

# APPENDIX A

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## Existing City of Tracy Water Supply Agreements

- Interim Renewal Contract No. 14-06-2000-7858A-IR1 between the United States and the City of Tracy Providing Project Water Service-Central Valley Project (December 2013)
- Agreement for Additional Assignment of Entitlement of CVP Water between the City of Tracy and the West Side Irrigation District (December 2013)
- Agreement Between City of Tracy and Plain View Water District (PVWD) for Central Valley Project (CVP) Supplies for Patterson Pass Business Park (September 1991)
- Agreement Between City of Tracy and South San Joaquin Irrigation District (SSJID) for Water Supply (October 1995)
- SSJID Lathrop-Tracy Purchase, Sale and Amendment Agreement (August 2013)
- Agreement Between City of Tracy and Semitropic Water Storage District and Its Improvement Districts for Participation in the Stored Water Recovery Unit of the Semitropic Water Banking and Exchange Program (November 2012)
- Wholesale Water Agreement between Byron Bethany Irrigation District and the City of Tracy for Water Supply for Tracy Hills (August 2013) (includes Long-term Contract between the United States and the Byron Bethany Irrigation District Providing for the Exchange of Non-Project Water for Project Water (April 2014))



Interim Renewal Contract No. 14-06-2000-7858A-IR1  
Between the United States and the City of Tracy  
Providing Project Water Service-Central Valley Project  
(December 2013





# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

**DEC 31 2013**

IN REPLY REFER TO:

MP-440  
WTR-4.00

Mr. Brent Ives  
Mayor  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95378

Subject: Interim Renewal Contract No. 14-06-200-7858A-IR1 Between the United States and the City of Tracy Providing for Project Water Service – Central Valley Project, California

Dear Mr. Ives:

Enclosed is an executed original of the subject contract for your records. This contract is effective January 1, 2014, through and including February 29, 2016. The Bureau of Reclamation thanks the City of Tracy for the time and efforts expended in completing the steps necessary to execute this contract in a timely manner.

If you have any questions, please contact Ms. Barbara Hidleburg, Repayment Specialist, at 916-978-5193, or e-mail [bhidleburg@usbr.gov](mailto:bhidleburg@usbr.gov).

Sincerely,

**ACTING FOR PABLO ARROYAVE**

David G. Murillo  
Regional Director

Enclosure

Subject: City of Tracy Interim Renewal Contract No. 14-06-200-7858A-IR1

2

bc: Assistant Solicitor, Water and Power Branch, Washington, DC  
Director, Office of Policy and Administration, Denver, CO  
Attention: 84-55000 (MKelly)  
Regional Solicitor, Pacific Southwest Region, Sacramento, CA  
Attention: 1150 (AAufdemberge)  
MP-440, MP-3400, SCC-440 (EJones)  
(w/copy of encl sent via e-mail to each)  
MP-3600 (w/original contract)

WBR:BHidleburg:KHall:12/31/2013:916-978-5193  
T:\PUB440\CONTRACTS\Water Service Contracts\Interim Renewal Contracts\Delta-Mendota  
Canal\2014\Letters\Executed Contract Letters\Executed contract trans Tracy7858A-IR12014  
Dec31.doc  
Surname: MP-440(2), MP-400, SOL-1150(AA), MP-103, MP110, MP-115, MP-105, MP-100

2014-12-31 10:10:10 AM

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

INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
AND  
THE CITY OF TRACY  
PROVIDING FOR PROJECT WATER SERVICE  
FROM THE DELTA DIVISION

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
6 AND  
7 THE CITY OF TRACY  
8 PROVIDING FOR PROJECT WATER SERVICE  
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this 31<sup>st</sup> day of December, 2013,

11 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
14 June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050),  
15 as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
16 hereinafter referred to as Federal Reclamation law, between the UNITED STATES OF  
17 AMERICA, hereinafter referred to as the United States, and the CITY OF TRACY, hereinafter  
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing,  
19 and acting pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood  
24 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other

26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and  
27 the San Joaquin River and their tributaries; and

28 [2<sup>nd</sup>] WHEREAS, the United States constructed the Delta-Mendota Canal and related  
29 facilities, hereinafter collectively referred to as the Delta Division Facilities, which will be used  
30 in part for the furnishing of water to the Contractor pursuant to the terms of this interim renewal  
31 contract; and

