

**AGREEMENT FOR MITIGATION OF IMPACTS
TO CONTRA COSTA WATER DISTRICT FROM CONSTRUCTION AND
OPERATION OF BAY DELTA
CONSERVATION PLAN/ CALIFORNIA WATERFIX**

This Agreement for Mitigation of Impacts to Contra Costa Water District (“**CCWD**”) from Construction and Operation of the Bay Delta Conservation Plan / California WaterFix (this “**Agreement**”), by and between CCWD and the California Department of Water Resources (“**DWR**” and, together with CCWD, each a “**Party**” and, collectively, the “**Parties**”), is made as of the reference date of March 24, 2016. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 12.

RECITALS

- A. WHEREAS**, DWR and the United States Bureau of Reclamation (“**Reclamation**”) together have prepared a 2013 Draft Environmental Impact Report / Environmental Impact Statement (“**DEIR/S**”) and a 2015 Partially Recirculated Draft Environmental Impact Report / Supplemental Environmental Impact Statement (“**2015 RDEIR/SDEIS**”) for a project titled the Bay Delta Conservation Plan (“**BDCP**”), which includes Action Alternative 4A, called the California WaterFix (“**CWF**”) (collectively, “**BDCP/CWF**”);
- B. WHEREAS**, the BDCP/CWF includes as one of its components a facility to convey water from one or more water diversion intakes located along the Sacramento River (“**Northern Intakes**”) to the State and/or Federal pumping facilities in the south Delta (“**Conveyance Facility**”);
- C. WHEREAS**, in addition to the Conveyance Facility, the CWF includes the following components and parameters:
 - 1. maximum diversion of a total of up to 9,000 cubic feet per second from a total of one or more new Northern Intakes;
 - 2. requirements to allow sufficient flow to bypass the new Northern Intakes and remain in the Sacramento River as specified in Table 4.1-2 of the 2015 RDEIR/SDEIS and Table 3-16 in the DEIR/S;
 - 3. continued use of existing State and Federal intakes in the south Delta to minimize water quality degradation by refraining from diverting from the Northern Intakes above a low-level pumping quantity of 300 cubic feet per second per intake during the months of July, August, and September of each calendar year unless the rate of diversions from the South Delta channels are at least approximately 3,000 cubic feet per second;
 - 4. coordinated operation of the State Water Project and Federal Central Valley Project facilities to: (i) meet the Delta outflow requirements in place as of the effective date of this Agreement as specified in State Water Resources Control Board Water Rights Decision 1641 (“**D-1641**”) Table 3 at pp. 183-187 and in the

United States Fish & Wildlife Service December 2008 Biological Opinion on the Effects of Long Term Coordinated Operations of the Central Valley and State Water Project on Delta Smelt and its Designated Critical Habitat, Reasonable and Prudent Alternative Component 3 at pp. 282-283 and Action 4 in Attachment B: (ii) the Rio Vista flow requirements in place as of the effective date of this Agreement as specified in D-1641 Table 3 at p. 184, and (iii) the additional Rio Vista flow requirements for at least 3,000 cubic feet per second from January to August of each calendar year, as specified in the 2015 RDEIR/SDEIS Table 4.1-2 at p. 4.1-9; and

5. up to 305 total acres of tidal wetland restoration located at Sherman Island, Cache Slough and the North Delta, where such restoration is required as mitigation for impacts of the BDCP/CWF and provided that tidal wetland restoration located at Sherman Island will not exceed 59 acres unless DWR demonstrates to CCWD's satisfaction that the tidal wetlands restoration mitigation will cause no adverse net water quality impacts at CCWD's intakes at any time;

- D. WHEREAS**, CCWD submitted comments on the 2015 RDEIR/SDEIS expressing its position that the BDCP/CWF would result in significant water quality, water supply and construction-related impacts to CCWD and its customers, and that the 2015 RDEIR/SDEIS was inadequate in other respects. Among other comments, CCWD expressed its concerns that construction of the BDCP/CWF could damage CCWD Facilities on and near Victoria Island; and that operation of the BDCP/CWF could cause salinity, algae and other contaminants to increase at CCWD's intakes. Increased salinity, algae and other contaminants at CCWD's intakes in turn could (a) adversely affect the quality of water delivered to CCWD's customers; (b) prevent CCWD from diverting water from one or more of its intakes during periods of degraded water quality; and (c) increase CCWD's water supply, energy and infrastructure costs due to changes in the timing of CCWD's diversions, periodic changes in the intakes used by CCWD to access water meeting CCWD's water quality objectives, and replacement of some or all of CCWD's water supply.
- E. WHEREAS**, DWR and Reclamation have filed a joint water rights petition before the State Water Resources Control Board ("**State Board**") that seeks to add three new points of diversion and/or points of re-diversion to specified water rights permits for the State Water Project and Central Valley Project in connection with the CWF ("**CWF Change of Point of Diversion**"). The State Board has bifurcated its proceedings on the CWF Change of Point of Diversion into multiple parts, and CCWD has filed a protest to the petition ("**Water Rights Protest Claims**").
- F. WHEREAS**, Reclamation has participated in informal consultation on the CWF under Section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), with the U.S. Fish & Wildlife Service and National Marine Fisheries Service and to that end has made available a working draft Biological Assessment for the CWF, which is anticipated to result in a final Biological Assessment and a Biological Opinion that will be critical to how the CWF will be operated.

- G. WHEREAS**, absent an enforceable and binding agreement to mitigate impacts of the BDCP/CWF to CCWD and its customers and to fully offset increased costs to CCWD resulting from operation of the BDCP/CWF, CCWD has threatened to commence litigation arising under the California Environmental Quality Act (“**CEQA**”), National Environmental Policy Act, California Water Code, Federal and State Endangered Species Acts, and other statutes and regulations to challenge actions and final decisions by DWR, Reclamation and other permitting agencies regarding the BDCP/CFW.
- H. WHEREAS**, without admitting to any liability arising from CCWD’s alleged harms above in Recital D, DWR desires to settle the Parties’ disagreements in lieu of litigation and to ensure that the BDCP/CWF provides the mitigation under CEQA, and resolves CCWD’s water right protest as a legal user of water, the Parties have agreed on measures to, among other things, (i) mitigate the impacts identified under CEQA of the BDCP/CWF, if approved, on CCWD and its customers, and (ii) fully offset any increased costs to CCWD and its customers resulting directly or indirectly from the BDCP/CWF, if approved, all as more fully set forth in this Agreement.
- I. WHEREAS**, the Parties recognize that DWR has not decided whether or on what conditions to approve the BDCP/CWF as a project under CEQA, and the Parties intend that, except with regard to the mitigation measures that must be implemented to address impacts to CCWD and its customers if DWR approves the BDCP/CWF, this Agreement in no way affects the independent judgment to be exercised and findings required to be made by DWR or CCWD under CEQA in the event the BDCP/CWF, is approved and implemented.
- J. WHEREAS**, this Agreement is intended to protect CCWD and its customers in the event that DWR approves and implements the BDCP/CWF; by entering into this Agreement CCWD does not endorse or otherwise support approval and implementation of the BDCP/CWF.
- K. WHEREAS**, DWR will benefit from CCWD’s withdrawal of its water rights protest prior to DWR’s selection of an action alternative and approval of the BDCP/CWF and prior to approval of the water rights petition, incidental take permits and other permits and approval that will govern construction and operation of the BDCP/CWF; therefore, this Agreement is intended to bind DWR and its successors and assigns to comply with the terms of this Agreement including but not limited to conveyance of Qualifying Water to CCWD in the amounts specified by this Agreement, regardless of the physical features, components or operational parameters approved and permitted for the BDCP/CWF and regardless of whether CCWD exercises its right to comment upon, oppose or challenge actions, approvals and permits for an alternative or project modification that both (i) deviates from the components and parameters specified in Recital C, above and (ii) has the potential to harm water quality at CCWD’s intakes.
- L. WHEREAS**, operation of the BDCP/CWF could adversely affect CCWD in a manner that is not addressed by this Agreement if the BDCP/CWF is approved, permitted or modified in a manner that deviates from the project components and parameters specified in Recital C, above; accordingly, this Agreement is not intended to prevent CCWD from

commenting on, opposing, or challenging any action, permit or approval that both (i) deviates from the project components and parameters specified in Recital C, above (b) has the potential to harm water quality at CCWD's intakes.

M. WHEREAS, the Parties recognize that to fully implement this Agreement, other agreements, permits and approvals are contemplated including but not limited to: an agreement between CCWD and the East Bay Municipal Utility District ("**EBMUD**") to allow water to be conveyed to CCWD through EBMUD's Freeport Intake ("**Freeport Intake**") and the interconnection between EBMUD's Mokelumne Aqueduct and CCWD's Los Vaqueros Pipeline; State Board approval of a water rights petition to identify the Freeport Intake as a point of diversion for water diverted pursuant to CCWD's Los Vaqueros water right; State Board approval of a water rights petition to identify the new Northern Intakes as points of diversion for water diverted pursuant to CCWD's Los Vaqueros water right; a Warren Act Contract between CCWD and Reclamation for conveyance through the Folsom South Canal of water diverted at the Freeport Intake under the Los Vaqueros water right; and cooperation from Reclamation with regard to implementation of CCWD's water supply contract with Reclamation in a manner that is consistent with the terms of this Agreement.

N. WHEREAS, two of CCWD's customers, the City of Antioch ("**Antioch**") and the City of Brentwood ("**Brentwood**"), as well as the East Contra Costa Irrigation District ("**ECCID**"), which supplies water to CCWD and to Brentwood, have submitted comments on the 2015 RDEIR/SDEIS expressing their concerns that they could be adversely affected by the BDCP/CWF in a manner that would not be fully addressed by mitigation of impacts to CCWD; two of these agencies (Antioch and ECCID) have existing agreements with DWR to address water quality at their intakes, and complete mitigation for water quality impacts to all of its customers and partners is important to CCWD; therefore, this Agreement requires DWR to contact each of these agencies and, if agreeable to these agencies, to commence negotiations regarding potential impacts to these agencies beyond the impacts to CCWD that are addressed by this Agreement, it being understood that this Agreement is not intended to address potential impacts of the BDCP/CWF to Antioch, ECCID or Brentwood except to the extent such impacts are indirectly addressed as a practical matter by the CEQA mitigation measures provided for in this Agreement to mitigate the impacts of the BDCP/CWF on CCWD.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. EFFECTIVENESS, CEQA REVIEW AND TERM OF AGREEMENT

1.1 Effective Date. This Agreement shall be effective as of the date that it is executed by both Parties, except to the extent expressly provided below in subsection 1.1.1.

