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M&I Only  
Contract No. 14-06-200-5198A-LTR1

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

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

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6 AND  
7 SACRAMENTO MUNICIPAL UTILITY DISTRICT  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM THE AMERICAN RIVER DIVISION

10 THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
11 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
15 October 27, 1986 (100 Stat. 3050), as amended, November 5, 1990 (104 Stat. 2074), and  
16 Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter referred  
17 to as Federal Reclamation law, between the UNITED STATES OF AMERICA, hereinafter  
18 referred to as the United States,, and the SACRAMENTO MUNICIPAL UTILITY DISTRICT,  
19 hereinafter referred to as the Contractor, a public agency of the State of California, duly  
20 organized, existing, and acting pursuant to the laws thereof;

21 WITNESSETH, That:

EXPLANATORY RECITALS

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

[2<sup>nd</sup>] WHEREAS, the United States constructed Folsom Dam and Reservoir, 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 Warren Act 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, hereinafter referred to as the Existing Contract, 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 Existing Contract, including any rights to renew the Existing 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 Existing 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, the United States has completed the PEIS and all other appropriate environmental review necessary to provide for long-term renewal of the Existing Contract; and

[8<sup>th</sup>] WHEREAS, the Contractor has requested the long-term renewal of the Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of California, for water service from the Project; 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, and other best management practices; however, implementing these measures have reduced and continue to reduce the ability of the Contractor and the water users in its Service Area to withstand a Condition of Shortage; and

[14<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve

89 repayment of the Project as required by law; to guard reasonably against Project Water shortages;  
90 to achieve a reasonable balance among competing demands for use of Project Water; and to  
91 comply with all applicable environmental statutes, all consistent with the legal obligations of the  
92 United States relative to the Project; and

93 [15<sup>th</sup>] WHEREAS, the parties intend by this Contract to develop a more cooperative  
94 relationship in order to achieve their mutual goals; and

95 [15.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated  
96 April 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply for  
97 the Sacramento region's economic health and planned development through the year 2030, and  
98 (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American River; and

99 [15.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the  
100 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate  
101 actions that they could take to implement the objectives of the Water Forum Agreement, which,  
102 if agreed to, would be the subject of a separate agreement between them; and

103 [16<sup>th</sup>] WHEREAS, the United States and the Contractor entered into a settlement  
104 agreement dated March 3, 2005 for settlement of certain issues related to Project M&I ratesetting  
105 and acknowledge that this Contract does not alter or amend the terms and conditions of that  
106 agreement; and

107 [17<sup>th</sup>] WHEREAS, the United States and the Contractor agreed to develop a separate  
108 agreement<sup>1</sup> by the execution date of this Contract, which reserves the rights of Contractor with  
109 respect to certain legal and other concerns expressed by the Contractor during the negotiation of

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<sup>1</sup> The exact type and form of an agreement between the parties has yet to be determined

the Contract. These concerns relate to the financial and certain other terms of the existing Contract and whether the terms of this Contract should be revised to address those concerns; and

[18<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this Contract 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 dates inclusive;

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

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

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

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



(f) “Contractor’s Service Area” shall mean the area to which the Contractor is permitted to provide Project Water obtained under this Contract as illustrated in Exhibit “A” attached hereto, which may be modified from time to time in accordance with Article 35 of this Contract without amendment of this Contract;

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

(h-i) Omitted;

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

(k-l) Omitted;

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

(n) Omitted;

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

(p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the delivery of M&I Water;

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

(r) Omitted;

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

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

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

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

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

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

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

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

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

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

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

TERM OF CONTRACT

2. (a) This Contract shall be effective on the date first written above, and shall remain in effect through February 28, 20\_\_ and supersedes the Existing Contract. In the event the Contractor wishes to renew this Contract beyond February 28, 20\_\_, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two years prior to the date this Contract expires.

(b) Omitted.

