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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  
SACRAMENTO MUNICIPAL UTILITY DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
AND FACILITIES REPAYMENT

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THE UNITED STATES  
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1           THIS CONTRACT, made this 28<sup>TH</sup> day of FEBRUARY, 2020,  
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   June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050),  
6   as amended, November 5, 1990 (104 Stat. 2074), Title XXXIV of the Act of October 30, 1992  
7   (106 Stat. 4706), and the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-  
8   322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all collectively hereinafter  
9   referred to as Federal Reclamation law, between the UNITED STATES OF AMERICA,  
10   hereinafter referred to as the United States, and the SACRAMENTO MUNICIPAL UTILITY  
11   DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,  
12   duly organized, existing, and acting pursuant to the laws thereof;

13           WITNESSETH, That:

14                   EXPLANATORY RECITALS

15           [1<sup>st</sup>]   WHEREAS, the United States has constructed and is operating the Central Valley  
16   Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for  
17   flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection

and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

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

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

[3.1] WHEREAS, on June 28, 1957, the City of Sacramento and the Contractor executed an Agreement of Assignment in which the City of Sacramento granted to the Contractor the right to divert up to 20 cubic feet per second for use in a thermal electric power generating plant, from either the American or Sacramento Rivers, under rights held by the City of Sacramento, hereinafter referred to as Assigned Water; and

[3.2] WHEREAS, the Contractor and the United States determined the Assigned Water shall be conveyed under a separate contract; and

[4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-5198A, dated November 20, 1970, which established terms for the delivery to the Contractor of a total of up to 75,000 acre-feet of water, including the Assigned Water, from the American River Division through December 31, 2012; and

[4.1] WHEREAS, on July 12, 2006, the Contractor assigned to the Sacramento County Water Agency the right, title, and interest in and to 30,000 acre-feet of Project Water under the Contract, including any rights to renew the Contract; and



[5<sup>th</sup>] WHEREAS, the United States and the Contractor have subsequently entered into a binding agreement, identified as Binding Agreement No. 14-06-200-5198A-BA, which sets out the terms pursuant to which the Contractor agreed to renew the Contract before its expiration date after completion of a programmatic environmental impact statement (PEIS) and other appropriate environmental documentation and negotiation of a renewal contract, and which also sets out the consequences of a subsequent decision not to renew; and

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

[7<sup>th</sup>] WHEREAS, in order to continue water service provided under Project water service contracts that expire prior to the completion of all appropriate environmental documentation, the United States intends to execute interim renewal contracts pursuant to Section 3404(c)(1) of the CVPIA, for a period not to exceed three (3) years in length, and for successive interim periods of not more than two (2) years in length, until such appropriate environmental documentation is finally completed, at which time the Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal contract for a period of forty (40) years; and may thereafter renew such long-term renewal contracts for successive periods not to exceed forty (40) years each; and

[8<sup>th</sup>] WHEREAS, the United States and the Contractor entered into interim renewal contract 16-06-200-5198A-IR1 and successive renewals of 14-06-200-5198A-IR1, hereinafter

referred to as the "Existing Contract", which established terms for the delivery of Project Water to the Contractor from the American River Division, in effect on the date the WIIN Act was enacted, and as may have been extended; and

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

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

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

[10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use and/or has demonstrated 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

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

[12<sup>th</sup>] 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

[13<sup>th</sup>] WHEREAS, the 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,

86 and other best management practices; however, implementing these measures have reduced and  
87 continue to reduce the ability of the Contractor and the water users in its Service Area to  
88 withstand a Condition of Shortage; and

89 [14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
90 provide for reliable Project Water supplies; to control costs of those supplies; to achieve  
91 repayment of the Project as required by law; to guard reasonably against Project Water  
92 shortages; to achieve a reasonable balance among competing demands for use of Project Water;  
93 and to comply with all applicable environmental statutes, all consistent with the legal obligations  
94 of the United States relative to the Project; and

95 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
96 relationship in order to achieve their mutual goals; and

97 [15.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated  
98 April 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply  
99 for the Sacramento region's economic health and planned development through the year 2030,  
100 and (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American  
101 River; and

102 [15.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the  
103 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate  
104 actions that they could take to implement the objectives of the Water Forum Agreement, which,  
105 if agreed to, would be the subject of a separate agreement between them; and