32 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States  
33 pursuant to California law for operation of the Project; and

34 [4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract  
35 No. 14-06-200-7858A dated July 22, 1974, which established the terms for the delivery to the  
36 Contractor of up to 10,000 acre-feet of Project Water from the Delta Mendota Canal through  
37 December 31, 2013; and

38 [5<sup>th</sup>] WHEREAS, the United States and the Contractor have, pursuant to subsection  
39 3404(c)(3) of CVPIA, subsequently entered into a binding agreement identified as Binding  
40 Agreement No. 14-06-200-7858A-BA dated September 30, 1997, which sets out the terms  
41 pursuant to which the Contractor agreed to renew Contract No. 14-06-200-7858A before its  
42 expiration date after completion of a programmatic environmental impact statement and other  
43 appropriate environmental documentation and negotiation of a renewal contract, and which also  
44 sets out the consequences of a decision not to renew; and

45 [6<sup>th</sup>] WHEREAS, pursuant to a June 5, 2001 "Agreement for Assignment of  
46 Entitlement to CVP Water Between the City of Tracy and the Banta-Carbona Irrigation District,"  
47 as amended on September 11, 2002, the Contractor was assigned 5,000 acre-feet of  
48 Banta-Carbona Irrigation District's entitlement to Project Water under Contract

49 No. 14-06-200-4305A-IR7, which assignment is reflected in the increased Contract Total under  
50 subdivision (a) of Article 3 of this Contract; and

51 [7<sup>th</sup>] WHEREAS, pursuant to an August 21, 2001 “Agreement for Assignment of  
52 Entitlement to CVP Water Between the City of Tracy and The West Side Irrigation District,” as  
53 amended on September 11, 2002, the Contractor was assigned 2,500 acre-feet of The West Side  
54 Irrigation District’s entitlement to Project Water under Contract No. 7-07-20-W0045-IR7,  
55 which assignment is reflected in the increased Contract Total under subdivision (a) of Article 3  
56 of this Contract; and

57 [7.1] WHEREAS, pursuant to that same August 21, 2001 “Agreement for Assignment  
58 of Entitlement to CVP Water Between the City of Tracy and The West Side Irrigation District,”  
59 as amended on September 11, 2002, the Contractor obtained an option to purchase an additional  
60 2,500 acre-feet of The West Side Irrigation District’s entitlement to Project Water under Contract  
61 No. 7-07-20-W0045-IR7 (hereinafter “Unexercised Option”) and the Contractor expects to  
62 exercise that option during the term of this Contract; and

63 [8<sup>th</sup>] WHEREAS, the Contractor and the United States entered into two separate  
64 interim renewal contracts, Contract No. 14-06-200-4305A-IR13-B and Contract  
65 No. 7-07-20-W0045-IR13-B, which in the aggregate, established the terms for the delivery to the  
66 Contractor of up to 7,500 acre-feet of Project Water from the Delta-Mendota Canal through  
67 February 28, 2014; and

68 [9<sup>th</sup>] WHEREAS, Contract No. 14-06-200-7858A dated July 22, 1974, Contract  
69 No. 07-20-W0045-IR13-B dated February 29, 2012, and Contract No. 14-06-200-4305A-IR13-B  
70 dated February 29, 2012, in the aggregate, constitute and are hereinafter referred to as the  
71 “Existing Contract”; and

72 [10<sup>th</sup>] WHEREAS, the Contractor has requested renewal of the Existing Contract,  
73 pursuant to Subsection 3404(c)(1) of the CVPIA, which will provide for the continued delivery  
74 of up to 17,500 acre-feet of Project Water from the Delta Mendota Canal of the Central Valley  
75 Project; and

76 [11<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA, precludes long-term renewal of water  
77 service contracts (including Contract No. 14-06-200-7858A dated July 22, 1974) until the  
78 completion of appropriate environmental documentation, including a programmatic  
79 environmental impact statement (hereinafter "PEIS") which is required by Section 3409 of the  
80 CVPIA, pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and  
81 indirect impacts and benefits of implementing the CVPIA and the potential renewal of all  
82 existing contracts for Project Water; and

