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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

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2
1	Definitions.....	7
2	Term of Contract.....	12
3	Water to be Made Available and Delivered to the Contractor.....	13
4	Time for Delivery of Water	18
5	Point of Diversion and Responsibility for Distribution of Water	19
6	Measurement of Water Within the Service Area.....	24
7	Rates, Method of Payment for Water and Accelerated Repayment of Facilities ..	26
8	Non-Interest Bearing Operation and Maintenance Deficits.....	34
9	Sales, Transfers, or Exchanges of Water	34
10	Application of Payments and Adjustments.....	36
11	Temporary Reductions--Return Flows	37
12	Constraints on the Availability of Water	38
13	Unavoidable Groundwater Percolation.....	39
14	Rules, Regulations, and Determinations	39
15	Protection of Water and Air Quality	39
16	Water Acquired by the Contractor Other Than From the United States.....	40
17	Opinions and Determinations	41
18	Coordination and Cooperation.....	42
19	Charges for Delinquent Payments	44

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
20	Equal Employment Opportunity	44
21	General Obligation--Benefits Conditioned Upon Payment	46
22	Compliance With Civil Rights Laws and Regulations	46
23	Privacy Act Compliance	47
24	Contractor to Pay Certain Miscellaneous Costs.....	47
25	Water Conservation	47
26	Existing or Acquired Water or Water Rights.....	49
27	Operations and Maintenance by the Operating Non-Federal Entity.....	49
28	Contingent on Appropriation or Allotment of Funds	50
29	Books, Records, and Reports	50
30	Assignment Limited--Successors and Assigns Obligated	50
31	Severability	51
32	Resolution of Disputes.....	51
33	Officials Not to Benefit.....	52
34	Changes in Contractor's Service Area or Organization.....	52
35	Federal Laws.....	53
36	Notices	53
37	Certification of Nonsegregated Facilities	53
38	Medium for Transmitting Payments	53
39	Contract Drafting Considerations	54
40	Confirmation of Contract.....	54
	Signature Page	55
	Exhibit A - Map of Contractor's Service Area	
	Exhibit B - Rates and Charges	
	Exhibit C – Existing Capital Obligation	

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1 THIS CONTRACT, made this _____ day of _____, 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

Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

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

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

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

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

[4.2] WHEREAS, Amendatory Contract No. 14-06-200-5183A-1 was superseded by Long Term Renewal Contract No. 14-06-200-5183A-LTR1, dated April 10, 2006, hereinafter referred to as the Existing Contract; and

[5th] Omitted; and

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

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

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

[8.1] WHEREAS, WIIN Act, Section 4011(a)(4)(C) further provides all contracts entered into pursuant to WIIN Act, Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users’ association [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users’ association [Contractor] and their landowners as provided under State law.”; and

[8.2] WHEREAS, WIIN Act, Section 4011(d)(3) and (4) provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this

section, any obligations under the reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Public Law 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

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

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

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

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

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

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

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

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

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

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

[14th] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Project as required by law; to guard reasonably against Project Water

shortages; to achieve a reasonable balance among competing demands for use of Project Water;
and to comply with all applicable environmental statutes, all consistent with the legal obligations
of the United States relative to the Project; and

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

[16th] Omitted; and

[17th] Omitted; and

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

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

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

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

United States, the environment, and other Project Contractors; and

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

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

DEFINITIONS

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

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

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

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

(d) “Contracting Officer” shall mean the Secretary’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

(e) “Contract Total” shall mean either the maximum amount of

133,000 acre-feet of water to which the Contractor is entitled under subdivision (a)(1) of Article 3 of this Contract; or, the maximum amount of 150,000 acre-feet of water to which the Contractor is entitled in any given year under subdivision (a)(2) or (a)(3), whichever subdivision is the then-operative provision, of Article 3 of this Contract;

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

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

(h-i) Omitted;

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

173 (k-l) Omitted;

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

177 (n) Omitted;

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

182 Water uses established before [effective date of Contract] and known to the Contracting Officer
183 and the Contractor are deemed to be authorized uses of M&I Water.