1.1.1 CCWD's obligations under Section 5.1 of this Agreement shall become effective only if, after completing CEQA review of the BDCP/CWF, DWR selects and approves a BDCP/CWF action alternative that does not deviate from the components and parameters of the CWF that are described in Recital C above (a "**Conforming Action Alternative**").

1.1.2 The Parties agree and acknowledge that DWR must complete CEQA review before it can construct, operate or use the BDCP/CWF. In conducting its CEQA review, DWR reserves all of its rights, powers and discretion under CEQA with regard to the BDCP/CWF, including, to the extent permitted under applicable law, but without limiting any of DWR's obligations under this Agreement, (i) the authority to adopt mitigation measures and/or an alternative project design, configuration, capacity or location in order to reduce any identified significant environmental impacts; (ii) the authority to deny approval of the BDCP/CWF based on any significant environmental impact that cannot be mitigated; and (iii) the authority to approve the BDCP/CWF notwithstanding any significant environmental impact that cannot be mitigated, if DWR determines that these impacts are outweighed by the project's social, economic or other benefits. CCWD similarly reserves all of its rights, powers and discretion under CEQA with regard to any decision by CCWD on whether and how to approve any connection to or use of any Conveyance Facility that is part of the BDCP/CWF. Notwithstanding the discretion identified in this Section, if DWR approves the BDCP/CWF or any modification to the BDCP/CWF, DWR shall implement the terms of this Agreement.

1.1.3 The Parties further agree and acknowledge that DWR also must complete CEQA review before it can construct, operate or use any Interconnection Facilities. Pursuant to this Agreement, DWR will identify construction and operation of the Interconnection Facilities as mitigation measures in the Final EIR/EIS for the BDCP/CWF, and will include an evaluation of the environmental effects of such mitigation in the Final EIR/EIS for the BDCP/CWF. In conducting its CEQA review, DWR reserves all of its rights, powers and discretion under CEQA with regard to the Interconnection Facilities, including, to the extent permitted under applicable law, but without limiting any of DWR's obligations under this Agreement, (i) the authority to adopt mitigation measures and/or an alternative project design, configuration, capacity or location in order to reduce any identified significant environmental impacts; (ii) the authority to deny approval of the Interconnection Facilities based on any significant environmental impact that cannot be mitigated (in which case DWR also must deny approval of the associated Conveyance Facility); and (iii) the authority to approve the Interconnection Facilities notwithstanding any significant environmental impact that cannot be mitigated, if DWR determines that these impacts are outweighed by the project's social, economic or other benefits. CCWD similarly reserves all of its rights, powers and discretion under CEQA with regard to any decision by CCWD on whether and how to approve any operation or use of the Interconnection Facilities. Notwithstanding the discretion identified in this Section, if DWR approves the BDCP/CWF or modifications to the BDCP/CWF,

DWR shall implement the terms of this Agreement including but not limited to the duty to construct the Interconnection Facilities.

- 1.2** Term. Unless this Agreement is earlier terminated by mutual written agreement of the Parties, this Agreement shall remain in effect for the entire duration that the BDCP/CWF and/or any amendment, modification, supplement or replacement thereof is in operation, including, without limitation, during any lapse thereof or any cessation of use of any Conveyance Facility that is later followed by the design, construction, operation or use of the same or a new or modified Conveyance Facility. For the avoidance of doubt, this Agreement shall be effective from and after the effective date hereof, including, without limitation, at any such time that is prior to the design, construction, operation or use of any Conveyance Facility; provided, however, this Agreement will automatically terminate if all of the following occur: (i) DWR permanently withdraws its CWF Change in Point of Diversion application; (ii) for a period of twenty (20) years following execution of this Agreement, DWR does not receive State Board approval for a CWF Change in Point of Diversion or any other change in point of diversion for a Conveyance Facility; and (iii) for a period of twenty (20) years following execution of this Agreement, DWR does not commence construction of the Conveyance Facility.

2. CONSTRUCTION OF CONVEYANCE FACILITY AND INTERCONNECTION FACILITIES

2.1 Provisions Applicable to the Design, Construction and Maintenance of the Conveyance Facility and the Interconnection Facilities.

2.1.1 Coordination between CCWD and DWR regarding Design, Construction, and Maintenance Schedules. DWR shall coordinate with CCWD on the schedules for design, construction and maintenance of the portion of the Conveyance Facility located on or beneath Victoria Island, San Joaquin County (“**Conveyance Facility on Victoria Island**”) and the Interconnection Facilities (as defined in Section 2.3.1).

- (a)** DWR shall provide a detailed schedule to CCWD for completion of design of the Conveyance Facility and Interconnection Facilities. DWR shall include as part of the design schedule sufficient time to enable completion of the review and comment periods provided by this Agreement prior to advertising the Conveyance Facility and Interconnection Facilities for bid and construction.
- (b)** No later than one hundred twenty (120) days prior to the commencement of construction of the Conveyance Facility on Victoria Island or Interconnection Facility, whichever occurs first, and no later than ninety (90) days prior to the commencement of construction or other ground-disturbing

activities associated with maintenance of the Conveyance Facility on Victoria Island, DWR shall provide to CCWD a detailed proposed construction schedule for each facility, including the proposed scope of construction or maintenance activities, proposed dates for such construction or maintenance, construction or maintenance activities (including dewatering as described in Section 2.2.2), a schedule of typical equipment and materials and the proposed construction contractor. CCWD shall provide written comments on the proposed construction or maintenance schedules to DWR within thirty (30) days of CCWD's receipt of each proposed schedule. DWR agrees to implement all CCWD comments except to the extent implementation of one or more comments would cause substantial delay in designing, constructing or maintaining the Conveyance Facility on Victoria Island or Interconnection Facilities or would result in a substantial increase in construction or maintenance costs. To the extent DWR objects to any of CCWD's written comments, within fifteen (15) days of DWR's receipt of said comments, DWR shall notify CCWD in writing of its objection and the Parties shall meet and confer in good faith to resolve the dispute. If the Parties cannot resolve the dispute within twenty-one (21) days of DWR's written notice of objection, the matter may be submitted by either Party to arbitration pursuant to Section 7 of this Agreement.

- (c) The schedule specified in Section 2.1.1(b), above, may be changed by the Parties by mutual consent.

2.1.2 Review of Documents. Unless noted otherwise in this Agreement or unless revised by the Parties by mutual written agreement, the following review and comment process shall apply:

- (a) Any review or approval of documents by CCWD contemplated by this Agreement, including but not limited to review of project designs, technical studies, third party contracts, and contractor submittals, shall be completed within fifteen (15) working days of receipt of those documents by CCWD from DWR. If CCWD has comments on a document, CCWD shall provide such comments to DWR in writing.
- (b) Within fifteen (15) working days of receipt of said comments, DWR shall notify CCWD in writing to the extent DWR objects to any of CCWD's written comments, and the Parties shall meet and confer in good faith to resolve the dispute.

- (c) If the Parties cannot resolve the dispute within twenty-one (21) working days of DWR's written notice, the matter may be submitted to arbitration pursuant to Section 7 of this Agreement.
- (d) If CCWD does not return comments to DWR within fifteen (15) working days of CCWD's receipt of contractor submittals, DWR will respond to the contractor submittals within the timeframe stipulated in the construction contract and will not delay response waiting for CCWD comments.

2.1.3 CCWD Review of Third Party Contracts. CCWD shall have the right to review construction, maintenance and similar contracts between DWR and third parties relating to the Conveyance Facilities within 1,000 feet of the easement for CCWD's Middle River Pipeline on Victoria Island and relating to the Interconnection Facilities (each a "Third Party Contract"). In furtherance of the foregoing, DWR shall provide CCWD with drafts of each Third Party Contract in a timely manner such that CCWD can review and provide comments on such drafts. DWR shall consider all such comments in good faith; provided that, to the extent any provisions of such Third Party Contracts conflict with the terms of this Agreement, DWR shall not include them in the final contracts without the written consent of CCWD. Unless otherwise agreed to by CCWD, each Third Party Contract will contain provisions acceptable to CCWD relating to the conduct of the construction or maintenance at or affecting any CCWD Facility, including, without limitation, compliance with CCWD's environmental, health and safety programs, and the right of CCWD to require DWR to halt construction activities that could cause material damage to CCWD's property, inspection and other rights.

2.1.4 Reimbursement of CCWD Costs for Review and Coordination. Promptly upon written notice thereof from CCWD, including a reasonably detailed description of such costs, DWR shall reimburse CCWD the cost of any CCWD staff time or third-party consultant costs relating to review of documents including but not limited to project designs, technical studies, third party contracts, and contractor submittals; pre-construction and post-construction inspections; reasonable observation and inspection during construction and maintenance; or any other activities to implement this Agreement relating to design, construction and maintenance of the Conveyance Facility on Victoria Island and Interconnection Facilities.

2.1.5 Avoidance of Western Area Power Administration Facilities. Construction and maintenance of the Conveyance Facility on Victoria Island and Interconnection Facilities has the potential to impact Western Area Power Administration facilities that provide power to the CCWD Facilities on or near Victoria Island (the "**WAPA Facilities**"), including

power lines and towers. DWR shall implement measures which in the reasonable opinion of CCWD are sufficient to protect the WAPA Facilities from potential damage when siting, constructing and maintaining the Conveyance Facility on Victoria Island and Interconnection Facilities, including with respect to access roads and Western Area Power Administration right-of-ways.