83 [12<sup>th</sup>] WHEREAS, in order to continue water service provided under Project water  
84 service contracts that expire prior to the completion of appropriate environmental documentation,  
85 including the PEIS, the United States intends to execute interim renewal contracts for a period  
86 not to exceed three Years in length, and for successive interim periods of not more than two  
87 Years in length, until appropriate environmental documentation, including the PEIS, is finally  
88 completed, at which time the Secretary shall, pursuant to Federal Reclamation law, upon request  
89 of the Contractor, enter into a long-term renewal contract for a period of 40 Years; and may  
90 thereafter renew such long-term renewal contracts for successive periods not to exceed 40 Years  
91 each; and

92 [13<sup>th</sup>] WHEREAS, the United States has completed the PEIS, but since the  
93 environmental documentation necessary to execute a long-term renewal contract has not been

94 completed, the Contractor has requested an interim renewal contract pursuant to Section  
95 3404(c)(1) of the CVPIA; and

96 [14<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all  
97 of its obligations under the Existing Contract; and

98 [15<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the  
99 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for  
100 reasonable and beneficial use and expects to utilize fully for reasonable and beneficial use the  
101 quantity of Project Water to be made available to it pursuant to this interim renewal contract; and

102 [16<sup>th</sup>] WHEREAS, water obtained from the Central Valley Project has been relied upon  
103 by urban areas within California for more than 39 years, and is considered by the Contractor as  
104 an essential portion of its water supply; and

105 [17<sup>th</sup>] WHEREAS, the economies of regions within the Central Valley Project,  
106 including the Contractor's, depend upon the continued availability of water, including water  
107 service from the Central Valley Project; and

108 [18<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and  
109 partnerships to pursue measures to improve water supply, water quality, and reliability of the  
110 Project for all Project purposes; and

111 [19<sup>th</sup>] WHEREAS, the mutual goals of the United States and the Contractor include: to  
112 provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to  
113 achieve repayment of the Central Valley Project as required by law; to guard reasonably against  
114 Central Valley Project Water shortages; to achieve a reasonable balance among competing  
115 demands for use of Central Valley Project Water; and to comply with all applicable

116 environmental statutes, all consistent with the legal obligations of the United States relative to  
117 the Central Valley Project; and

118 [19.1] WHEREAS, the parties intend by this Contract to develop a more cooperative  
119 relationship in order to achieve their mutual goals; and

120 [20<sup>th</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
121 assignments, rescheduling and conveyance of Project Water and non-Project water under this  
122 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the  
123 beneficial uses of water; and

124 [20.1] WHEREAS, the parties desire and intend that this Contract not provide a  
125 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the  
126 Explanatory Recital immediately above; and

127 [20.2] WHEREAS, the Secretary intends to assure uninterrupted water service and  
128 continuity of contract through the process set forth in Article 2 hereof; and

129 [21<sup>st</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
130 Contract pursuant to Federal Reclamation law on the terms and conditions set for below;

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

133 DEFINITIONS

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

136 (a) "Assigned Water" shall mean all Project water supply acquired through  
137 assignment from the Banta Carbona Irrigation District, assignment agreement  
138 No. 14-06-200-4305A-B, dated February 27, 2004, and acquired through assignment from

139 The West Side Irrigation District, assignment agreement No. 7-07-20-W0045-B dated  
140 February 27, 2004. Prior to execution of this Contract, the Assigned Water has been delivered to  
141 the Contractor pursuant to the Existing Contract;

142 (b) "Calendar Year" shall mean the period January 1 through December 31,  
143 both dates inclusive;

144 (c) "Charges" shall mean the payments required by Federal Reclamation law  
145 in addition to the Rates specified in this Contract as determined annually by the Contracting  
146 Officer pursuant to this Contract;

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

150 (e) "Contracting Officer" shall mean the Secretary of the Interior's duly  
151 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law  
152 or regulation;

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

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

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

161 (h.1) "Delta Division Facilities" shall mean those existing and future Project  
162 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to,  
163 the Tracy Pumping Plant, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir,  
164 used to divert, store and convey water to those Project Contractors entitled to receive water  
165 conveyed through the Delta-Mendota Canal;

166 (i-j) Omitted;