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

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

189 (r) Omitted;

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

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

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

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

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

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

207 (y) Omitted;

208 (z) “Water Delivered” or “Delivered Water” shall mean Project Water
209 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting
210 Officer;

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

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

218 (bb) “Water Scheduled” shall mean Project Water made available to the
219 Contractor for which times and quantities for delivery have been established by the Contractor

and Contracting Officer, pursuant to subdivision (b) of Article 4(a) of this Contract; and

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

(dd) "Additional Capital Obligation" shall mean construction costs or other capitalized costs incurred after [REDACTED] or not reflected in the Existing Capital Obligation as defined herein and in accordance with WIIN Act, Section 4011, subsection (a)(3)(B).

(ee) "Existing Capital Obligation" shall mean the remaining amount of construction costs or other capitalized costs allocated to the Contractor as described in Section 4011, subsection (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, dated [REDACTED], as adjusted to reflect payments not reflected in such schedule. The Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit C, which is incorporated herein by reference.

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

TERM OF CONTRACT

2. (a) This Contract shall be effective [REDACTED] and shall continue so long as the Contractor pays applicable Rates and Charges under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law;

(1) Provided, That the Contracting Officer shall not seek to terminate

this Contract for failure to fully or timely pay applicable Charges by the Contractor, unless the Contracting Officer has first provided at least sixty (60) calendar days written notice to the Contractor of such failure to pay and Contractor has failed to cure such failure to pay, or to diligently commence and maintain full curative payments satisfactory to the Contracting Officer within the sixty (60) calendar days' notice period;

(2) Provided further, That the Contracting Officer shall not seek to suspend making water available or declaring Water Made Available pursuant to this Contract for non-compliance by the Contractor with the terms of this Contract or Federal law, unless the Contracting Officer has first provided at least thirty (30) calendar days written notice to the Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully cured within the thirty (30) calendar days' notice period. If the Contracting Officer has suspended making water available pursuant to this paragraph, upon cure of such noncompliance satisfactory to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

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

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

(c) Omitted.

(d) Notwithstanding any provision of this Contract, the Contractor reserves

and shall have all rights and benefits, under the Act of June 21, 1963 (77.Stat. 68), to the extent allowed by law.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

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

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

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

(3) At Station 666+50 on the Folsom South Canal, the Contractor shall be entitled to take delivery of up to a total of 150,000 acre-feet of Project Water for M&I purposes in any Year, only under the terms and conditions of Article 5(a)(3). The quantity of

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

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement (PEIS) required by Section 3409 of the CVPIA, projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the five years immediately preceding execution of the Amendatory Contract No. 14-06-200-5183A-1, dated July 20, 2001, the average amount of water made available under the Original Contract was 75,000 acre-feet based on contract minimum quantities. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), ground-water banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge

program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 25 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Ground-water recharge programs, ground-water banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

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

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water, or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without adversely impacting other Project

Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that Project Water, or other water available to the Project, can be made available to the Contractor, the Contracting Officer will announce the availability of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of taking such water to determine the most equitable and efficient allocation of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

Article 12 of this Contract.

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

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

TIME FOR DELIVERY OF WATER

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

Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

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

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

(1) A point of delivery on the Sacramento River at Freeport (Freeport).
It is the intent of the parties to pursue this point of delivery in cooperation with City and County

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

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

for the associated Project Water rights.

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

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

(b) Omitted.

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

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contractor, or any other appropriate entity as designated by the Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been

made, the Contracting Officer shall consult with the Contractor prior to making a final determination of the quantity delivered for that period of time.

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

(f) The parties agree that for the purposes of taking delivery of water under this Contract, at Freeport on the Sacramento River or at Site 5 on the Lower American River, the Contractor shall have the right to construct a facility which connects to and extends from or near the existing terminus of the Folsom South Canal or at any other points of delivery set forth in Article 5(a) to the Mokelumne Aqueducts. The Contractor shall also have the right to use the Folsom South Canal as a conveyance facility for Project Water that may be delivered to the Contractor at any location and pumped back to the Folsom South Canal through a pipeline to be

