservation
1096 plans established under Federal law and submit such revised water conservation plan to the
1097 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
1098 the water conservation plan meets Reclamation's then-existing conservation and efficiency
1099 criteria for evaluating water conservation plans established under Federal law.

1100 (e) If the Contractor is engaged in direct ground-water recharge, such activity
1101 shall be described in the Contractor's water conservation plan.

1102 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1103 26. Except as specifically provided in Article 16 of this Contract, the provisions of
1104 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1105 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1106 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1107 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1108 any water user within the Contractor's Service Area acquires or has available under any other
1109 Contract pursuant to Federal Reclamation law.

1110 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL

1111 ENTITY

1112 27. Omitted.

1113 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1114 28. The expenditure or advance of any money or the performance of any obligation of
1115 the United States under this Contract shall be contingent upon appropriation or allotment of
1116 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1117 obligations under this Contract. No liability shall accrue to the United States in case funds are
1118 not appropriated or allotted.

1119 BOOKS, RECORDS, AND REPORTS

1120 29. (a) The Contractor shall establish and maintain accounts and other books and
1121 records pertaining to administration of the terms and conditions of this Contract, including: the
1122 Contractor's financial transactions; water supply data; project operation, maintenance, and
1123 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1124 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1125 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
1126 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
1127 and regulations, each party to this Contract shall have the right during office hours to examine
1128 and make copies of the other party's books and records relating to matters covered by this
1129 Contract.

1130 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1131 books, records, or other information shall be requested from the Contractor by the Contracting
1132 Officer unless such books, records, or information are reasonably related to the administration or
1133 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1134 time within which to provide the requested books, records, or information.

1135 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1136 30. (a) The provisions of this Contract shall apply to and bind the successors and
1137 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1138 therein by either party shall be valid until approved in writing by the other party.

1139 (b) The assignment of any right or interest in this Contract by either party

1140 shall not interfere with the rights or obligations of the other party to this Contract absent the
1141 written concurrence of said other party.

1142 (c) The Contracting Officer shall not unreasonably condition or withhold
1143 approval of any proposed assignment.

1144 SEVERABILITY

1145 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1146 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1147 (iii) an association or other form of organization whose primary function is to represent parties to
1148 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1149 enforceability of a provision included in this Contract and said person, entity, association, or
1150 organization obtains a final court decision holding that such provision is legally invalid or
1151 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1152 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1153 final court decision identify by mutual agreement the provisions in this Contract which must be
1154 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1155 The time periods specified above may be extended by mutual agreement of the parties. Pending
1156 the completion of the actions designated above, to the extent it can do so without violating any
1157 applicable provisions of law, the United States shall continue to make the quantities of Project
1158 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1159 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1160 RESOLUTION OF DISPUTES

1161 32. Should any dispute arise concerning any provisions of this Contract, or the
1162 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1163 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1164 Officer referring any matter to Department of Justice, the party shall provide to the other party
1165 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1166 required where a delay in commencing an action would prejudice the interests of the party that
1167 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1168 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1169 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1170 United States may have.

1171 OFFICIALS NOT TO BENEFIT

1172 33. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1173 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1174 same manner as other water users or landowners.

1175 CHANGES IN CONTRACTOR'S SERVICE AREA OR ORGANIZATION

1176 34. (a) While this Contract is in effect, no change may be made in the
1177 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1178 changes which may affect the respective rights, obligations, privileges, and duties of either the
1179 United States or the Contractor under this Contract including, but not limited to, dissolution,
1180 consolidation, or merger, except upon the Contracting Officer's written consent.

1181 (b) Within 30 days of receipt of a request for such a change, the Contracting
1182 Officer will notify the Contractor of any additional information required by the Contracting
1183 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1184 schedule for timely completion of the process. Such process will analyze whether the proposed
1185 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;

1186 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1187 to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1188 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,
1189 the Contracting Officer shall comply with NEPA and ESA. The Contractor will be responsible
1190 for all costs incurred by the Contracting Officer in this process, and such costs will be paid in
1191 accordance with Article 24 of this Contract.