167 (k) "Full Cost Rate" shall mean an annual rate, as determined by the  
168 Contracting Officer that shall amortize the expenditures for construction properly allocable to the  
169 Project Irrigation or M&I functions, as appropriate, of facilities in service including all operation  
170 and maintenance deficits funded, less payments, over such periods as may be required under  
171 Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the  
172 construction expenditures and funded Operations and Maintenance deficits from  
173 October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs  
174 arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections  
175 202(3)(B) and (3)(C) of the Reclamation Reform Act. The Full-Cost Rate includes actual  
176 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and  
177 Regulations for the RRA;

178 (l-m) Omitted;

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

182 (o) Omitted;



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

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

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

195                   (s)     “Operating Non-Federal Entity” shall mean the entity(ies), its (their)  
196 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of  
197 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this  
198 Contract was entered into, the Operating Non-Federal Entity was the San Luis Delta-Mendota  
199 Water Authority;

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

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

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

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

211 (x) "Recent Historic Average" shall mean the most recent five-year average of  
212 the final forecast of water made available to the Contractor pursuant to this Contract or its  
213 preceding contract(s);

214 (y) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
215 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
216 through any agency of the Department of the Interior;

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

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

223 (bb) "Water Scheduled" shall mean Project Water Made Available to the  
224 Contractor for which times and quantities for delivery have been established by the Contractor  
225 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

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

228 TERM OF CONTRACT

229 2. (a) This Contract shall renew the Existing Contract, and replace Contracts  
230 Nos. 14-06-200-4305A-IR13B and 7-07-20-W0045-IR13B and shall be effective  
231 January 1, 2014, through February 29, 2016, and thereafter will be renewed as described in this  
232 Article. Except as provided in subdivision (b) of this Article, until completion of all appropriate  
233 environmental review, and provided that the Contractor has complied with all the terms and  
234 conditions of the contract in effect for the period immediately preceding the requested successive  
235 interim renewal contract, this Contract will be renewed, upon request of the Contractor, for  
236 successive interim periods each of which shall be no more than two Years in length. Also,  
237 except as provided in subdivision (b) of this Article, in order to promote orderly and cost effect  
238 contract administration, the terms and conditions in subsequent interim renewal contracts shall  
239 be identical to the terms and conditions in the interim renewal contract immediately preceding  
240 the subsequent interim renewal: *Provided, however,* That each party preserves the right to  
241 propose modification(s) in any interim renewal contract other than those described in subdivision  
242 (b) of this Article, in which case the parties shall negotiate in good faith appropriate  
243 modification(s) to be included in any successive interim renewal contracts. Said  
244 modification(s) of each successive interim renewal contract shall be agreed upon within a  
245 reasonable time prior to expiration of the then-existing interim renewal contract. Nothing in  
246 this Article shall in any way alter the obligation that, upon final completion of necessary  
247 environmental documentation, the Secretary shall, pursuant to Federal Reclamation law, upon  
248 request of the Contractor, enter into a long-term renewal contract for a period of 40 Years  
249 and shall thereafter renew such long-term renewal contracts for successive periods not to  
250 exceed 40 Years each.

251 (b) The parties have engaged and if necessary will continue to engage in good  
252 faith negotiations intended to permit the execution of a 40 Year long-term renewal contract  
253 contemplated by Section 3404(c) of the CVPIA, hereinafter referred to as a “long-term renewal  
254 contract.” The parties recognize the possibility that this schedule may not be met without further  
255 negotiations. Accordingly: in the event (i) the Contractor and the Contracting Officer have  
256 reached agreement on the terms of the Contractor’s long-term renewal contract or (ii) the  
257 Contractor and Contracting Officer have not completed the negotiations on the Contractor’s  
258 long-term renewal contract, believe that further negotiations on that contract would be beneficial,  
259 and mutually commit to continue to negotiate to seek to reach agreement, but (iii) all  
260 environmental documentation required to allow execution of the Contractor’s long-term renewal  
261 contract have not been completed in time to allow execution by December 31, 2013, then  
262 (iv), the parties will expeditiously complete the environmental documentation required of each of  
263 them in order to execute the Contractor’s long-term renewal contract at the earliest practicable  
264 date. In addition, the Contractor’s then-current interim renewal contract will be renewed without  
265 change upon the request of either party through the agreed-upon effective date of the  
266 Contractor’s long-term renewal contract, through or, in the absence of agreement on the terms of  
267 the Contractor’s long-term renewal contract, through the next succeeding last day of February.