constructed and operated by the Contractor at its expense and which will connect to the Folsom South Canal at a point located northerly of Grant Line Road at Station 522+81 to accommodate the Site 5 option, or at a location in the vicinity of Grant Line Road at approximately Station 666+50 to accommodate the Freeport East option or other location as mutually agreed to, in writing, by the parties. Prior to the construction of connection facilities to the Folsom South Canal, or from the Folsom South Canal to the Mokelumne Aqueducts for any project different than the project described in the Record of Decision, the Contractor shall submit any necessary further plans, specifications and environmental documentation for making such connections to the Contracting Officer for review and written approval. The Contracting Officer shall cooperate with the Contractor in the development of such further plans, specifications and environmental documentation. All such design and construction costs shall be at the Contractor's expense. The Contracting Officer's approval of such further plans, specifications, and environmental documentation shall not be unreasonably withheld. The Contractor shall pay all reasonable costs, including overhead, incurred by the Contracting Officer in (1) the development, review, and approval of any further plans, specifications, and environmental documentation and (2) inspection and oversight costs related to any construction. The United States shall hold the Contractor harmless from any liability arising from the negligence or willful misconduct of the United States, or any of its officers, employees, agents, or assigns, in the conveyance of Project Water through the Folsom South Canal; Provided, That such liability has not arisen from performance or lack thereof of the Contractor under terms and conditions of any approvals related to the Contractor's connection facilities, this Contract or any subsequent amendment or renewal thereof.

MEASUREMENT OF WATER WITHIN THE SERVICE AREA

6. (a) The parties acknowledge that the Contractor has equipped all surface water delivery systems within its boundaries with water measuring devices at each M&I water service connection of a type acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 25 of this Contract.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the M&I service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the

Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

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

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to Section 4011, subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit C, and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other cost obligations shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates and Charges applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

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

(2) In accordance with the WIIN Act, the Contractor's allocable share

of Project construction costs will be repaid pursuant to the provisions of this Contract.

(A) The amount due and payable to the United States, pursuant to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth as a lump sum payment as set forth in Exhibit C. The Repayment Obligation is due in lump sum within 60 days of the effective date of this Contract as provided by the WIIN Act. Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

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

(1) If the collective Additional Capital

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

(2) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs properly assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law and Project ratesetting policy; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

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

(c) The Contracting Officer shall notify the Contractor of the Rates and Charges as follows:

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

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

(d) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the

Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or 60 days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(e) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (d) of this Article to the United States for Water Delivered, at the Charges then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered as shown in the water delivery report for

the subject month prepared by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges shall be computed pursuant to Article 19 of this Contract.

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

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

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

(i) The Contracting Officer shall keep its accounts pertaining to the administration of the financial terms and conditions of its long-term Contracts, in accordance with applicable Federal standards, so as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the

disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

(k) Omitted.

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

(m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the changed costs (if any) incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in

accordance with the then-applicable Project ratesetting policy.

(n) Omitted.

(o) With respect to the Rates for M&I Water, the Contractor asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies which it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or imposition of any deficit charges accruing during the term of the Original and the Existing Contracts; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Original and the Existing Contracts; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I Contractor on any of these issues, and credits for payments heretofore made; Provided, That the basis for such ruling is applicable to the Contractor.

NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

8. Omitted.

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,

and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this Contract may take place without the prior written approval of the Contracting Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be approved absent completion of all appropriate environmental documentation, including but not limited to documents prepared pursuant to the NEPA and the ESA. Such environmental documentation should include, as appropriate, an analysis of ground-water impacts and economic and social effects, including environmental justice, of the proposed water transfers on both the transferor and transferee.

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

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

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

(c) Omitted.

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

(e) By entering into this Contract, the Contractor does not waive any legal rights or remedies it may have to file or participate in any administrative or judicial proceeding

contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy adopted after the effective date of this Contract was promulgated; (ii) the substance of such a policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies that it may then have to assert in such a proceeding.

UNAVOIDABLE GROUNDWATER PERCOLATION

13. Omitted.

RULES, REGULATIONS, AND DETERMINATIONS

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

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

PROTECTION OF WATER AND AIR QUALITY

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

(b) The Contractor will comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and will obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within its Project Water Service Area.

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

16. (a) Omitted.

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

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

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

(3) The United States shall not be responsible for control, care, or distribution of the non-Project water before it is introduced into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United States, and its officers, agents, and employees, from any claim for damage to persons or

property, direct or indirect, resulting from the acts of the Contractor, its officers', employees', agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water into Project facilities.