106 [16<sup>th</sup>] WHEREAS, the United States and the Contractor entered into a settlement  
107 agreement dated March 3, 2005 for settlement of certain issues related to Project M&I ratesetting

108 and acknowledge that this Contract does not alter or amend the terms and conditions of that  
109 agreement; and

110 [17<sup>th</sup>] WHEREAS, on December 16, 2016, the 114<sup>th</sup> Congress of the United States of  
111 America enacted the WIIN Act; and

112 [18<sup>th</sup>] WHEREAS, Section 4011(a)(1) of the WIIN Act provides that “upon request of  
113 the contractor, the Secretary of the Interior shall convert any water service contract in effect on  
114 the date of enactment of this subtitle and between the United States and a water users’  
115 association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph  
116 (2) under mutually agreeable terms and conditions.”; and

117 [19<sup>th</sup>] WHEREAS, Section 4011(a)(1) of the WIIN Act further provides that “the  
118 manner of conversion under this paragraph shall be as follows: (A) Water service contracts that  
119 were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted  
120 under this section shall be converted to repayment contracts under section 9(d) of that Act (53  
121 Stat. 1195)”; and (B) Water service contracts that were entered under subsection (c)(2) of section  
122 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this section shall be  
123 converted to a contract under subsection (c)(1) of section 9 of that Act (53 Stat. 1195).”; and

124 [20<sup>th</sup>] WHEREAS, Section 4011(a)(4)(C) of the WIIN Act further provides all contracts  
125 entered into pursuant to Section 4011(a)(1), (2), and (3) of the WIIN Act shall “not modify other  
126 water service, repayment, exchange and transfer between the water users’ association  
127 [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the  
128 water users’ association [Contractor] and their landowners as provided under State law.”; and

129 [21<sup>st</sup>] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that  
130 “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) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

[22<sup>nd</sup>] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert Irrigation Water service contracts and 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

[23<sup>rd</sup>] WHEREAS, the Contracting Officer and the Contractor agree to amend, convert and restate the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal Reclamation law on the terms and conditions set forth below; and

[24<sup>th</sup>] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[25<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into and execute this Amended and Restated Contract (hereinafter “Contract”) consistent with the provisions of section 3404(c) of the CVPIA and pursuant to Federal Reclamation law on the terms and conditions set forth below.

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

154 dates inclusive;

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

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

161 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly  
162 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
163 or regulation;

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

166 (f) "Contractor's Service Area" shall mean the area to which the Contractor is  
167 permitted to provide Project Water obtained under this Contract. As of the date of this Contract,  
168 the Contractor's Service Area is the area identified and described in Exhibit "A" attached hereto.  
169 The Contractor's Service Area may be modified from time to time in accordance with Article 34  
170 of this Contract without amendment of this Contract;

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

173 (h-i) Omitted;

174 (j) "Full Cost Rate" shall mean an annual rate, as determined by the  
175 Contracting Officer, that shall amortize the expenditures for construction properly allocable to  
176 the Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M

177 deficits funded, less payments, over such periods as may be required under Federal Reclamation  
178 law, or applicable contract provisions. Interest will accrue on both the construction expenditures  
179 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the  
180 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated  
181 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes  
182 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules  
183 and Regulations for the RRA;

184 (k-l) Omitted;

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

188 (n) Omitted;

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

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

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

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

200 (r) Omitted;

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

- 203                   (t)     "Project Contractors" shall mean all parties who have contracts for water  
204     service for Project Water from the Project with the United States pursuant to Federal  
205     Reclamation law;
- 206                   (u)     "Project Water" shall mean all water that is developed, diverted, stored, or  
207     delivered by the Secretary in accordance with the statutes authorizing the Project and in  
208     accordance with the terms and conditions of water rights acquired pursuant to California law;
- 209                   (v)     "Rates" shall mean the payments determined annually by the  
210     Contracting Officer in accordance with the then-current applicable water ratesetting policies for  
211     the Project, as described in subdivision (a) of Article 7 of this Contract;
- 212                   (w)     "Recent Historic Average" shall mean the most recent five-year average of  
213     the final forecast of Water Made Available to the Contractor pursuant to this Contract or its  
214     preceding contract(s);
- 215                   (x)     "Secretary" shall mean the Secretary of the Interior, a duly appointed  
216     successor, or an authorized representative acting pursuant to any authority of the Secretary and  
217     through any agency of the Department of the Interior;
- 218                   (y)     "Tiered Pricing Component" shall be the incremental amount to be paid  
219     for each acre-foot of Water Delivered as described in Article 7 of this Contract;
- 220                   (z)     "Water Delivered" or "Delivered Water" shall mean Project Water diverted  
221     for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;
- 222                   (aa)    "Water Made Available" shall mean the estimated amount of  
223     Project Water that can be delivered to the Contractor for the upcoming Year as declared by the  
224     Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;
- 225                   (bb)    "Water Scheduled" shall mean Project Water made available to the