268 (c) The omission of language in this interim renewal contract providing for  
269 conversion of this interim renewal contract or any subsequent renewals thereof to a repayment contract,  
270 pursuant to subsection (c)(1) of Section 9 of the Reclamation Projects Act of 1939 (53 Stat. 1187), shall  
271 not prejudice the Contractor’s right to assert a right to have such language included in subsequent  
272 renewals of this interim renewal contract or to exercise such conversion, all as provided by law, or to  
273 negotiate the language regarding such conversion to be included in subsequent renewal contracts.

274 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

275 3. (a) During each Year, consistent with all applicable State water rights,  
276 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of  
277 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to  
278 20,000 acre-feet of water for M&I purposes; *Provided*, That 2,500 acre-feet of this amount  
279 represents an “Unexercised Option” for which the Contractor must provide proof to the  
280 Contracting Officer that the option has been exercised prior to 2,500 acre-feet of Assigned Water  
281 being made available. *Provided*, however, during the two month period of January and February  
282 of year 2014, the Contracting Officer shall make available for delivery to the Contractor that  
283 portion of the 2013 allocation of Project Water unused by the Contractor under the Existing  
284 Contract. Water Delivered to the Contractor in accordance with this subdivision shall be  
285 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

286 (b) Because the capacity of the Project to deliver Project Water has been  
287 constrained in recent years and may be constrained in the future due to many factors including  
288 hydrologic conditions and implementation of Federal and State laws, the likelihood of the  
289 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this  
290 Article in any given Year is uncertain. The Contracting Officer’s most recent modeling  
291 referenced in the PEIS projected that the Contract Total set forth in this Contract will not be  
292 available to the Contractor in many years. During the most recent five Years, the Recent  
293 Historic Average of Water Made Available to the Contractor was 8,107 acre-feet. Nothing in  
294 subdivision (b) of this Article shall affect the rights and obligations of the parties under any  
295 provision of this Contract.

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

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

315 (e) The Contractor shall comply with requirements applicable to the  
316 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution  
317 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as  
318 amended, which are within the Contractor's legal authority to implement. The Existing Contract,

319 which evidences in excess of 39 years of diversions for M&I purposes of the quantities of water  
320 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an  
321 appropriate baseline for the biological assessment prepared pursuant to the Endangered Species  
322 Act, and any other needed environmental review. Nothing herein shall be construed to prevent  
323 the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction  
324 with respect to any biological opinion or other environmental documentation referred to in this  
325 Article.

326 (f) Following the declaration of Water Made Available under Article 4 of this  
327 Contract, the Contracting Officer will make a determination whether Project Water, or other  
328 water available to the Project, can be made available to the Contractor in addition to the Contract  
329 Total under Article 3 of this Contract during the Year without adversely impacting other Project  
330 Contractors. At the request of the Contractor, the Contracting Officer will consult with the  
331 Contractor prior to making such a determination. If the Contracting Officer determines that  
332 Project Water, or other water available to the Project, can be made available to the Contractor,  
333 the Contracting Officer will announce the availability of such water and shall so notify the  
334 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor  
335 and other Project Contractors capable of taking such water to determine the most equitable and  
336 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such  
337 water, the Contracting Officer shall make such water available to the Contractor in accordance  
338 with applicable statutes, regulations, guidelines, and policies.

339 (g) The Contractor may request permission to reschedule for use during the  
340 subsequent Year some or all of the Water Made Available to the Contractor during the current  
341 Year referred to as "rescheduled water." The Contractor may request permission to use during

342 the current Year, a quantity of Project Water which may be made available by the United States  
343 to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s  
344 written approval may permit such uses in accordance with applicable statutes, regulations,  
345 guidelines, and policies.

346 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable  
347 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract  
348 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this  
349 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all  
350 of its obligations under this Contract and any renewals thereof. Nothing in the preceding  
351 sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or  
352 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal  
353 contracts.

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

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



364 Contracting Officer shall recognize the Contractor has a legal right under the terms of this  
365 Contract to use Project Water.