- 2.1.6** Continued Access to CCWD Facilities. DWR shall ensure that CCWD has free and safe access to CCWD Facilities at all times during construction and maintenance of the Conveyance Facility and Interconnection Facilities.
- 2.1.7** Pre-Construction and Post-Construction Inspections. Prior to the commencement of construction of the Conveyance Facility on Victoria Island or the Interconnection Facilities, whichever occurs first, CCWD shall conduct a pre-construction inspection of those CCWD Facilities that could be affected by construction of the Conveyance Facility on Victoria Island and the Interconnection Facilities. Following completion of construction of the Conveyance Facility on Victoria Island and the Interconnection Facilities, CCWD shall conduct a post-construction inspection of those same CCWD Facilities to determine whether damage to those CCWD Facilities occurred as a result of construction activities.
- 2.1.8** Damage to CCWD Facilities and Access Roads. Upon written notice from CCWD describing such costs in reasonable detail, DWR shall promptly reimburse CCWD for all costs incurred by CCWD due to damage caused by construction and maintenance of the Conveyance Facility on Victoria Island and the Interconnection Facilities, including but not limited to the costs of repair or replacement of CCWD Facilities. In addition, DWR shall repair or replace any access roads and levees damaged by construction and maintenance of the Conveyance Facility on Victoria Island and the Interconnection Facilities. If DWR fails to immediately repair or replace said access roads and levees, CCWD shall have the option of conducting such repairs or replacement and DWR shall promptly reimburse CCWD for the costs of such repair or replacement, upon written notice from CCWD describing such costs in reasonable detail.
- 2.1.9** Loss of Water Supply. Any loss of CCWD water supply directly or indirectly caused by (i) construction or maintenance by DWR or its third party contractors of the Conveyance Facility, (ii) construction or maintenance by DWR or its third party contractors of any other component of the BDCP/CWF, or (iii) construction or maintenance by DWR or its third party contractors of the Interconnection Pump Station; or (iv) construction by DWR or its third party contractors of the Interconnection Pipeline and Interconnection Valve, shall be the

responsibility of DWR, and may be recouped through delivery of the same amount of water to CCWD via the interconnection between the East Bay Municipal Utility District (“**EBMUD**”) Mokelumne Aqueduct and CCWD’s Los Vaqueros Pipeline at DWR’s sole expense, or in another manner reasonably satisfactory to CCWD and at DWR’s expense.

2.1.10 Levee Subsidence. The Parties shall work in good faith to establish a set of protocols, protective measures and monitoring to address potential levee subsidence associated with construction and maintenance of the Conveyance Facility on Victoria Island and the Interconnection Facilities. Construction of the Conveyance Facility on Victoria Island or the Interconnection Facilities shall not commence until such protocols and protective measures are established to the Parties’ mutual satisfaction.

2.1.11 Hazardous Materials. DWR shall use, store and dispose of Hazardous Material to be used to construct the facilities described in Section 2 of this Agreement by DWR or DWR’s Related Parties only in compliance with any and all applicable federal, state or local environmental health or safety laws, statute, ordinance, rule, regulation or requirement (“**Environmental Laws**”). DWR shall, at DWR’s sole cost and expense, promptly undertake such removal or remedial action as may be required by Environmental Law with regard to any non-de minimis violation of any Environmental Law with regard to any Hazardous Material used by DWR or DWR’s Related Parties. “**Hazardous Material**” shall mean any asbestos-containing materials, petroleum, explosives, toxic materials, or any other substances regulated as hazardous wastes, hazardous materials, hazardous substances, or toxic substances under any Environmental Laws, including but not limited to any substance, pollutant or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq., and the regulations promulgated pursuant to the Act.

2.2 Provisions Relating to the Conveyance Facility on Victoria Island.

2.2.1 Victoria Island Safe Haven Shaft. DWR shall notify CCWD in writing in the event DWR determines that a safe haven shaft is required in conjunction with sub-surface construction and tunneling on Victoria Island. Prior to the construction of any safe haven shaft, DWR shall provide CCWD engineering drawings and data, specifications, materials, maps, hydrologic data and seismic studies relating to such shaft and such other information as may be reasonably requested by CCWD in order to review and evaluate DWR’s proposal. The location and design of such shaft shall be coordinated with CCWD pursuant to the process described in Section 2.1.2 of this Agreement.

- 2.2.2** Dewatering. DWR shall ensure that it designs and implements dewatering in conjunction with the construction and maintenance of pipelines/tunnels, shafts and other components of the Conveyance Facility to prevent damage to the CCWD Facilities that may result from dewatering. The minimum amount of dewatering necessary to implement construction and maintenance shall be effectuated only upon (i) a written settlement monitoring and corrective action plan coordinated between and executed by the Parties with direct input by CCWD regarding allowable settlement trigger points, and (ii) the placement of instrumentation on the CCWD Facilities at a site to be mutually agreed by the Parties, at DWR's sole expense, for the monitoring of settlement.
- 2.2.3** Dewatering Discharge. DWR shall neither cause nor permit any dewatering that takes place pursuant to Section 2.2.2 to have an adverse impact on the CCWD Facilities or water quality.
- 2.2.4** Restrictions on Parking and Stockpiling. DWR shall ensure that no construction and maintenance equipment shall park on or over CCWD Facilities and no construction and maintenance material shall be stockpiled on CCWD-owned property or within CCWD easements without CCWD's prior written authorization. DWR shall ensure that equipment and materials hauling activities over CCWD Facilities do not result in excessive loading, and DWR shall submit calculations and measures to reduce loads, such as trench plates, to CCWD for review and approval in advance of commencing any equipment and materials hauling activities over CCWD Facilities.
- 2.2.5** Tunnel Design to Avoid Ground Settlement. The design of the Conveyance Facility tunnels on Victoria Island shall be based on DWR's geotechnical analysis and shall include measures sufficient to avoid ground settlement within 1,000 feet of the easement for CCWD's Middle River Pipeline. CCWD shall have the right to review such geotechnical analysis, and DWR shall respond to comments by CCWD, pursuant to the process described in Section 2.1.2 of this Agreement. CCWD shall provide to DWR levels of ground settlement that can be tolerated at CCWD Facilities, to be included in the design documents used for bidding and construction of the Conveyance Facility on Victoria Island.

2.3 Design and Construction of the Interconnection Facilities.

- 2.3.1** DWR Obligation to Design and Construct Interconnection Facilities. To ensure the Secondary Method for conveying water to CCWD, as described further in Section 3.3 of this Agreement, is available for conveyance of Qualifying Water, as defined in Section 3.4 of this

Agreement, DWR shall design and construct the “**Interconnection Facilities.**”

- (a) Unless modified by mutual written agreement of the Parties, the Interconnection Facilities shall consist of the following facilities:
 - (i) a direct connection to the Conveyance Facility, pumping station, and appurtenant facilities (collectively “**Interconnection Pump Station**”) on Victoria Island with capacity to convey Qualifying Water to CCWD’s Old River Pipeline at a normal operating capacity of 150 cubic feet per second, and with sufficient pressure for the water to reach CCWD’s Existing Transfer Pump Station while the Old River Pipeline is operating at a total flow rate of up to 320 cubic feet per second; (ii) a pipeline and appurtenant facilities with a normal operating capacity of 150 cubic feet per second to convey the water from the Interconnection Pump Station on Victoria Island to CCWD’s Middle River Pipeline (“**Interconnection Pipeline**”), (iii) a valve between the Interconnection Pipeline and CCWD’s Middle River Pipeline (“**Interconnection Valve**”); and (iv) all instrumentation and communication equipment needed for CCWD to remotely monitor all Interconnection Facilities and operate all CCWD-owned facilities.
- (b) DWR shall design and construct the Interconnection Facilities in coordination with CCWD. DWR shall provide CCWD engineering drawings and data, specifications, materials, maps, hydrologic data and seismic studies relating to the Interconnection Facilities and such other information as may be reasonably requested by CCWD in order to review and evaluate DWR’s proposal. The location and design of such Interconnection Facilities shall be coordinated with CCWD pursuant to the process described in Section 2.1.2 of this Agreement.
- (c) Prior to the commencement of construction of the Interconnection Facilities, DWR and CCWD may consider and mutually agree to increase the Interconnection Facilities’ normal operating capacity to 250 cubic feet per second, with responsibility for the costs associated with the increased capacity to be determined during negotiation of such mutual agreement. Further, during design of the Interconnection Facilities, DWR and CCWD may consider and mutually agree to a different design for the Interconnection Facilities under which the Interconnection Pipeline conveys water to CCWD’s Old River Pipeline from a new pump station connected to the Conveyance Facility at the Subdivided Clifton Court Forebay. The amount of mitigation water to be conveyed in any year is specified in

Section 3.6 and 3.7 and would be the same regardless of the size or capacity of the Interconnection Facilities.

- (d) As part of its CEQA review for the BDCP/CWF, DWR shall evaluate the Interconnection Facilities, including a capacity of 250 cubic feet per second. The Interconnection Facilities are intended as a mitigation measure to be included in the Final EIR/EIS for the BDCP/CWF. The Parties recognize that, if after DWR completes the Final EIR/EIS and approves the BDCP/EIR, DWR later elects to pursue an alternative design for the Interconnection Facilities that differs from the design selected by DWR at the time DWR certifies the Final EIR/EIS and approves the BDCP/CWF, additional CEQA review may be required. Further, this Agreement does not obligate DWR to pay the cost of CEQA review if CCWD later proposes to modify the Interconnection Facilities after they have been constructed.

2.3.2 Interconnection Facilities Design to Include Liquefaction Analysis. The design of the Interconnection Facilities shall include a liquefaction analysis that (i) evaluates potential impacts of liquefaction, and (ii) describes mitigation measures to protect the Interconnection Facilities, the appurtenant structures and the connection point between the Interconnection Facilities and the CCWD Facilities. CCWD shall have the right to review such liquefaction analysis, and DWR shall respond to comments by CCWD, pursuant to the process described in Section 2.1.2 of this Agreement.

2.3.3 Interconnection Facilities Design to Reflect Differential Settlement and Flexibility of Connections. The design of the Interconnection Facilities shall (i) evaluate and address potential differential settlement, and (ii) incorporate flexible connections between CCWD Facilities and the Interconnection Facilities to account for long-term settlement, seismic motion and/or sea level rise impacts. CCWD shall have the right to review such differential settlement analysis, and DWR shall respond to comments by CCWD, pursuant to the process described in Section 2.1.2 of this Agreement.

2.3.4 CCWD Design Review. Design of the Interconnection Facilities that may affect one or more existing CCWD Facilities is subject to review by a third party of CCWD's choice and at DWR's expense as part of the value engineering or peer review process for BDCP/CWF. CCWD shall be invited as a participant of any Value Engineering workshops held in conjunction with the Interconnection Facilities design.

2.3.5 Design Standards. The Interconnection Facilities shall be designed using the current standards for design criteria and the current seismic loading and performance requirements including site-specific seismic

use criteria at the time of design and construction for a critical facility. All electrical and mechanical equipment shall be designed to ensure immediate post-earthquake functionality following the maximum credible earthquake for the site. The design as completed by DWR shall be sealed by an overall Engineer of Responsible Charge and the appropriate discipline engineers utilized on the project, with all registered engineers being so registered in the State of California. The design shall be completed using the professional standard of care for such projects within California. CCWD shall have the right to review all design documents, including a detailed surge analysis demonstrating that CCWD Facilities will be protected from any potentially damaging operations, during the design preparation and prior to issuance of the final design for the Interconnection Facilities.

2.3.6 Costs. DWR shall secure fee title or permanent easements for, and design and construct all components of the Interconnection Facilities, in each case at its sole cost.