Contractor for which times and quantities for delivery have been established by the Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract;

(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 March 1, 2020 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 allocable 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, in the Final 2020 Ratebooks, 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; and

(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 March 1, 2020 ("Effective Date") 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 Rates and 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

272 allowed by law.

273 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

274 3. (a) During each Year, consistent with all applicable State water rights,  
275 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of  
276 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to  
277 30,000 acre-feet of M&I Water. Provided, however, during the two (2) month period of January  
278 and February of 2013, the Contracting Officer shall make available for delivery to the Contractor  
279 that portion of the 2012 allocation of Project Water unused by the Contractor under the Existing  
280 Contract. The quantity of Water Delivered to the Contractor in accordance with this subdivision  
281 shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

282 (b) Because the capacity of the Project to deliver Project Water has been  
283 constrained in recent years and may be constrained in the future due to many factors including  
284 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
285 Contractor actually receiving the total amount of Project Water set out in subdivision (a) of this  
286 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the  
287 PEIS projected that the Contract Total set forth in this Contract will not be available to the  
288 Contractor in many years. During the most recent five years, the Recent Historic Average of  
289 Water Made Available to the Contractor was 28,500 acre-feet based on Existing Contract  
290 minimum quantities. Nothing in subdivision (b) of this Article shall affect the rights and  
291 obligations of the parties under any provision of this Contract.

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

294                   (d)     The Contractor shall make reasonable and beneficial use of all water  
295     furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),  
296     groundwater banking programs, surface water storage programs, and other similar programs  
297     utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
298     Contractor's Service Area which are consistent with applicable State law and result in use  
299     consistent with Federal Reclamation law will be allowed; *Provided*, That any direct recharge  
300     program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to  
301     Article 25 of this Contract; *Provided, further*, That such water conservation plan demonstrates  
302     sufficient lawful uses exist in the Contractor's Service Area to show reasonable and beneficial  
303     use of the quantity of Delivered Water based on a long-term average in compliance with Federal  
304     Reclamation law. Groundwater recharge programs, groundwater banking programs, surface  
305     water storage programs, and other similar programs utilizing Project Water or other water  
306     furnished pursuant to this Contract conducted outside the Contractor's Service Area may be  
307     permitted upon written approval of the Contracting Officer, which approval will be based upon  
308     environmental documentation, Project Water rights, and Project operational concerns. The  
309     Contracting Officer will address such concerns in regulations, policies, or guidelines.

310                   (e)     The Contractor shall comply with requirements applicable to the  
311     Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
312     of the Existing Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973  
313     (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing  
314     Contract, which evidences in excess of 40 years of diversions for M&I purposes of the quantities  
315     of water provided in subdivision (a) of Article 3 of this Contract, will be considered in  
316     developing an appropriate baseline for any required environmental review prepared by

Reclamation regarding execution of this Contract. 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 the 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 Made 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, however*, 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.

(k) The delivery of Project Water to, and use of Project Water at, any electric power generating facility within the Contractor's Service Area (i) from which the Contractor purchases all of the electricity produced by such facility and (ii) which is owned by a joint

powers authority or other entity controlled by the Contractor, shall be deemed to be a delivery of Project Water to, and use of such water by, the Contractor pursuant to this Contract.

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: (i) the turnout at milepost 24.681 (left side) on the Folsom-South Canal located at a point 700 feet upstream from the inlet transition of the Laguna Creek siphon, and (ii) any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

(b) The Contracting Officer shall make all reasonable efforts to maintain sufficient flows and levels of water in the Folsom-South Canal to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

(c) The Contractor shall not deliver Project Water to land 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 United States, or other appropriate entity as designated by the Contracting Officer at the point or points of delivery established pursuant to subdivision (a) of this Article; *Provided*, That if the Project Water delivered pursuant to this Contract is diverted at a location or in a manner so as to be commingled with water diverted by any other entity, the point of measurement for Project



Water delivered to the Contractor shall be a location at which Project Water diverted for Contractor's use can be measured separately from water diverted by any such entity or entities. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated, 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.