366 TIME FOR DELIVERY OF WATER

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

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

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

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

392 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

393 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this  
394 Contract shall be delivered to the Contractor at a turnout from the Delta-Mendota Canal and at  
395 any additional point or points of delivery either on Project facilities or another location or  
396 locations mutually agreed to in writing by the Contracting Officer and the Contractor.

397 (b) The Contracting Officer, either directly or indirectly through its written  
398 agreement(s) with the Operating Non-Federal Entity(ies) shall make all reasonable efforts to  
399 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the  
400 Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

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

403 (d) All Water Delivered to the Contractor pursuant to this Contract shall be  
404 measured and recorded with equipment furnished, installed, operated, and maintained by the  
405 United States, the Operating Non-Federal Entity or other appropriate entity at the point or points  
406 of delivery established pursuant to subdivision (a) of this Article. Upon the request of either  
407 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the  
408 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any  
409 necessary steps to adjust any errors appearing therein. For any period of time when accurate

410 measurements have not been made, the Contracting Officer shall consult with the Contractor and  
411 the responsible Operating Non-Federal Entity prior to making a final determination of the  
412 quantity delivered for that period of time.

413           (e) Absent a separate contrary written agreement with the Contractor, neither  
414 the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the  
415 control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor  
416 pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article.  
417 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on  
418 account of damage or claim of damage of any nature whatsoever for which there is legal  
419 responsibility, including property damage, personal injury, or death arising out of or connected  
420 with the control, carriage, handling, use, disposal, or distribution of such Water Delivered  
421 beyond such delivery points, except for any damage or claim arising out of: (i) acts or omissions  
422 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any  
423 responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in  
424 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,  
425 employees, agents, or assigns, including any responsible Operating Non-Federal Entity;  
426 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns  
427 including any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from  
428 a malfunction of facilities owned and/or operated by the United States or responsible Operating  
429 Non-Federal Entity; *Provided*, That the Contractor is not the Operating Non-Federal Entity that  
430 owned or operated the malfunctioning facility(ies) from which the damage claim arose.

431 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

432 6. (a) The Contractor has established a measuring program satisfactory to the  
433 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I  
434 purposes is measured at each M&I service connection. The water measuring devices or water  
435 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.  
436 The Contractor shall be responsible for installing, operating, and maintaining and repairing all  
437 such measuring devices and implementing all such water measuring methods at no cost to the  
438 United States. The Contractor shall use the information obtained from such water measuring  
439 devices or water measuring methods to ensure its proper management of the water, to bill water  
440 users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I  
441 purposes by customer class as defined in the Contractor's water conservation plan provided for  
442 in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor  
443 from establishing and collecting any charges, assessments, or other revenues authorized by  
444 California law. The Contractor shall include a summary of all its annual surface water deliveries  
445 in the annual report described in subdivision (c) of Article 25.

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

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

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

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

468 (e) The Contractor shall inform the Contracting Officer and the Operating  
469 Non-Federal Entity on or before the twentieth calendar day of each month of the quantity of  
470 M&I Water taken during the preceding month.

471 RATES AND METHOD OF PAYMENT FOR WATER

472 7. (a) The Contractor shall pay the United States as provided in this Article for  
473 all Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's  
474 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,  
475 modified, or superseded only through a public notice and comment procedure; (ii) applicable  
476 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other

477 applicable provisions of this Contract. Payments shall be made by cash transaction, wire  
478 transfer, or any other mechanism as may be agreed to in writing by the Contractor and the  
479 Contracting Officer. The Rates and Charges applicable to the Contractor upon execution of this  
480 Contract are set forth in Exhibit "B", as may be revised annually.

481 (b) The Contracting Officer shall notify the Contractor of the Rates and  
482 Charges, as follows:

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

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

499 (c) At the time the Contractor submits the initial schedule for the delivery of  
500 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
501 Contractor shall make an advance payment to the United States equal to the total amount payable  
502 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
503 scheduled to be delivered pursuant to this Contract during the first two calendar months of the  
504 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
505 Contractor shall make an advance payment to the United States, at the Rate(s) set under  
506 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
507 during the second month immediately following. Adjustments between advance payments for  
508 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of  
509 the following month; *Provided*, That any revised schedule submitted by the Contractor pursuant  
510 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this  
511 Contract during any month shall be accompanied with appropriate advance payment, at the Rates  
512 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such  
513 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to  
514 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no  
515 additional Project Water shall be delivered to the Contractor unless and until an advance  
516 payment at the Rates then in effect for such additional Project Water is made. Final adjustment  
517 between the advance payments for the Water Scheduled and payments for the quantities of Water  
518 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
519 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried  
520 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last  
521 day of February.