2.3.7 Interconnection Pump Station. After completion of construction of the Interconnection Facilities, DWR shall own, operate and maintain the Interconnection Pump Station. DWR shall inspect the Interconnection Pump Station at least once per year per all manufacturers' recommended maintenance schedules for corrosion, coatings, safety, drainage, security, electrical and mechanical functionality, structural and geotechnical performance, and any other conditions necessary to ensure reliable and safe facility operation. DWR shall promptly provide the results of such inspections to CCWD. DWR shall be responsible for repairing and replacing all components of the Interconnection Pump Station at its sole cost so that it is capable of operating in good condition and at its design capacity at all times.

2.3.8 Interconnection Pipeline and Interconnection Valve. After completion of construction of the Interconnection Pipeline and Interconnection Valve, DWR shall transfer ownership of the Interconnection Pipeline and Interconnection Valve to CCWD and CCWD shall be responsible for operation and maintenance of the Interconnection Pipeline and Interconnection Valve.

- (a) DWR shall retain the fee title or easement for the real property on which the Interconnection Pipeline and Interconnection Valve are located, but shall ensure that CCWD has full and complete access to the Interconnection Pipeline and Interconnection Valve for the purposes of inspecting, maintaining and replacing such Interconnection Pipeline and Interconnection Valve. Alternatively DWR may elect to transfer the fee title or easement for the Interconnection Pipeline and Interconnection Valve to CCWD.

- (b) CCWD shall regularly inspect the Interconnection Pipeline and Interconnection Valve, and shall promptly provide the results of such inspections to DWR. CCWD shall be responsible for repairing and replacing all components of the Interconnection Pipeline and Interconnection Valve so that they are capable of operating in good condition and at their design capacity at all times; provided, however, that DWR shall be responsible for repairing and replacing at its sole cost all components of the Interconnection Pipeline and Interconnection Valve that are defective due to construction or latent defects.

2.3.9 Interconnection Pipeline Easement. The Interconnection Pipeline shall be constructed in an easement dedicated to its purpose. DWR shall ensure that all easements for the Interconnection Pipeline and Interconnection Valve provide the ability for CCWD to access such facilities without undue burden or delay and without prior written approval, in order to operate, maintain, renew, replace or install facilities and appurtenances. DWR shall provide all easements and land agreements to CCWD for its review in advance of finalizing such easements and land agreements. The pipeline shall be designed by DWR to pressures and flow rates as approved by CCWD. The connection of the Interconnection Pipeline to CCWD Facilities shall be as approved and coordinated by CCWD.

2.3.10 Victoria Island Pump Station. The location of a pump station on Victoria Island, if needed to transfer flows from the Conveyance Facility to the CCWD Facilities, shall be subject to approval by CCWD. In requesting approval from CCWD for the location of a Victoria Island Pump Station, DWR shall provide CCWD prior to the construction of the pump station design with engineering drawings and data, power supply design, specifications, materials, maps, hydrologic data, seismic studies and any other information reasonably requested by CCWD in order to properly evaluate DWR's proposal. CCWD shall have the right to review such documents pertaining to the pump station, and DWR shall respond to comments by CCWD, pursuant to the process described in Section 2.1.2 of this Agreement.

2.3.11 Elevation of Equipment Associated with Interconnection Facilities. DWR shall ensure that any shafts, permanent pumping equipment or permanent electrical equipment associated with the Interconnection Facilities shall be located on or accessed from a finished grade consistent with U.S. Army Corps of Engineers criteria for flood protection and levee breach, and sufficient for protection in the event of sea level rise as identified at the time the design is completed and for the design life of the Interconnection Facilities, assumed for purposes of this provision to be 50 years.

- 2.3.12** Restrictions on Parking and Stockpiling. DWR shall ensure that no construction and maintenance equipment shall park on or over CCWD Facilities and no construction material shall be stockpiled on CCWD-owned property or within CCWD easements without CCWD's prior written authorization. DWR shall ensure that equipment and materials hauling activities over CCWD Facilities do not result in excessive loading, and DWR shall submit calculations and measures to reduce loads, such as trench plates, to CCWD for review and approval in advance of commencing any equipment and materials hauling activities over CCWD Facilities.
- 2.3.13** Control of Connections and Valves. All connections and valves at the CCWD Facilities shall be solely controlled and operated by CCWD.
- 2.3.14** Selection of Construction Contractor. The procedure for selection of a contractor for the construction of the Interconnection Facilities contemplated by this Agreement shall conform with then-applicable State law with regard to public works contracts.
- 2.3.15** Construction Observation Rights. CCWD shall have access to the construction site and the right to reasonably observe and comment on construction at all times during the construction of the Interconnection Facilities. Specific points of connection and coordination with CCWD Facilities shall be scheduled as part of the construction schedule and a detailed connection plan provided by DWR to CCWD a minimum of 90 days prior to the connection occurring to allow sufficient time to review, comment and accept the connection plan by CCWD. DWR shall provide CCWD all construction contractor submittals for review, and shall provide as-built documents as well as operations and maintenance manuals for all equipment to be owned and operated by CCWD.
- 2.3.16** Testing Plans. CCWD and DWR shall jointly develop multiple startup and testing procedures for the Interconnection Facilities and any pumping equipment and movement of water through the Interconnection Facilities once they have been accepted for testing and operations by both Parties.
- 2.3.17** Operational Date. The Interconnection Facilities shall be fully operational no later than the first day of operation of any Conveyance Facility.
- 2.3.18** Instrumentation. DWR shall as part of the design and construction of the Interconnection Facilities incorporate SCADA systems into its facility that can communicate with and be controlled by CCWD using a mutually agreed upon platform and communication protocols.

2.3.19 Operation, Maintenance, Repair, and Replacement of the Interconnection Facilities. DWR shall at its expense obtain all permits and other approvals necessary for the operation, maintenance, repair, and replacement of the Interconnection Facilities. DWR shall provide CCWD with copies of all permits issued and other approvals necessary for the Interconnection Facilities, including all necessary CEQA compliance documents. CCWD and DWR may only operate the Interconnection Facilities valves that they own. The Parties shall coordinate operations of their separate facilities with the operation of the Interconnection Facilities. Water supplied through the Interconnection Facilities shall be measured upstream of the point of interconnection by the flow meters located at the Interconnection Pump Station, which will be calibrated as needed to the mutual satisfaction of both Parties. The expense of calibration shall be shared equally by both Parties. The Parties shall schedule a meeting in advance of operation and confirm at that meeting the procedures by which the Interconnection Facilities shall be operated to deliver water. Each Party shall be given unrestricted access to its respective Interconnection Facilities at all times without prior notice. DWR and CCWD agree neither party has the right or obligation to operate or maintain the other party's Interconnection Facilities. Each party shall have the sole responsibility for the security of its respective property at all times. Each Party shall have responsibility for operating, maintaining, and repairing its respective Interconnection Facilities. Each Party may operate, repair or replace any of the physical works of the other's Interconnection Facilities with the prior written agreement of the other Party. Either Party may perform or contract for work on its own property, including its easement(s) or right(s) of way, in regard to its own Interconnection Facilities. The other Party shall cooperate with such work, conduct its own operations in such a manner as not to cause any unnecessary delay or hindrance, and adjust and coordinate its work so as to permit proper completion of all work in the area.

2.3.20 Future Agreements. The Parties may enter into separate, future agreements concerning the use of the Interconnection Facilities for purposes beyond the scope of this Agreement, with costs associated with such use to be determined in corresponding agreements.

3. CEQA MITIGATION OF CCWD WATER QUALITY AND SUPPLY IMPACTS BY CONVEYANCE OF WATER TO CCWD FROM AN ALTERNATE HIGH-QUALITY SOURCE

3.1 Conveyance of Mitigation Water. To mitigate for water quality and water supply impacts arising from the water quality impacts to CCWD from the construction, operation or use of any Conveyance Facility, DWR shall convey water to CCWD (i) meeting the water quality requirements of Section 3.4 of this Agreement, (ii) in the minimum amounts specified in Section 3.6 of this Agreement and

(iii) according to the schedule specified in Sections 3.7 and 3.8 of this Agreement. The method of conveying the water to CCWD shall be as specified in Section 3.2 or Section 3.3 of this Agreement, and the cost of conveying the water shall be borne by DWR as specified in Section 3.5 of this Agreement. CCWD shall identify whether the water conveyed to it by DWR is: (a) water diverted pursuant to CCWD's CVP Contract Supply, provided that it is within CCWD's then current allocation and schedule; (b) water diverted under CCWD's Los Vaqueros water right, provided that it is within the amount and season then authorized in the LV Water Right Permit and providing the Delta is then in surplus conditions; (c) transfer water purchased by CCWD, provided that CCWD has purchased the transfer water and obtained all necessary permits and approvals, or (d) or any combination of (a), (b) or (c). This Agreement does not increase the total amount of water that CCWD otherwise would be entitled to divert pursuant to its CVP Contract Supply, Los Vaqueros water right, or any water transfers. This Agreement also does not change any existing approval process for identification, scheduling, or allocation of water diverted pursuant to CCWD's CVP Contract Supply, Los Vaqueros water right, or any water transfers. Water conveyed to CCWD pursuant to this Agreement may be used as CCWD deems appropriate in its sole discretion.

3.2 Primary Method of Conveyance. The primary method of conveying the water described in Section 3.1 ("**Primary Method**") shall be through EBMUD's Freeport Intake and the interconnection between EBMUD's Mokelumne Aqueduct and CCWD's Los Vaqueros Pipeline.

3.2.1 CCWD will use reasonable efforts to enter into a separate agreement with EBMUD under which the Freeport Intake and CCWD interconnection with EBMUD's Mokelumne Aqueduct could be used to convey water to CCWD pursuant to this Agreement (such separate agreement, the "**CCWD/EBMUD Use Agreement**").

3.2.2 The Parties acknowledge that delivery of water to CCWD via the Freeport Intake and interconnection between CCWD and EBMUD's Mokelumne Aqueduct may be constrained by EBMUD's scheduling or other requirements imposed by EBMUD or regulatory agencies.

3.3 Secondary Method of Conveyance. The secondary method of conveying the water described in Section 3.1 ("**Secondary Method**") shall be through the Interconnection Facilities described in Section 2.3.1.

3.3.1 The Secondary Method shall be used if (i) DWR determines the Primary Method is impractical for scheduling or financial reasons, (ii) no CCWD/EBMUD Use Agreement is then in effect, or (iii) EBMUD determines that capacity at the Freeport Intake is not then available.