#### MEASUREMENT OF WATER WITHIN THE SERVICE AREA

6. (a) The Contractor shall ensure that, unless the Contractor establishes an alternative measurement program satisfactory to the Contracting Officer, all surface water

delivered by the Contractor within the Contractor's Service Area for M&I purposes is measured at each M&I service connection. The water measuring devices or water measuring methods of comparable effectiveness must be 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.

(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 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, commence to negotiate in good faith how, and 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 for the delivery of Project Water under this Contract 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 by the Contractor 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 Project Water taken during the previous 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, Charges, and Tiered Pricing Component 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, Charges, and Tiered Pricing Component 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 Amendment 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, Charges, and Tiered Pricing Component 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 and Tiered Pricing Component 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 and Tiered Pricing Component 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



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

577 (e) The Contractor shall also make a payment in addition to the Rate(s) in  
578 subdivision (c) of this Article to the United States for Project Water delivered, at the Charges and  
579 the appropriate Tiered Pricing Component then in effect, before the end of the month following  
580 the month of delivery. The payments shall be consistent with the quantities of Project Water  
581 delivered as shown in the water delivery report for the subject month prepared by the  
582 Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges  
583 and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment  
584 or underpayment of Charges shall be made through the adjustment of payments due to the United  
585 States for Charges for the next month. Any amount to be paid for past due payment of Charges  
586 and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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



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

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

599                   (i)     The Contracting Officer shall keep its accounts pertaining to the  
600   administration of the financial terms and conditions of its long-term contracts, in accordance  
601   with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
602   The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
603   Contractor a detailed accounting of all Project and Contractor expense allocations, the  
604   disposition of all Project and Contractor revenues, and a summary of all water delivery  
605   information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
606   to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

614                   (k)     (1)     Beginning at such time as deliveries of Project Water in a Year  
615   exceed 80 percent of the Contract Total, then before the end of the month following the month of

delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal one-half of the difference between the Rate established under subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article and (ii) the M&I Full Cost Water Rate.

(2) Omitted.

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

(l) Rates under the respective ratesetting policies 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 ratesetting policies, 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 in accordance with the then-applicable Project ratesetting policy 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.

(n) Omitted.

(o) Omitted.

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 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 groundwater 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, among Project Contractors located within the same geographical area, by means of water transfers 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 the NEPA and the 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, or to be delivered to established wildlife refuges, groundwater basins or for M&I use or for fish and wildlife purposes; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing Project facilities with no new construction or modifications to Project 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. Such water transfers must not lead to land conversion.

(d) Solely for the purpose of determining whether Section 3405(a)(1)(M) of the CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting Officer acknowledges that the Contractor is within a county, watershed or other area

of origin, as those terms are utilized under California law, of water that constitutes the natural flow of the American River and its tributaries above the confluence of the American and Sacramento Rivers.

#### 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 25 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 25.

#### 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 Project 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 to 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

733 Contractor of said determination as soon as practicable.

734 (b) If there is a Condition of Shortage because of inaccurate runoff forecasting  
735 or other similar operational errors affecting the Project; drought and other physical or natural  
736 causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer  
737 to meet current and future legal obligations, then, except as provided in subdivision (a) of Article  
738 17, no liability shall accrue against the United States or any of its officers, agents, or employees  
739 for any damage, direct or indirect, arising therefrom.

740 (c) Omitted.

741 (d) Project Water furnished under this Contract will be allocated in  
742 accordance with the then-existing Project M&I Water Shortage Policy; *Provided*, That any  
743 increases in the Contractor's demand that have arisen since the delivery of Project Water to the  
744 Contractor the previous year, which are the result of Contractor providing additional water to an  
745 electrical power generating plant (including a cogeneration plant), shall, in addition to any other  
746 applicable adjustments pursuant to the policy, result in a corresponding increase in the  
747 Contractor's "historic use" quantity. Such policy shall be amended, modified, or superseded  
748 only through a public notice and comment procedure.