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

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

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

OPINIONS AND DETERMINATIONS

17. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of Article 17 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in

statute or regulation.

COORDINATION AND COOPERATION

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

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

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

(1) The Contracting Officer will, at the request of the Contractor,

assist in the development of integrated resource management plans for the Contractor. Further, the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

CHARGES FOR DELINQUENT PAYMENTS

19. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor

shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

(h) The Contractor will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

(b) The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make

water available to the Contractor through Project facilities during any period in which the Contractor is in arrears in the advance payment of water rates due the United States. The Contractor shall not deliver water under the terms and conditions of this Contract for lands or parties that are in arrears in the advance payment of water rates as levied or established by the Contractor.

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

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

PRIVACY ACT COMPLIANCE

23. Omitted.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

25. (a) Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations). Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water conservation plans established under Federal law. The water conservation and efficiency program contains certain definite water conservation objectives, appropriate economically feasible water conservation measures, and time schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's continued implementation of such water conservation program. In the event the Contractor's water conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of Article 25 of this Contract have not yet been determined by the Contracting Officer to meet such criteria, due to circumstances

1061 which the Contracting Officer determines are beyond the control of the Contractor, water
1062 deliveries shall be made under this Contract so long as the Contractor diligently works with the
1063 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter
1064 the Contractor immediately begins implementing its water conservation and efficiency program
1065 in accordance with the time schedules therein.

1066 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1067 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1068 Contractor shall implement the Best Management Practices identified by the time frames issued
1069 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I
1070 Water unless any such practice is determined by the Contracting Officer to be inappropriate for
1071 the Contractor.

1072 (c) The Contractor shall submit to the Contracting Officer a report on the status
1073 of its implementation of the water conservation plan on the reporting dates specified in the
1074 then-existing conservation and efficiency criteria established under Federal law.

1075 (d) Prior to the expiration of the currently approved water conservation plan,
1076 and thereafter at five (5)-year intervals, the Contractor shall revise its water conservation plan to
1077 reflect the then-existing conservation and efficiency criteria for evaluating water conservation
1078 plans established under Federal law and submit such revised water conservation plan to the
1079 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
1080 the water conservation plan meets Reclamation's then-existing conservation and efficiency
1081 criteria for evaluating water conservation plans established under Federal law.

1082 (e) If the Contractor is engaged in direct ground-water recharge, such activity

shall be described in the Contractor's water conservation plan.

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

27. Omitted.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

BOOKS, RECORDS, AND REPORTS

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

(b) Notwithstanding the provisions of subdivision (a) of this Article, no

books, records, or other information shall be requested from the Contractor by the Contracting Officer unless such books, records, or information are reasonably related to the administration or performance of this Contract. Any such request shall allow the Contractor a reasonable period of time within which to provide the requested books, records, or information.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

SEVERABILITY

31. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be

revised and (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

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

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S SERVICE AREA OR ORGANIZATION

34. (a) While this Contract is in effect, no change may be made in the Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other

changes which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

(b) Within 30 days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with NEPA and ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 24 of this Contract.

FEDERAL LAWS

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

NOTICES

36. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to Area Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Rd., Folsom, CA 95630-1799, and on behalf of the United States, when mailed,

postage prepaid, to Board of Directors, East Bay Municipal Utility District, P.O. Box 24055, Oakland, California 94623-1055, or delivered to Board of Directors, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

CERTIFICATION OF NONSEGREGATED FACILITIES

37. Omitted

MEDIUM FOR TRANSMITTING PAYMENTS

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

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

CONTRACT DRAFTING CONSIDERATIONS

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

CONFIRMATION OF CONTRACT

41. Omitted

1212 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1213 the day and year first above written.

1214 THE UNITED STATES OF AMERICA

1215 By: _____
1216 Regional Director, Mid-Pacific Region
1217 Bureau of Reclamation

1218 (SEAL)

1219 EAST BAY MUNICIPAL UTILITY DISTRICT

1220 By: _____
1221 President of the Board of Directors

1222 Attest:

1223 By: _____
1224 Secretary of the Board of Directors

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

EXHIBIT A

[Map or Description of Service Area]

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

EXHIBIT B
EAST BAY MUNICIPAL UTILITY DISTRICT
PLACEHOLDER

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

EXHIBIT C
[Existing Capital Obligation]