3.4 Water Quality Requirements. Regardless of whether the Primary Method or Secondary Method is used, the water to be conveyed to CCWD pursuant to this

Agreement shall, to the extent feasible, contain a maximum of 30 mg/L chlorides and a maximum of 4 mg/L total organic carbon (“Qualifying Water”). DWR shall maintain a water quality station at the Subdivided Clifton Court Forebay (if the Interconnection Pump Station is located at the Clifton Court Forebay), or at the Intermediate Forebay (if the Interconnection Pump Station is located on Victoria Island), to monitor chloride and total organic carbon and report the daily data in real-time on the California Data Exchange Center (“CDEC”) or a similar future database mutually acceptable to the Parties. If data is not available to determine whether Qualifying Water is available, CCWD shall have the sole discretion to determine whether to accept delivery of the water to be conveyed to CCWD pursuant to this Agreement. Prior to the conveyance of water to CCWD through either the Primary Method or the Secondary Method, the Parties shall evaluate existing conditions for concentrations of chlorides and organic carbon and may, by mutual agreement, amend this Agreement to modify the amount of chlorides or total organic carbon authorized for, and acceptable to, CCWD as Qualifying Water.

3.5 Costs of Conveyance to CCWD’s Existing Transfer Pump Station. Regardless of whether the Primary Method or Secondary Method is used for conveyance of water to CCWD, DWR shall bear all costs associated with conveyance to CCWD of the quantity and quality of water required by this Agreement (including, without limitation, all associated energy costs). If the Primary Method is used to convey water to CCWD, DWR shall pay EBMUD the amount charged by EBMUD for conveyance of the water from the Freeport Intake to CCWD Facilities at a pressure sufficient to lift the conveyed water to CCWD’s Existing Transfer Pump Station. If the Secondary Method is used to convey water to CCWD, DWR shall pay the costs associated with conveyance through the Conveyance Facility and from the Interconnection Pump Station to the Interconnection Valve at a pressure sufficient to lift the conveyed water to CCWD’s Existing Transfer Pump Station.

3.6 Water Conveyance to Be Scaled. The annual amount of Qualifying Water to be conveyed to CCWD shall be scaled to actual BDCP/CWF operations in each water year as follows.

3.6.1 The annual amount of Qualifying Water to be conveyed by DWR to CCWD shall be determined by the fraction of Unimpaired Sacramento River Runoff that is exported from the Delta by the CVP and SWP, in conjunction with the fraction of those exports diverted at the northern intakes, as described in the following table. Based on the BDCP modeling for the 2013 DEIR/DEIS and 2015 RDEIR/SDEIS and taking into account replacement of the requirements of the 1967 Agreement between DWR and CCWD pertaining to CCWD’s Mallard Slough Intake, the quantity of Qualifying Water to be conveyed by DWR to CCWD is expected to range between 2 and 50 thousand acre-feet (“TAF”) per water year. Exhibit A attached hereto sets forth examples of the application of the methodology set forth in this Section 3.6 and

Section 3.7 for determining the annual amount of Qualifying Water to be conveyed by DWR to CCWD in a given water year.

		Annual Amount of Water to be Conveyed [TAF]							
		Northern Exports / Total Exports							
		0	0.1	0.2	0.3	0.4	0.5	0.6	0.7
Total Exports / Sacramento River Runoff	0	2	2	5	5	5	5	5	5
	0.1	2	8	9	10	11	13	16	18
	0.2	5	10	13	15	17	20	23	26
	0.3	5	15	19	23	27	32	37	42
	0.4	5	19	25	31	37	43	49	50
	0.5	6	23	31	42	47	50		

Green shading represents the operating range in the BDCP modeling for the 2013 DEIR/DEIS and 2015 RDEIR/SDEIS. The darker the shading, the more often the operations are expected to occur.

3.6.2 If more Northern Exports or Total Exports are taken by DWR and/or Reclamation in a water year than are shown in the table in subsection 3.6.1 above, DWR and CCWD shall meet and confer to attempt to determine, by mutual agreement, an appropriate amount of Qualifying Water to be conveyed by DWR to CCWD in the next water year to mitigate water quality impacts to CCWD that occurred during the water year. If such mutual agreement cannot be reached within thirty (30) days after the end of such water year, then the minimum annual amount of Qualifying Water to be conveyed by DWR to CCWD in the next water year shall be 50,000 acre feet.

3.7 Initial Mitigation Conveyance to CCWD. In order to create a positive water balance in the Los Vaqueros Reservoir and to mitigate initial impacts of BDCP/CWF operations, DWR shall convey 30,000 acre-feet of Qualifying Water to CCWD before the beginning of the first planned full water year of operation of any part of the BDCP/CWF that could affect CCWD's intake water quality. For the purposes of this Section 3.7, parts of the BDCP/CWF that could affect CCWD's intake water quality include but are not limited to: the Conveyance Facility and other BDCP/CWF project components or BDCP/CWF permit conditions that could result in a substantial change to Delta hydrodynamics. Subsequently, the annual amount of Qualifying Water to be conveyed to CCWD shall be calculated in arrears in accordance with Section 3.6 after September 30th of each water year and shall be conveyed to CCWD by September 30th of the following water year.

3.8 Coordination of Scheduled Conveyance. The Parties shall collaborate to schedule Qualifying Water conveyance from DWR to CCWD pursuant to this Agreement.

- 3.8.1** The Parties agree to continue their current practice of regular operational coordination meetings.
- 3.8.2** After September 30th but no later than October 31st of each water year, DWR shall provide written notice to CCWD regarding the quantity of Qualifying Water that DWR must convey to CCWD based on application of the methodology specified in Sections 3.6 and 3.7 to conditions that occurred during the water year then most recently ended. To the extent CCWD objects to DWR's calculation of the annual amount of Qualifying Water to be conveyed, and within sixty (60) days of receipt of said notice, CCWD shall notify DWR in writing of its objection and the Parties shall meet and confer in good faith to resolve the objection. If the Parties cannot resolve the dispute within twenty-one (21) days of CCWD's written notice of objection, the matter may be submitted by either Party to arbitration pursuant to Section 7 of this Agreement.
- 3.8.3** Not later than seven (7) days after written notice from CCWD to DWR, DWR shall commence delivery of Qualifying Water to CCWD in the quantity requested by CCWD in such notice (a "**Conveyance Request**") and shall maintain delivery to CCWD at a rate of at least 150 cubic feet per second until the requisite amount of Qualifying Water is fully delivered to CCWD unless (i) a corresponding amount of Qualifying Water is not then available from both (A) the Primary Method due to EBMUD's refusal or inability to convey the requisite quantity of Qualifying Water and (B) the Secondary Method due to restraints or restrictions imposed by applicable regulatory authorities having jurisdiction over operation of the Conveyance Facility that fully prevent the conveyance of any water through the Conveyance Facility from the Northern Intakes, or (ii) the full amount of Qualifying Water to be delivered by DWR to CCWD for such water year under this Agreement already has been conveyed to CCWD. If DWR fails to commence conveyance to CCWD of the requisite amount of Qualifying Water requested by CCWD pursuant to this Section 3.8.3 within seven (7) days after its delivery of a Conveyance Request or fails to maintain delivery to CCWD at the requisite rate until the requisite amount of Qualifying Water is fully delivered to CCWD, and such conveyance by DWR is not then excused due to the circumstances described under the preceding clauses (i) and (ii), then, upon further written notice from CCWD to DWR, the Parties shall meet and confer in good faith to resolve the matter. If the Parties cannot resolve the matter within five (5) days of CCWD's written notice, the matter may be submitted by either Party to arbitration pursuant to Section 7 of this Agreement.

3.8.4 If at any time DWR is unable to convey the requisite quantity of Qualifying Water that is requested by CCWD pursuant to the preceding subsection 3.8.3 due to the circumstances described in clause (i) thereof, then DWR shall convey such requisite quantity of Qualifying Water to CCWD on the first date that is acceptable to CCWD on which the circumstances described in clause (i) of subsection 3.8.3 no longer apply.

3.8.5 DWR may deliver more Qualifying Water to CCWD than required for a given water year upon the written concurrence of CCWD. Upon CCWD's written concurrence, and upon the negotiation of terms in a separate agreement, the excess Qualifying Water delivered during a given water year may be credited against the amount of Qualifying Water that DWR is required to deliver for the subsequent water year.

3.9 Remedy for DWR Failure to Deliver Required Water. This section 3.9 does not apply if a Force Majeure event described in Section 3.10 prevents DWR from conveying Qualifying Water. In any other event if DWR fails to convey the full amount of Qualifying Water required to be conveyed to CCWD under Sections 3.6 and 3.7 of this Agreement within a given water year, despite CCWD's timely scheduling of delivery of such water and its ability to accept such water, the Parties shall meet and confer to attempt to resolve that year's water deficit by mutually agreeable and reasonable means. If the Parties cannot reach agreement within thirty (30) days after the conclusion of said water year and the failure to convey Qualifying Water within said water year was not due to an excusable event as defined in Sections 3.8.3(i)(A) and (B), which event prevented DWR from conveying the full amount of Qualifying Water to CCWD by the end of said water year, DWR shall pay CCWD, no later than thirty (30) days after the conclusion of said water year, an amount equal to twice what it would have cost to convey the water deficit for said water year through the Freeport Intake and the interconnection between EBMUD's Mokelumne Aqueduct and CCWD's Los Vaqueros Pipeline, as determined by CCWD, acting reasonably and in good faith, and set forth in a written notice to DWR. As a further remedy, DWR shall, not later than September 30th of the following water year, also convey 30,000 acre-feet of Qualifying Water for delivery to the Los Vaqueros Reservoir; provided, however, that if the Los Vaqueros Reservoir cannot then accommodate 30,000 acre feet of water, then DWR shall convey so much of such 30,000 acre feet of Qualifying Water as the Los Vaqueros Reservoir can then accommodate, with the remainder conveyed in the next succeeding water year or, if the Los Vaqueros Reservoir cannot accommodate the remainder in such next succeeding water year, then at the earliest time as the Los Vaqueros Reservoir can accommodate such remainder. DWR shall have no obligation under this Section 3.9 if DWR fails to convey the full amount of Qualifying Water required to be conveyed to CCWD under Sections 3.6 and 3.7 of this Agreement within a given water year because either (i) CCWD fails to request and schedule delivery of such water, or (ii) CCWD informs DWR that it is not able to accept delivery of such water.