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

756 UNAVOIDABLE GROUNDWATER PERCOLATION

757 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.

(c) Any new, additional or proposed water to be introduced into the facility by existing or future Project contractors may be allowed to the extent such introduction does not:

- (i) interfere with Project purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water to the extent that such a reduction would significantly affect the use of water, or the cost of putting such water to use, by Project contractors as reasonably determined by the Contracting Officer, following consultation with the affected contractor; (iii) interfere with delivery of contractual water entitlements to any other Project Contractors; or (iv) interfere with structural integrity, operation or physical maintenance of Project facilities.



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 to lands 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 their respective 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 of (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 groundwater management plan applicable to the Contractor 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.

#### 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 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

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 operation and management of the Project. The communication, coordination, and cooperation regarding operations and management shall include, but not be limited to, any action which will or may materially affect the quantity or quality of Project Water supply, the allocation of Project Water supply, and Project financial matters including, but not limited to, budget issues. The communication, coordination, and cooperation provided for hereunder shall extend to all provisions of this Contract. Each party shall retain exclusive decision-making 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 operation and management 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, or the 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.

#### 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; 29 U.S.C. § 791, et seq.), 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.



996 WATER CONSERVATION

997 25. (a) Prior to the delivery of water provided from or conveyed through federally  
998 constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop  
999 a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of  
1000 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

1001 Additionally, an effective water conservation and efficiency program shall be based on the  
1002 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
1003 the conservation and efficiency criteria for evaluating water conservation plans established under  
1004 Federal law. The water conservation and efficiency program shall contain definite water  
1005 conservation objectives, appropriate economically feasible water conservation measures, and  
1006 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1007 Contract shall be contingent upon the Contractor's continued implementation of such water  
1008 conservation program. In the event the Contractor's water conservation plan or any revised  
1009 water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have  
1010 not yet been determined by the Contracting Officer to meet such criteria, due to circumstances  
1011 which the Contracting Officer determines are beyond the control of the Contractor, water  
1012 deliveries shall be made under this Contract so long as the Contractor diligently works with the  
1013 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter  
1014 the Contractor immediately begins implementing its water conservation and efficiency program  
1015 in accordance with the time schedules therein.

1016 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1017 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the  
1018 Contractor shall implement the Best Management Practices identified by the time frames issued  
1019 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I

1020 Water unless any such practice is determined by the Contracting Officer to be inappropriate for  
1021 the Contractor.

1022 (c) The Contractor shall submit to the Contracting Officer a report on the  
1023 status of its implementation of the water conservation plan on the reporting dates specified in the  
1024 then-existing conservation and efficiency criteria established under Federal law.

1025 (d) Prior to the expiration of the currently approved water conservation plan,  
1026 and thereafter at five (5)-year intervals, the Contractor shall revise its water conservation plan to  
1027 reflect the then-existing conservation and efficiency criteria for evaluating water conservation  
1028 plans established under Federal law and submit such revised water conservation plan to the  
1029 Contracting Officer for review and evaluation. The Contracting Officer will then determine if  
1030 the water conservation plan meets Reclamation's then-existing conservation and efficiency  
1031 criteria for evaluating water conservation plans established under Federal law.

1032 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
1033 shall be described in the Contractor's water conservation plan. Such water conservation plan  
1034 shall demonstrate sufficient lawful uses exist in the Contractor's Service Area so that using a  
1035 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such  
1036 uses and in compliance with Reclamation law.

1037 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1038 26. Except as specifically provided in Article 16 of this Contract, the provisions of  
1039 this Contract shall not be applicable to or affect non-Project Water or water rights now owned or  
1040 hereafter acquired by the Contractor or any user of such water within the Contractor's Service  
1041 Area. Any such water shall not be considered Project Water under this Contract. In addition,  
1042 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or

1043 any water user within the Contractor's Service Area acquires or has available under any other  
1044 contract pursuant to Federal Reclamation law.

1045 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

1046 27. Omitted.

1047 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1048 28. The expenditure or advance of any money or the performance of any obligation of  
1049 the United States under this Contract shall be contingent upon appropriation or allotment of  
1050 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1051 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1052 not appropriated or allotted.