1192 FEDERAL LAWS

1193 35. By entering into this Contract, the Contractor does not waive its rights to contest
1194 the validity or application in connection with the performance of the terms and conditions of this
1195 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1196 the terms and conditions of this Contract unless and until relief from application of such Federal
1197 law or regulation to the implementing provision of the Contract is granted by a court of
1198 competent jurisdiction.

1199 NOTICES

1200 36. Any notice, demand, or request authorized or required by this Contract shall be
1201 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1202 delivered to Area Manager, Central California Area Office, Bureau of Reclamation, 7794
1203 Folsom Dam Rd., Folsom, CA 95630-1799, and on behalf of the United States, when mailed,
1204 postage prepaid, to Board of Directors, East Bay Municipal Utility District, P.O. Box 24055,
1205 Oakland, California 94623-1055, or delivered to Board of Directors, East Bay Municipal Utility
1206 District, 375 Eleventh Street, Oakland, California 94607. The designation of the addressee or the
1207 address may be changed by notice given in the same manner as provided in this Article for other
1208 notices.

1209 CERTIFICATION OF NONSEGREGATED FACILITIES

1210 37. Omitted

1211 MEDIUM FOR TRANSMITTING PAYMENTS

1212 38. (a) All payments from the Contractor to the United States under this Contract
1213 shall be by the medium requested by the United States on or before the date payment is due. The
1214 required method of payment may include checks, wire transfers, or other types of payment
1215 specified by the United States.

1216 (b) Upon execution of the Amendatory Contract, the Contractor shall furnish
1217 the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The
1218 purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent
1219 amounts arising out of the Contractor's relationship with the United States.

1220

1221 CONTRACT DRAFTING CONSIDERATIONS

1222 39. This amended Contract has been negotiated and reviewed by the parties hereto,
1223 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1224 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1225 the parties, and no one party shall be considered to have drafted the stated articles. Single-
1226 spaced articles are standard articles pursuant to Reclamation policy.

1227 CONFIRMATION OF CONTRACT

1228 40. Omitted

1225 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1226 the day and year first above written.


1227 THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY



OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

1228
1229
1230
1231

By: 
Regional Director
Interior Region 10: California-Great Basin
Bureau of Reclamation