3.10 Force Majeure. If, due to Force Majeure as defined herein below, DWR is prevented from conveying the full amount of Qualifying Water required within a given water year to CCWD through both the Primary Method and the Secondary Method, DWR's payment of the remedy required under Section 3.9 shall be excused for the particular water year in which the Force Majeure conditions prevented such conveyance. However, DWR shall be required to convey the full amount of Qualifying Water required to be conveyed to CCWD pursuant to Section 3.6 of this Agreement within one water year of cessation of the Force Majeure conditions that prevented conveyance. "Force Majeure" shall include war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming Force Majeure; riots; earthquakes; fires; floods; levee failure; casualties; acts of the public enemy; epidemics; quarantine restrictions; or litigation that fully enjoins required performance. If either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected); provided that (i) the Party affected by the Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the Force Majeure event, (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible.

3.11 Evaluation and Adoption of Mitigation Measures. The following sections of this Agreement shall be adopted by DWR as CEQA mitigation measures to address the adverse environmental effects of the BDCP/CWF or any alternative thereto, upon CCWD and its customers: Sections 2.3.1, 3.1, 3.2, 3.3, 3.3.1, 3.4, 3.5, 3.6, 3.6.1, 3.6.2, 3.7, 3.8, 3.8.1, 3.8.2, 3.8.3, 3.8.4 and 3.8.5. The Final Environmental Impact Report for the BDCP/CWF shall identify such mitigation measures and evaluate the construction, operational and cumulative impacts of such mitigation measures.

4. EFFECT OF THIS AGREEMENT ON THE 1967 AGREEMENT BETWEEN DWR AND CCWD

4.1 Effect of this Agreement on 1967 DWR-CCWD Agreement. When DWR commences annual conveyance of water to CCWD pursuant to this Agreement, this Agreement shall replace and supersede the 1967 Agreement between CCWD and DWR ("**1967 Agreement**") regarding payment for the effect of State Water Project operation on water quality at CCWD's Mallard Slough intake, a copy of which is attached hereto as Exhibit B. Until DWR commences annual conveyance of water to CCWD pursuant to this Agreement, the 1967 Agreement shall remain in full force and effect and DWR shall continue to make the payments to CCWD specified by the 1967 Agreement.

5. CCWD'S NON-OPPOSITION TO BDCP/CWF

5.1 No Challenge to Environmental Document or Project Approval for Conforming Action Alternative. CCWD's Board of Directors shall not take a formal Board action in opposition to the approval of any Conforming Action Alternative. Board members are not prohibited from discussing the BDCP/CWF as individuals and with other organizations. If DWR and Reclamation approve any Conforming Action Alternative, CCWD shall not file a legal challenge to the Final Environmental Impact Report/Environmental Impact Statement for the Conforming Action Alternative, or assert any related cause of action or voluntarily join any related lawsuit as a petitioner. By no later than five (5) days after the effective date of this Agreement CCWD shall submit to DWR a letter stating that the full and complete implementation of this Agreement will address the concerns expressed in CCWD's comment letters regarding the effects that operation of a Conforming Action Alternative would have on water quality at CCWD's intakes and the potential for damage to CCWD Facilities caused by construction of a Conforming Action Alternative.

5.2 No Protests of Water Right Petitions for Conforming Action Alternative.

5.2.1 Effective upon the effective date of this Agreement, CCWD hereby releases, to the fullest extent permitted by applicable law, DWR from any and all Water Rights Protest Claims which CCWD now has or has ever had against DWR with respect to the CWF Change of Point of Diversion. For the avoidance of doubt, this release shall not include claims to enforce the terms of this Agreement.

In connection with the release contained in the preceding paragraph, CCWD waives all rights it has or may have under any applicable law, statute or ordinance, as well as under any other common law principles of similar effect, which prohibits the waiver of unknown claims, including California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

5.2.2 In furtherance of the foregoing, CCWD shall file a letter with the California State Water Resources Control Board to withdraw its water rights protest to the CWF Change of Point of Diversion, and any materials submitted by CCWD in connection with such protest by no later than five (5) days after the effective date of this Agreement.

- 5.3** CVP Cost Allocation Negotiations or Challenges. Except with regard to the Water Rights Protest Claims waived in section 5.2, this Agreement shall have no effect on CCWD's right to negotiate with, or bring potential claims against, Reclamation regarding cost allocations or water supply allocations for CVP water. Further, this Agreement shall have no effect on CCWD's right to negotiate with, or bring claims against, CVP contractors regarding cost allocations for CVP water.
- 5.4** Non-Project Restoration. This Agreement shall have no effect on CCWD's right to comment on, or bring potential claims against, any wetlands restoration project beyond the up to 305 acres of tidal wetlands restoration located at Sherman Island, Cache Slough and the North Delta that is required as mitigation for impacts of the CWF, of which no more than 59 acres of tidal wetlands restoration would be constructed at Sherman Island unless DWR demonstrates to CCWD's satisfaction that the tidal wetlands restoration mitigation will cause no adverse net water quality impacts at CCWD's intakes at any time. The Parties recognize that the BDCP as originally proposed included more than 305 acres of wetlands restoration; however, wetlands restoration beyond the up to 305 acres needed to mitigate impacts of the Conveyance Facility is not part of the CWF, and CCWD does not waive any right to comment on, oppose or challenge approval of such wetland restoration program or projects, nor does CCWD waive any right to comment on, oppose or challenge approval of wetland restoration program or projects exceeding 59 acres at Sherman Island unless DWR demonstrates to CCWD's satisfaction that the tidal wetlands restoration mitigation will cause no adverse net water quality impacts at CCWD's intakes at any time.
- 5.5** Future Projects. Except as specified in Section 5.1, this Agreement shall have no effect on CCWD's right to comment on, oppose, or bring claims against, any future project including, without limitation, a future project or project change that deviates from the Conforming Action Alternative or any future changes to any water quality control plan.

6. DWR'S NON-OPPOSITION TO CCWD PROJECTS AND ENCOURAGEMENT OF STAKEHOLDER SUPPORT

- 6.1** Los Vaqueros Water Right Petition - Freeport Intake Point of Diversion. The Parties recognize that for DWR to convey to CCWD water diverted pursuant to CCWD's Los Vaqueros water right through the Primary Method for conveyance, the Freeport Intake must be added as a point of diversion on CCWD's Los Vaqueros water right, and other approvals may be needed. DWR shall support a water right petition filed by CCWD to add the Freeport Intake as a point of diversion on CCWD's Los Vaqueros water right to be used to convey to CCWD up to the amount of water necessary to implement this Agreement, and DWR shall support any other related approvals needed to convey CCWD's water to CCWD through the Primary Method for conveyance.

- 6.2** Los Vaqueros Water Right Petition - Intakes for Conveyance Facility. The Parties recognize that for DWR to convey to CCWD water diverted pursuant to CCWD's Los Vaqueros water through the Secondary Method for conveyance, the Northern Intakes that will be used for any Conveyance Facility must be added as points of diversion on CCWD's Los Vaqueros water right, and other approvals may be needed. DWR shall support a water right petition filed by CCWD to add the Northern Intakes as points of diversion on CCWD's Los Vaqueros water right to be used to convey to CCWD up to the amount of water necessary to implement this Agreement, and DWR shall support any other related approvals needed to convey CCWD's water to CCWD through the Secondary Method for conveyance. The water right petitions described in Sections 6.1 and 6.2 are hereafter collectively referred to as the **"LV Water Right Petitions"**.
- 6.3** LV Water Right Petitions - Conveyance Facility Users. DWR acknowledges that the changes to CCWD's Los Vaqueros water right as contemplated by the LV Water Right Petitions are essential for full implementation of this Agreement. Therefore, DWR shall require SWP contractors who participate in the Conveyance Facility, as a condition to use of the Conveyance Facility, to agree not to oppose the LV Water Right Petitions. Nothing in this Agreement would bind SWP contractors from protesting or objecting to other CCWD applications to the State Water Resources Control Board that are not necessary to implement this Agreement or that request changes to quantities of water beyond the amount that is necessary to implement this Agreement.
- 6.4** Index for Measurement of Old and Middle River Flow Requirements. DWR shall collaborate with CCWD to advocate for the use of an index for measurement of compliance with requirements for net flow in the Old and Middle Rivers, such as those in the 2008 U.S. Fish and Wildlife Biological Opinion and 2009 National Marine Fisheries Service Biological Opinion on the operations of the State Water Project and Central Valley Project, that allows diversions at CCWD's screened intakes while preserving protections for fish, provided that there is no injury to DWR's use of its water right permits.
- 6.5** Encouragement of Stakeholder Support for Regional CCWD Water Supply Reliability Projects. DWR, in collaboration with CCWD, shall facilitate discussions with the State Water Project and Central Valley Project contractors and other appropriate stakeholders on the following future regional water supply projects: (i) the enlargement of CCWD's 160,000 acre foot Los Vaqueros Reservoir, and (ii) the Bay Area Regional Desalination Project, including any water rights petitions filed for that project.
- 6.6** Antioch. DWR will within thirty (30) days following the effectiveness of this Agreement contact Antioch, which has an existing agreement with DWR to address water quality at Antioch's intakes, and, if Antioch agrees, DWR will enter into and diligently pursue negotiations with Antioch regarding potential additional impacts to water quality (and, in turn, water quantity of suitable quality) at Antioch's intakes due to the BDCP/CWF.

- 6.7** East Contra Costa Irrigation District. DWR will within thirty (30) days following the effectiveness of this Agreement contact ECCID, which has an existing agreement with DWR to address water quality at ECCID's intakes, and, if ECCID agrees, DWR will enter into and diligently pursue negotiations with ECCID regarding potential additional impacts to water quality (and, in turn, water quantity of suitable quality) at ECCID's intakes due to BDCP/CWF.
- 6.8** Brentwood. DWR will within thirty (30) days following the effectiveness of this Agreement contact the City of Brentwood, which serves ECCID water and is dependent on ECCID's existing agreement with DWR to address water quality at ECCID's intakes, and, if Brentwood agrees, DWR will enter into and diligently pursue negotiations with Brentwood regarding potential impacts to water quality (and, in turn, water quantity of suitable quality) affecting Brentwood due to BDCP/CWF.