1053 BOOKS, RECORDS, AND REPORTS

1054 29. (a) The Contractor shall establish and maintain accounts and other books and  
1055 records pertaining to administration of the terms and conditions of this Contract, including the  
1056 Contractor's financial transactions; water supply data; project operation, maintenance, and  
1057 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop  
1058 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting  
1059 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on  
1060 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws  
1061 and regulations, each party to this Contract shall have the right during office hours to examine  
1062 and make copies of the other party's books and records relating to matters covered by this  
1063 Contract.

1064 (b) Notwithstanding the provisions of subdivision (a) of this Article, no  
1065 books, records, or other information shall be requested from the Contractor by the Contracting  
1066 Officer unless such books, records, or information are reasonably related to the administration or  
1067 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1068 time within which to provide the requested books, records, or information.

1069 (c) Omitted.

1070 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1071 30. (a) The provisions of this Contract shall apply to and bind the successors and  
1072 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1073 therein by either party shall be valid until approved in writing by the other party.

1074 (b) The assignment of any right or interest in this Contract by either party  
1075 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1076 written concurrence of said other party.

1077 (c) The Contracting Officer shall not unreasonably condition or withhold  
1078 approval of any proposed assignment.

## 1079 SEVERABILITY

1080           31.       In the event that a person or entity who is neither (i) a party to a Project contract,  
1081       nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor  
1082       (iii) an association or other form of organization whose primary function is to represent parties to  
1083       Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1084       enforceability of a provision included in this Contract and said person, entity, association, or  
1085       organization obtains a final court decision holding that such provision is legally invalid or  
1086       unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1087       the parties to this Contract shall use their best efforts to (i) within thirty days of the date of such  
1088       final court decision identify by mutual agreement the provisions in this Contract which must be  
1089       revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).

1090 The time periods specified above may be extended by mutual agreement of the parties. Pending  
1091 the completion of the actions designated above, to the extent it can do so without violating any  
1092 applicable provisions of law, the United States shall continue to make the quantities of  
1093 Project Water specified in this Contract available to the Contractor pursuant to the provisions

1094 of this Contract which were not found to be legally invalid or unenforceable in the final court  
1095 decision.

1096 RESOLUTION OF DISPUTES

1097 32. Should any dispute arise concerning any provisions of this Contract, or the  
1098 parties' rights and obligations there under, the parties shall meet and confer in an attempt to  
1099 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1100 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1101 30 days' written notice of the intent to take such action; *Provided*, That such notice shall not be  
1102 required where a delay in commencing an action would prejudice the interests of the party that  
1103 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer  
1104 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,  
1105 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the  
1106 United States may have.

1107 OFFICIALS NOT TO BENEFIT

1108 33. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1109 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1110 manner as other water users or landowners.

1111 CHANGES IN CONTRACTOR'S SERVICE AREA OR ORGANIZATION

1112 34. (a) While this Contract is in effect, no change may be made in the  
1113 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other  
1114 changes which may affect the respective rights, obligations, privileges, and duties of either the  
1115 United States or the Contractor under this Contract including, but not limited to, dissolution,  
1116 consolidation, or merger, except upon the Contracting Officer's written consent.

1117 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1118 Officer will notify the Contractor of any additional information required by the Contracting  
1119 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1120 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 the NEPA and the 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 the 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, or delivered to the Contractor at Sacramento Municipal Utility District, Power Contracts Administration, P.O. Box 15830, Sacramento, CA 95852-1830. 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.

#### MEDIUM FOR TRANSMITTING PAYMENTS

37. (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 Contract, the Contractor shall furnish the

1150 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1151 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1152 out of the Contractor's relationship with the United States.

1153 CONTRACT DRAFTING CONSIDERATIONS

1154 38. This amended Contract has been negotiated and reviewed by the parties hereto,  
1155 each of whom is sophisticated in the matters to which this amended Contract pertains. The  
1156 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by  
1157 the parties, and no one party shall be considered to have drafted the stated Articles. Single-  
1158 spaced Articles are standard articles pursuant to Reclamation policy.

1159 CERTIFICATION OF NONSEGREGATED FACILITIES

1160 39. Omitted

1161 CONFIRMATION OF CONTRACT


1162 40. Promptly after the execution of this contract, the Contractor will provide evidence  
1163 to the Contracting Officer that, pursuant to the laws of the State of California, the Contractor is a  
1164 legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This  
1165 contract will not be binding on the United States until the Contractor provides evidence to the  
1166 Contracting Officer's satisfaction. In addition to other forms of evidence to meet the  
1167 requirements of this Article, the Contractor may provide or the Contracting Officer may require a  
1168 certified copy of a final decree of a court of competent jurisdiction in the State of California,  
1169 confirming the proceedings on the part of the Contractor for the authorization of the execution of  
1170 this contract.