1232 EAST BAY MUNICIPAL UTILITY DISTRICT

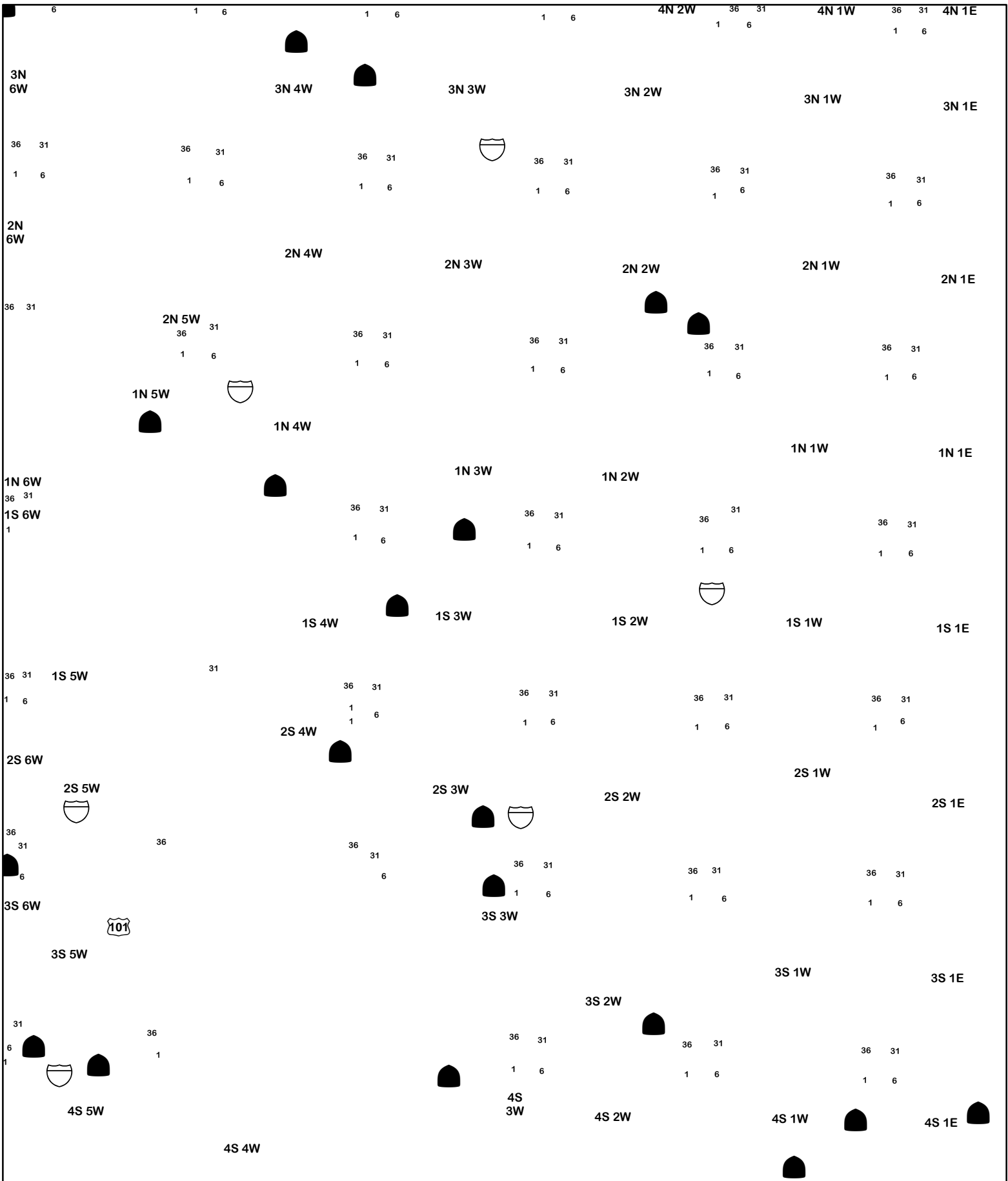
1233
1234

By: 
General Manager


1235 Approved As To Legal Form:

1236
1237

By: 
For the Office of General Counsel



District Boundary

 Contractor's Service Area

East Bay M.U.D.

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

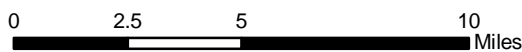


Exhibit B
EAST BAY MUNICIPAL UTILITY DISTRICT
2020 Rates and Charges
(Per Acre-Foot)

	M&I Water
COST-OF-SERVICE (COS) RATE	
Construction Component	\$0.00
O&M Component	
Water Marketing	\$6.12
Storage	\$14.99
Conveyance	\$3.07
Deficit Cost Component	\$60.08
TOTAL COS RATE <i>(Tier 1 Rate)</i>	\$84.26
M&I FULL COST RATE	
	\$0.00
TIERED PRICING COMPONENTS <i>(In Addition to Total COS Rate Above)</i>	
M&I	
<i>Tier 2 Rate : >80% <=90% of Contract Total (Amount to be Added to Tier 1 Rate)</i>	\$0.00
<i>Tier 3 Rate : >90% of Contract Total (Amount to Be Added to Tier 1 Rate)</i>	\$0.00
CHARGES AND ASSESSMENTS <i>(Payments in Addition to Rates)</i>	
P.L. 102-575 Surcharges (Restoration Fund Payments) ¹ [Section 3407(d)(2)(A)]	\$21.82
P.L. 106-377 Assessment (Trinity Public Utilities District) ² [Appendix B, Section 203]	\$0.12

EXPLANATORY NOTES

- 1 The surcharges were determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are determined on a fiscal year basis (10/1-9/30).
- 2 The Trinity Public Utilities District Assessment is applicable to each acre-foot of water delivered from 3/1/2020-2/28/2021 and is adjusted annually.

The Historical Use, as defined in the CVP M&I Water Shortage Policy, is 133,000 acre-feet.

Additional detail of rate components is available on the Internet at
www.usbr.gov/mp/cvpwaterrates/.