7. ARBITRATION OF DISPUTES ARISING UNDER THIS AGREEMENT

- 7.1** Any controversy or claim arising out of or relating to this Agreement shall be resolved as provided in this Section 7, except to the extent expressly provided elsewhere in this Agreement or if equitable relief is sought by CCWD pursuant to Section 11.8. The Parties shall first negotiate in good faith to resolve the dispute. In the event the Parties are unable to resolve the dispute within thirty (30) days, such dispute shall be settled by final and binding arbitration pursuant to the commercial arbitration rules of the American Arbitration Association ("AAA"), except to the extent the remaining provisions of this Section 7 conflict with those rules, in which case the provisions of this Section 7 shall control. To the extent allowed by the arbitrator, any arbitration shall comply with the following:
- 7.1.1** The place of arbitration shall be within the City and County of San Francisco, California;
- 7.1.2** The Parties shall agree on a single arbitrator. If the Parties cannot agree on a single arbitrator within ten (10) days following submission of the dispute to arbitration, then the Parties shall each appoint one person who together will select a third person. The three persons shall constitute the arbitration panel to hear and resolve the matter submitted to it.
- 7.1.3** Written notice of the referral to arbitration will be given within five (5) business days by the referring Party to the other Party setting out the issues for resolution, the Party's position with regard to such issues, the dollar amount involved (if any) and the remedy sought. The other Party will respond within ten (10) business days of receipt of such notice by giving the referring Party notice of any counterclaims, the Party's position with regard to all issues, the dollar amount involved (if any) and the remedy sought;

- 7.1.4** The arbitration will commence within sixty (60) calendar days of the referral before the persons appointed above under subsection 7.1.3;
- 7.1.5** All documents, materials and information in the possession of each Party that are in any way relevant to the issues in dispute will be made available to the other Party forthwith hereunder. Each Party will be entitled, on an expedited basis, to propound written discovery and to obtain testimony of witnesses by deposition to the same extent as a civil litigant in a suit filed in the Superior Court under the then-prevailing California Code of Civil Procedure. To the extent possible, the arbitrators will not be bound by the rules of civil procedure or evidence and will consider such writing and oral presentations as reasonable business persons would use in the conduct of their day-to-day affairs, and may require the Parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrators may determine to be appropriate;
- 7.1.6** The decision of the arbitrators will be in writing and, upon the request of either Party, the arbitrators shall specify the factual and legal basis for the award;
- 7.1.7** In rendering the award, the arbitrators shall determine the rights and obligations of the Parties according to the laws of the State of California. The Parties acknowledge that by agreeing to arbitration, they are giving up the right to a jury trial;
- 7.1.8** During the arbitration process, the costs of arbitration, including any administration fees, arbitrators fees and costs for the use of facilities during the hearings, shall be borne equally by the Parties to the arbitration;
- 7.1.9** A decision of the arbitrators will be final and binding and the arbitrators may require remedial measures and injunctive or other equitable relief as part of any award; provided, however, that the arbitrators shall not have the power to alter, amend, modify or change any of the terms of this Agreement or to grant any remedy that is otherwise prohibited by the terms of this Agreement or not available in a court of law. The arbitrators may award legal fees and costs (including arbitration costs) to the prevailing party; and
- 7.1.10** Reference to arbitration must be made within two (2) years of the act, omission or occurrence giving rise to the referral.

8. INDEMNIFICATION

- 8.1.1** DWR shall indemnify CCWD and its Related Parties (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, obligations,

liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), incurred by, claimed, alleged or asserted against any Indemnatee by any Person (including DWR), arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, or any agreement or instrument contemplated hereby, the performance by the Parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) the construction, operation or maintenance of the BDCP/CWF including but not limited to any Conveyance Facility; (iii) the construction, operation or maintenance of the Interconnection Pump Station; (iv) the construction of the Interconnection Pipeline or Interconnection Valve, (v) relating to crops, crop losses, livestock or structures, (vi) the use or release of Hazardous Material in, on, under or about the properties and facilities described in Section 2 of this Agreement directly or indirectly caused by DWR or DWR's Related Parties, (vii) the violation by DWR or DWR's Related Parties of any Environmental Law, (viii) the assertion by any Governmental Authority that there has been a violation by DWR or DWR's Related Parties of any Environmental Law, or (ix) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by CCWD, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. DWR's obligations under this Section 8 shall survive the termination of this Agreement.

- 8.1.2** CCWD shall indemnify DWR and its Related Parties (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, obligations, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), incurred by, claimed, alleged or asserted against any Indemnatee by any Person (including CCWD) as a result of (i) the operation or maintenance of the Interconnection Pipeline or Interconnection Valve or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by DWR, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such

Indemnatee. CCWD's obligations under this Section 8 shall survive the termination of this Agreement.

9. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party as follows:

9.1 Due Authorization and Enforceability. Such Party has full power, right and authority to execute, perform and deliver this Agreement and all other documents and agreements executed or to be executed by such Party in connection with the transactions contemplated hereby and thereby and to consummate the transactions contemplated hereby and thereby. The execution and delivery by such Party of this Agreement and each other document and agreement contemplated hereby, the performance by such Party of its obligations hereunder and thereunder, and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary governmental, agency or other action by such Party. This Agreement constitutes, and each other document and agreement to be executed by such Party in connection with the transactions contemplated hereby when so executed and delivered will constitute, a valid and binding obligation of such Party, enforceable in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

9.2 No Conflicts. Such Party has made, obtained or been granted all approvals, consents, filings, registrations, notices, waivers and exemptions required to be obtained by it under any applicable law and regulation with respect to its execution and delivery of this Agreement and all other ancillary documents and agreements in connection with the transactions contemplated hereby and with respect to its performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and all other documents and agreements executed or to be executed by such Party and the consummation by it of the transactions contemplated hereby or thereby will not conflict with or result in any breach or violation of any of the terms and conditions of, or constitute (or with notice or lapse of time or both constitute) a default under or a violation of, any statute, regulation, order, judgment or decree applicable to such Party, or any instrument, contract or other agreement to which such Party is a party or to which any of its assets may be bound or subject.

10. TRANSFER OF CONVEYANCE FACILITY OR INTERCONNECTION FACILITIES BY DWR

10.1 No Transfer Without Consent. DWR shall not assign, license, transfer or otherwise dispose of any of its right, title or interest in any Conveyance Facility or the Interconnection Facilities to any other Person without the prior written

consent of CCWD (such consent not to be unreasonably withheld or delayed), unless (i) such Person agrees in writing, in form and substance satisfactory to CCWD, to be jointly and severally liable with DWR for all of DWR's obligations under this Agreement and each other document and agreement contemplated hereby, and (ii) such Person is a creditworthy entity (as determined by CCWD in its reasonable discretion exercised in good faith).

11. MISCELLANEOUS TERMS

- 11.1** Alteration of Terms. This Agreement fully expresses all understandings of the Parties with respect to the subject matter of this Agreement, and constitutes the complete agreement among the Parties for these purposes. No addition to, or alteration of, the terms of this Agreement, shall be valid unless made in writing, formally approved, and executed by the parties.
- 11.2** Notices. Any notice under this Agreement shall be sent by facsimile, electronic mail or overnight mail to the designated persons identified below. Any Party may change its address for notices under this Agreement by giving formal written notice to the other Party, specifying that the purpose of the notice is to change the Party's address.

CONTRA COSTA WATER DISTRICT:	General Manager CONTRA COSTA WATER DISTRICT P.O. Box H2O Concord, CA 94524 Fax: (925) 688-8197
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With a copy to: General Counsel
C/O CONTRA COSTA WATER DISTRICT
P.O. Box H2O
Concord, CA 94524
Fax: (925) 933-7804

CALIFORNIA DEPARTMENT OF WATER RESOURCES	Director CALIFORNIA DEPARTMENT OF WATER RESOURCES P.O. Box 942386, Room 1115-2 Sacramento, CA 94236 Fax: (916) 653-5028
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With a copy to: Chief Counsel
CALIFORNIA DEPARTMENT OF WATER RESOURCES
P.O. Box 942386, Room
Sacramento, CA 94236
Fax: (916) 653-0952

- 11.3** Counterparts and Serial Signatures. This Agreement may be signed by the Parties in different counterparts and the signature pages combined to create a document binding on each and all Parties. Signatures delivered by electronic means shall be binding. Notwithstanding the preceding sentence, either Party may rescind its signature at any time prior to the date the Agreement has been fully executed by the Parties and this Agreement shall not be binding upon such rescinding Party. A Party that elects to rescind its signature pursuant to this Section 11.3 shall do so by providing written notice to the other Party in compliance with Section 11.2 of this Agreement.
- 11.4** Governing Law. This Agreement shall be governed and construed under the laws of the State of California.
- 11.5** Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, such finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid, and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity, or enforceability of any other provision of this Agreement.
- 11.6** Successors and Assigns. This Agreement shall be binding upon the Parties hereto, as well as their respective successors and assigns. Neither Party may assign this Agreement in whole or in part without the prior written consent of the other Party, and any such attempted assignment without such prior written consent shall be void ab initio. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the Parties and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- 11.7** Survival. All covenants, agreements, representations and warranties made in this Agreement shall survive the execution and delivery of this Agreement.
- 11.8** Equitable Relief. Notwithstanding anything expressed or implied to the contrary in this Agreement, each Party acknowledges that a breach or threatened breach of its obligations under this Agreement would give rise to irreparable harm to the other Party, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by either Party of any such obligations, the non-breaching Party shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

12. DEFINITIONS

As used in this Agreement, the following capitalized terms have the following meanings:

“**CCWD Facilities**” means all water storage and conveyance facilities and infrastructure of any kind owned, leased or licensed by CCWD, whether now existing or hereafter arising and wherever located.

“**CVP**” means the Central Valley Project, which is the federal water management facility in California operated by Reclamation.

“**CVP Contract Supply**” means water supplied to CCWD pursuant to its contract with Reclamation to receive water from the CVP.

“**Delta**” means the inland river delta and estuary in Northern California known as the Sacramento - San Joaquin River Delta.

“**Existing Transfer Pump Station**” means CCWD’s transfer pump station near Brentwood, California, and any modification or replacement thereof in whole or in part.

“**Freeport Intake**” means EBMUD’s water intake facility and pumping plant located on the Sacramento River, upstream from Freeport, California, and any modification or replacement thereof in whole or in part.

“**Intermediate Forebay**” means the forebay that DWR will construct within the North Delta that will receive water from each of the Northern Intakes before providing gravity flow through the Conveyance Facility.

“**Governmental Authority**” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Los Vaqueros Pipeline**” means the pipeline extending between the Contra Costa Canal and Los Vaqueros Reservoir, and any modification or replacement thereof in whole or in part.

“**Los Vaqueros Reservoir**” means CCWD’s water storage reservoir in Contra Costa County accessible from North Vasco Road with a storage capacity as of the date of this Agreement of approximately 160,000 acre feet of water.

“**LV Water Right Permit**” means State Water Resources Control Board Water Right Permit 20749, and any modification or replacement thereof.

“Middle River Pipeline” means the existing buried pipeline that transports water from CCWD’s Middle River Intake to the Old River Pipeline, and any modification or replacement thereof in whole or in part.