1171 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day  
1172 and year first above written.

1173 THE UNITED STATES OF AMERICA

1174 APPROVED AS TO LEGAL  
1175 FORM AND SUFFICIENCY  
1176   
1177 OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

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

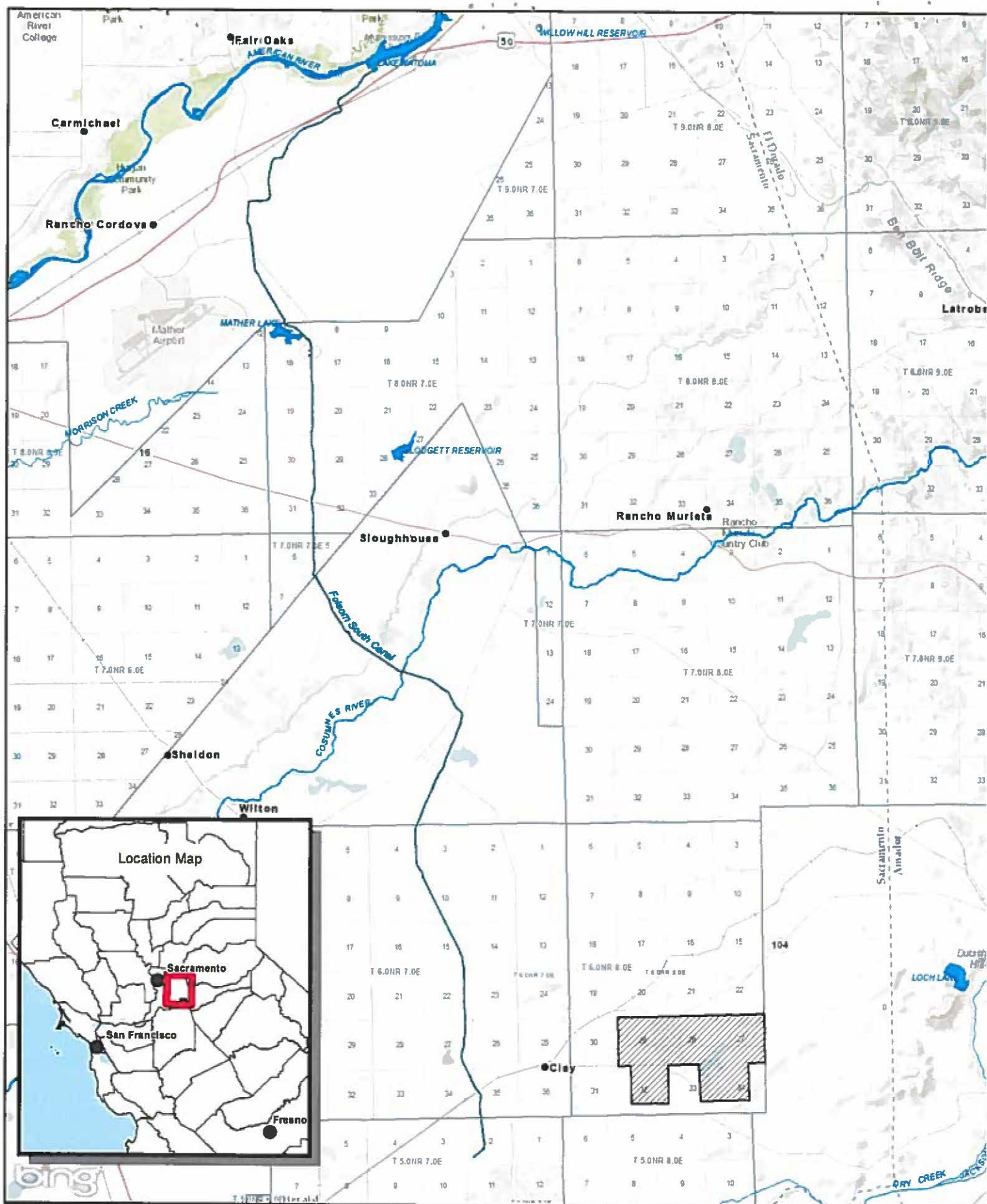
1178 SACRAMENTO MUNICIPAL UTILITY  
1179 DISTRICT

1180 By:   
1181 Chief Executive Officer and  
1182 General Manager

LEGAL  
95

1183 Attest:

1184 By:   
Chief Legal Officer



# Sacramento M.U.D.

Contract No. 14-06-200-5198A-IR1-P

Exhibit A



Contractor's Service Area

Date: December 11, 2012

Map: n:\ad\st\st\st\st\sacramento\_mud\sacramento\_mud\SC.mxd

0 0.5 1 2 3 4 5 Miles



353-202-5

**Exhibit B**  
**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**2020 Rates and Charges**  
**(Per Acre-Foot)**

	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>	
Construction Component	\$0.00
O&M Component	
Water Marketing	\$6.12
Storage	\$14.99
Conveyance	\$3.07
Deficit Cost Component	\$0.00
<b>TOTAL COS RATE (Tier 1 Rate)</b>	<b>\$24.18</b>
<b>M&amp;I FULL COST RATE</b>	<b>\$0.00</b>
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>	
<b>M&amp;I</b>	
Tier 2 Rate : >80% <=90% of Contract Total (Amount to be Added to Tier 1 Rate)	\$0.00
Tier 3 Rate : >90% of Contract Total (Amount to Be Added to Tier 1 Rate)	\$0.00
<b>CHARGES AND ASSESSMENTS (Payments in Addition to Rates)</b>	
P.L. 102-575 Surcharges (Restoration Fund Payments) [Section 3407(d)(2)(A)]	\$21.82
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12

**EXPLANATORY NOTES**

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

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

Additional detail of rate components is available on the Internet at  
[www.usbr.gov/mp/cvpwaterrates/](http://www.usbr.gov/mp/cvpwaterrates/).

## Exhibit C

### Repayment Obligation - Current Calculation under the WIIN Act, Section 4011 (a) (2)

#### Unpaid Construction Cost from the 2020 Water Rate Books\*

**Contractor:** Sacramento MUD  
**Facility:** Folsom-South Canal  
**Contract:** 14-06-200-S198A-IR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-28a and A-28c)			
	Unpaid Cost	Discount	