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

(d) The Contracting Officer shall make a determination 10 years after the date of execution of this Contract, and every five years thereafter during the term of this Contract, of whether a conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that during the term of this Contract, all authorized Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under said

subsection 9(c)(1), subject to applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that, account being taken of the amount credited to return by the Contractor as provided for under Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return by the Contractor can probably be repaid to the United States within the term of a contract under said subsection (c)(1) of Section 9. If the remaining amount of costs that are properly assignable to the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out above, conversion to a contract under said subsection (c)(1) of Section 9. In the event such determination of costs has not been made at a time which allows conversion of this Contract during the term of this Contract or the Contractor has not requested conversion of this Contract within such term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (c) of this Article a provision that carries forth in substantially identical terms the provisions of this subdivision (d).

**WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR**

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor up to 30,000 acre-feet of M&I water. The quantity of Water Delivered to the Contractor in accordance

with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

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

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

(d) The Contractor shall make reasonable and beneficial use of all water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; *Provided*, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; *Provided, further*, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area to show reasonable and beneficial

use of the quantity of Delivered Water based on a long-term average in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of 40 years of diversions for M&I purposes of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate baseline for the biological assessment prepared pursuant to the ESA, and any other needed environmental review. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

(f) Following the declaration of Water Made Available under Article 4 of this Contract, the Contracting Officer will make a determination whether Project Water or other water available to the Project, can be made available to the Contractor in addition to the Contract Total under Article 3 of this Contract during the Year without adversely impacting other Project Contractors. At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making such a determination. If the Contracting Officer determines that

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

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

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



(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 26 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 26.

(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 AND METHOD OF PAYMENT FOR WATER

7. (a) The Contractor shall pay the United States as provided in this Article for all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with: (i) the Secretary's then-existing ratesetting policy for M&I Water. 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 transfer, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(b) 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".

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

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

(d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (c) of this Article to the United States for Project Water delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of Project Water delivered as shown in the water delivery report for the subject month prepared by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the



applicable Tiered Pricing Component for Project Water delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

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

Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

(j) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the total Project Water deliveries, 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 Project Water delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the total Project Water deliveries, 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 Project Water delivered which exceeds 90 percent of the total Project Water deliveries 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, total Project Water deliveries shall include Project

Water that the Contractor transfers to others but shall not include Project Water transferred to the Contractor, nor shall it include other water furnished pursuant to Article 3(f) of this Contract.

(k) For the term of this Contract, 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.

(l) 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.

(m) Omitted.

(n) 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 water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

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

(c) Omitted.

(d) Project Water furnished under this Contract will be allocated in accordance with the then-existing Project M&I Water Shortage Policy; *Provided*, That any

increases in the Contractor's demand that have arisen since the delivery of Project Water to the Contractor the previous year, which are the result of Contractor providing additional water to an electrical power generating plant (including a cogeneration plant), shall, in addition to any other applicable adjustments pursuant to the policy, result in a corresponding increase in the Contractor's "historic use" quantity. Such policy shall be amended, modified, or superseded only through a public notice and comment procedure.

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

#### UNAVOIDABLE GROUNDWATER PERCOLATION

13. Omitted.

#### RULES AND REGULATIONS

14. The parties agree that the delivery of Project Water , or use of Federal facilities pursuant to this Contract, is subject to the applicable provisions of Federal Reclamation law; and any applicable rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

#### PROTECTION OF WATER AND AIR QUALITY

15. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided,*



That 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 shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall 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 the Contractor's 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.

(d) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

#### QUALITY OF WATER

16. Combined with Article 15.

#### WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

17. (a) Omitted.

(b) Except for, 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

727 applicable groundwater management plan applicable to the Contractor for the area from  
728 which it was extracted.

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

734 OPINIONS AND DETERMINATIONS

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

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

COORDINATION AND COOPERATION

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

20. (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 OPPORTUNITY

21. 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, disability, 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, disability, 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, disability, or national origin.