“Northern Exports” means the total water diversion at the intakes for any Conveyance Facility, including diversions by DWR, Reclamation and any successors in interest thereto.

“Northern Intake” means the water intake facility or facilities, inclusive of any pumping plant, at the northern end of any Conveyance Facility.

“Old River Pipeline” means the existing buried pipeline that transports water from CCWD’s Old River Intake to CCWD’s Existing Transfer Pump Station.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Related Parties” means, with respect to any Person, the directors, officers, employees, agents, trustees, administrators, managers, advisors, representatives, contractors, invitees, permittees and licensees of such Person.

“Subdivided Clifton Court Forebay” means the separate section of Clifton Court Forebay that will receive water from the Conveyance Facility.

“SWP” means the State Water Project, which is the state water management facility in California operated by DWR.


“Total Exports” means the total water pumped into the Delta Mendota Canal, the California Aqueduct, and any other facility to convey water to the Bay Area, the Central Valley and Southern California from CVP and SWP facilities in the South Delta (including, without limitation, water diverted from the Northern Exports into the Clifton Court Forebay).

“Unimpaired Sacramento River Runoff” means the sum of Unimpaired Runoff in million acre-feet at Sacramento River above Bend Bridge, Feather River at Oroville (inflow to Lake Oroville), Yuba River near Smartville, and the American River below Folsom Lake. **“Unimpaired Runoff”** represents the natural water production in a river basin, unaltered by upstream diversions, storage, or export of water to or import of water from other basins.

IN WITNESS WHEREOF, the Parties have executed this AGREEMENT as of the day and year first written above.

Dated: 3/18/16

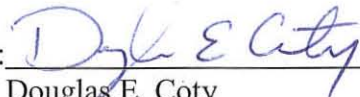
CONTRA COSTA WATER DISTRICT

By: 
Jerry Brown
General Manager

Approved As To Form:

Dated: March 17, 2016

BOLD, POLISNER, MADDOW, NELSON &
JUDSON

By: 
Douglas E. Coty
General Counsel, Contra Costa Water District

Dated: 3/24/16

CALIFORNIA DEPARTMENT OF WATER
RESOURCES

By: 
Mark Cowin
Director

Approved As To Form:

Dated: 3/24/16

By: 
Spencer Kenner
Chief Counsel, Department of Water Resources

EXHIBIT A
EXAMPLES OF APPLICATION OF METHODOLOGY IN SECTION 3.6 AND 3.7

		Annual Amount of Water to be Conveyed [TAF]							
		Northern Exports / Total Exports							
		0	0.1	0.2	0.3	0.4	0.5	0.6	0.7
Total Exports / Sacramento River Runoff	0	2	2	5	5	5	5	5	5
	0.1	2	8	9	10	11	13	16	18
	0.2	5	10	13	15	17	20	23	26
	0.3	5	15	19	23	27	32	37	42
	0.4	5	19	25	31	37	43	49	50
	0.5	6	23	31	42	47	50		

EXAMPLE OPERATIONS UNDER TERMS 3.6 and 3.7

Year of CWF Operation (Water Year)	Period of CWF Operation	Total Exports / Sacramento River Runoff	Northern Exports / Total Exports	Amount of Water Wheeled
1 (partial water year)	June - September	0.3	0.1	Initial 30 TAF per Term 3.7
2	October - September	0.3	0.3	15 TAF based on Year 1 operations
3	October - September	0.5	0.6	23 TAF based on Year 2 operations
4	October - September	0.4	0.3	Amount determined per Term 3.6.2, minimum 50 TAF based on Year 3 operations

EXAMPLE OPERATIONS UNDER TERM 3.9

Year of CWF Operation (Water Year)	Period of CWF Operation	Total Exports / Sacramento River Runoff	Northern Exports / Total Exports	Amount of Water Wheeled
15	October - September	0.4	0.5	Amount based on Year 14 ops
16	October - September	0.1	0.4	10 TAF (however, based on Year 15 operations, 43 TAF was required)
17	October - September	-	-	Payment of penalty plus 30 TAF per Term 3.9 due to deficit in Year 16 and
		0.2	0.5	11 TAF based on Year 16 operations

EXHIBIT B
1967 AGREEMENT

AGREEMENT

THIS AGREEMENT made this 21 day of April 1967, between the STATE OF CALIFORNIA, acting by and through its Department of Water Resources, hereinafter referred to as the "State", and CONTRA COSTA COUNTY WATER DISTRICT, a public body organized and existing pursuant to Division 12 of the Water Code of the State of California, hereinafter referred to as the "District",

WITNESSETH:

WHEREAS, since 1930 the District and its predecessor, California Water Service Company, have been diverting water from Mallard Slough on Suisun Bay in Contra Costa County pursuant to Water Right Permit to Appropriate Water number 3167 issued on Application number 5941 filed on November 19, 1928. Said diversions have been for direct beneficial use and to storage for later beneficial use within the service area of the Treated Water Division of the District when the water in Mallard Slough had a chloride ion content (mean tidal cycle surface zone) of 100 parts per million or less and was not otherwise polluted to make it unsuitable for treatment for municipal and domestic use (hereinafter referred to as usable river water), and

WHEREAS, the average number of days per water year (October 1 to September 30, hereinafter referred to as "year") that usable river water has been available to the District at said point of diversion is 142 and the median period of said availability is from January 15 to June 5, both days inclusive, and

WHEREAS, during each day usable river water has been and will in the

future be available to the District the quantity thereof has been and will be adequate to meet the water requirements of the District from that point of diversion during such day, and

WHEREAS, in the future the average number of days per year that usable river water will be available to the District will decrease and such decrease will be due in part to the operation of the State Water Resources Development System as defined in Section 12931 of the Water Code, and

WHEREAS, it is contemplated that the Contra Costa Canal, supplemented by the Kellogg Unit or other facilities to be constructed by the Bureau of Reclamation, will meet the District's future water requirements which are not met by usable river water. If such facilities are not constructed by the Bureau of Reclamation, water supply facilities will have to be constructed by another agency or agencies to meet the District's future requirements including a substitute water supply equal to the District's water deficiency entitlement as defined in this agreement;

NOW, THEREFORE, the parties agree as follows:

1. The term of this agreement shall begin on the first day of October, 1967, and shall continue in effect until terminated by either party by written notice to the other party given at least 12 months prior to the effective date of such termination. The effective date of termination shall be the last day of a year (September 30) and no termination shall be effective prior to September 30, 2007.

2. The State shall reimburse the District in the manner hereinafter provided for any decrease in availability to the District of usable river water

in Mallard Slough during the term of this agreement caused by operation of the State Water Resources Development System. Such decrease in availability of usable river water is hereinafter referred to as the District's "water deficiency entitlement".

3. The quantity of the District's water deficiency entitlement shall be determined for each year during the term of this agreement by the formula $E = \frac{(142-D)}{3} \frac{(R+P)}{142}$ where E is the District's water deficiency entitlement for such year in acre-feet, D is the number of days during such year that usable river water is available to the District at Mallard Slough, R is the total quantity of water in acre-feet diverted by the District from Mallard Slough from 8:00 A. M. on January 15 to 8:00 A. M. on June 6 and P is the total quantity of water in acre-feet purchased by the District and introduced into its facilities in the vicinity of Chenery Reservoir from 8:00 A. M. on January 15 to 8:00 A. M. on June 6. If in any year D exceeds 142, the District shall have no water deficiency entitlement for such year and the amount of such excess shall offset any water deficiency entitlement of the District for an equal number of days in the next succeeding year or years when D is less than 142.

4. For the purpose of computing the District's water deficiency entitlement, the District will at its expense measure the chloride ion content of water in Mallard Slough at such intervals as shall be reasonably necessary and shall make the results of such measurements available to the State. The State may at its expense verify the accuracy of the District's measurements and any error thus disclosed shall be corrected by the District.

5. Each year during the term of this agreement that the District has a water deficiency entitlement it shall purchase a quantity of substitute water equal thereto from the Contra Costa Canal as supplemented by the Kellogg Unit or other facilities constructed by the Bureau of Reclamation to meet the District's requirement, but if sufficient water is not available to the District from such source it shall purchase said quantity of substitute water from a project or projects constructed by another agency or agencies to meet the District's future water requirements. For the purposes of this agreement, substitute water shall be deemed to have been purchased during the period beginning at 8:00 A. M. on January 15 and ending at 8:00 A. M. on June 6 of such year and the price paid by the District for substitute water shall be deemed to be the average price per acre-foot paid by the District for all untreated water purchased by it for introduction into its facilities in the vicinity of Chenery Reservoir during said period without deduction for any discount, allowance or rebate that may hereafter be made or allowed by the U. S. Bureau of Reclamation in the event the District hereafter undertakes, to any extent to operate and maintain any facilities of the U. S. Bureau of Reclamation not operated and maintained by the District as of the date of this agreement.

6. Each year during the term of this agreement that the District purchases substitute water for its water deficiency entitlement, the State will pay the District an amount of money computed in accordance with the formula $M = E(C_w + C_e - \$4.90)$ where M is the amount in dollars to be paid by the State, E is the District's water deficiency entitlement for such year determined in

the manner provided in Section 3 hereof, Cw is the amount per acre-foot paid by the District for substitute water delivered to the District as provided in Section 5 hereof, and Ce is the average amount (if any) per acre-foot paid by the District for electric energy to transport substitute water from the point of delivery thereof to the District to the District's facilities in the vicinity of Chenery Reservoir. The State shall pay said amount to the District not later than October 31 of the following year. Such payments are hereby determined to be reasonable costs of the annual maintenance and operation of the State Water Resources Development System and shall be disbursed from the California Water Resources Development Bond Fund pursuant to subsection (b) (1) of Section 12937 of the Water Code.

7. The District, in consideration of the payments by the State herein provided, releases the State from liability for any decrease in the availability to the District of usable river water at Mallard Slough caused by operation of the State Water Resources Development System during the term of this agreement.

8. The obligations of the State herein shall not be affected by any modification or discontinuance of the District's Mallard Slough pumping plant or Chenery Reservoir.

9. Nothing herein shall be deemed to be a release or waiver of any right of the District to purchase supplemental water supplies from the State with the priorities established by Water Code Section 11460, 12201 to 12204 inclusive, and 12931.

IN WITNESS WHEREOF the parties hereto have executed this agreement
by their respective officers thereunto duly authorized on the date first above
written.

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

By P. A. Towner /s/
Chief Counsel

By William R. Gianelli /s/
Director

ATTEST:

CONTRA COSTA COUNTY WATER
DISTRICT

B. M. McCloskey /s/
Secretary

By Ralph D. Bollman /s/
President