Construction Cost (Excludes Intertie):	\$ -		
2019 Repayment (Estimate) **	\$ -		
Adjusted Construction Cost (Excludes Intertie):	\$ -	\$ -	
Intertie Construction Cost:	\$ -	\$ -	
<b>Total</b>	<b>\$ -</b>	<b>\$ -</b>	
If Paid in Installments (Used 20 yr CMT)			
Due			
Payment 1 N/A		\$ -	
Payment 2 N/A		\$ -	
Payment 3 N/A		\$ -	
Payment 4 N/A		\$ -	
<b>Total Installment Payments</b>		<b>\$ -</b>	
20 yr CMT Rates			N/A
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A)):			N/A

M&I Construction Cost (2020 M&I Ratebook, Sch A-28a)	
	Unpaid Cost
Construction Cost****:	\$ (239,228)
2019 Repayment (Estimate) **	\$ -
Adjusted Construction Cost***:	\$ (239,228)

**Calculation Support:** Irrigation Lump Sum or First Payment Due Date N/A  
 Days Until the End of the Fiscal Year N/A

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total Present Values
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	
2020	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2021	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2023	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2024	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2025	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2026	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2027	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2028	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2029	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2030	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2031-63				\$ -	\$ -	\$ -	\$ -
<b>Total, Lump Sum Payment</b>			<b>\$ -</b>			<b>\$ -</b>	<b>\$ -</b>

Amount of Reduction, Lump Sum \$ - \$ - \$ -

\* Costs are assumed to be paid and all charges are assumed to be accurate. If at a later date charges are determined to need update, they are still required. Also, unpaid charges are still a requirement under contract

\*\* 2019 Repayment is based on a conservative estimate. If not sufficient, the remainder will be billed

\*\*\* Excludes interest to payment date as interest will be computed as an annual expense as usual.

\*\*\*\* As adjusted by two Construction payments, one for \$250,000 on 10/24/2018 and a second for \$1,428,344 on 8/7/2019 (See Footnotes of Schedule A-28a).