(c) 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 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by EO 11246, 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.

(f) 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 EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) 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 EO 11246, 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 that the United States enter into such litigation to protect the interests of the United States.

#### GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

22. (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 obligations to the Contractor.

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

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

#### COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

23. (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 agreement 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

24. Omitted.

#### CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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



WATER CONSERVATION

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

(b) Should the amount of M&I Water delivered pursuant to subdivision (a) of Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the best management practices identified by the time frames issued by the California Urban Water Conservation Council for such M&I Water unless any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

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

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

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

#### EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

948                    OPERATION AND MAINTENANCE BY THE OPERATING  
949                    NON-FEDERAL ENTITY

950            28.    Omitted.

951                    CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

957                    BOOKS, RECORDS, AND REPORTS

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

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

972            (c)    Omitted.

973                    ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

#### SEVERABILITY

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

998 RESOLUTION OF DISPUTES

999 33. Should any dispute arise concerning any provisions of this Contract, or the  
1000 parties' rights and obligations there under, the parties shall meet and confer in an attempt to  
1001 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1002 Officer referring any matter to Department of Justice, the party shall provide to the other party 30  
1003 days' written notice of the intent to take such action; *Provided*, That such notice shall not be  
1004 required where a delay in commencing an action would prejudice the interests of the party that  
1005 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer  
1006 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,  
1007 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the  
1008 United States may have.

1009 OFFICIALS NOT TO BENEFIT

1010 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1011 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1012 manner as other water users or landowners.

1013 CHANGES IN CONTRACTOR'S ORGANIZATION

1014 35. (a) While this Contract is in effect, no change may be made in the  
1015 Contractor's organization, by inclusion or exclusion of lands or by any other changes which may  
1016 affect the respective rights, obligations, privileges, and duties of either the United States or the  
1017 Contractor under this Contract including, but not limited to, dissolution, consolidation, or  
1018 merger, except upon the Contracting Officer's written consent.

1019 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1020 Officer will notify the Contractor of any additional information required by the Contracting  
1021 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1022 schedule for timely completion of the process. Such process will analyze whether the proposed  
1023 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 25 of this Contract.

#### FEDERAL LAWS

36. 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

37. 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, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630-1799, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of the Sacramento Municipal Utility District, P.O. Box 15830, MS B406, 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.

#### CONFIRMATION OF CONTRACT

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

1051                                    SUBCONTRACT FOR RESALE OF WATER

1052                    39.     Omitted.

1053                                    MEDIUM FOR TRANSMITTING PAYMENTS

1054                    40.     (a)     All payments from the Contractor to the United States under this Contract  
1055 shall be by the medium requested by the United States on or before the date payment is due. The  
1056 required method of payment may include checks, wire transfers, or other types of payment  
1057 specified by the United States.

1058                                    (b)     Upon execution of the Contract, the Contractor shall furnish the  
1059 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose  
1060 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising  
1061 out of the Contractor's relationship with the United States.

1062                                    CONTRACT DRAFTING CONSIDERATIONS

1063                    41.     This Contract has been, negotiated and reviewed by the parties hereto, each of  
1064 whom is sophisticated in the matters to which this Contract pertains. The double spaced Articles  
1065 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall  
1066 be considered to have drafted the stated articles.  
1067

1068                    IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the  
1069   day and year first above written.

1070                    THE UNITED STATES OF AMERICA

1071                    By: \_\_\_\_\_  
1072                    Regional Director, Mid-Pacific Region  
1073                    Bureau of Reclamation

1074                    SACRAMENTO MUNICIPAL UTILITY  
1075                    DISTRICT

1076                    By: \_\_\_\_\_  
1077                    President of the Board of Directors

1078                    Attest:

1079                    By: \_\_\_\_\_  
1080                    Secretary of the Board of Directors



EXHIBIT A  
[Map of Contractor's Service Area]

Draft

EXHIBIT B  
[Rates and Charges]

Draft