522           (d)     The Contractor shall also make a payment in addition to the Rate(s) in  
523 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in  
524 effect, before the end of the month of delivery. The payments shall be consistent with the  
525 quantities of M&I Water Delivered as shown in the water delivery report for the subject month  
526 prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by  
527 the Contracting Officer. The water delivery report shall be deemed a bill for the payment of  
528 Charges for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be  
529 made through the adjustment of payments due to the United States for Charges for the next  
530 month. Any amount to be paid for past due payment of Charges shall be computed pursuant to  
531 Article 19 of this Contract.

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

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

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



544 (h) The Contracting Officer shall keep its accounts pertaining to the  
545 administration of the financial terms and conditions of its long-term contracts, in accordance  
546 with applicable Federal standards, so as to reflect the application of Project costs and revenues.  
547 The Contracting Officer shall, each Year upon request of the Contractor, provide to the  
548 Contractor a detailed accounting of all Project and Contractor expense allocations, the  
549 disposition of all Project and Contractor revenues, and a summary of all water delivery  
550 information. The Contracting Officer and the Contractor shall enter into good faith negotiations  
551 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

559 (j) Omitted.

560 (k) For the term of this Contract, Rates under the respective ratesetting  
561 policies will be established to recover only reimbursable O&M (including any deficits) and  
562 capital costs of the Project, as those terms are used in the then-current Project ratesetting  
563 policies, and interest, where appropriate, except in instances where a minimum Rate is applicable  
564 in accordance with the relevant Project ratesetting policy. Changes of significance in practices  
565 which implement the Contracting Officer's ratesetting policies will not be implemented until the

566 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and  
567 impact of the proposed change.

568 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
569 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates  
570 adjusted upward or downward to reflect the changed costs of delivery (if any) of the transferred  
571 Project Water to the transferee's point of delivery in accordance with the then-applicable Central  
572 Valley Project Ratesetting Policy.

573 (m) Omitted.

574 (n) Omitted.

575 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

576 8. Omitted.

577 SALES, TRANSFERS, OR EXCHANGES OF WATER

578 9. (a) The right to receive Project Water provided for in this Contract may be  
579 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of  
580 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,  
581 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project  
582 Water under this Contract may take place without the prior written approval of the Contracting  
583 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or  
584 exchanges shall be approved absent all appropriate environmental documentation, including but  
585 not limited to documents prepared pursuant to the National Environmental Policy Act and the  
586 Endangered Species Act. Such environmental documentation should include, as appropriate, an  
587 analysis of groundwater impacts and economic and social effects, including environmental  
588 justice, of the proposed water transfers on both the transferor and transferee.

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

604           (c)     For a water transfer to qualify under subdivision (b) of this Article, such  
605 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three  
606 years, for M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead  
607 to land conversion; and be delivered to established cropland, wildlife refuges, groundwater  
608 basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a  
609 willing seller and a willing buyer; (iv) convey water through existing facilities with no new  
610 construction or modifications to facilities and be between existing Project Contractors and/or the  
611 Contractor and the United States, Department of the Interior; and (v) comply with all applicable

612 Federal, State, and local or tribal laws and requirements imposed for protection of the  
613 environment and Indian Trust Assets, as defined under Federal law.

614 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

632 TEMPORARY REDUCTIONS—RETURN FLOWS

633 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the  
634 requirements of Federal law and (ii) the obligations of the United States under existing contracts,

635 or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall  
636 make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in  
637 this Contract.

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

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

655 CONSTRAINTS ON THE AVAILABILITY OF WATER

656 12. (a) In its operation of the Project, the Contracting Officer will use all  
657 reasonable means to guard against a Condition of Shortage in the quantity of water to be made

658 available to the Contractor pursuant to this Contract. In the event the Contracting Officer  
659 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the  
660 Contractor of said determination as soon as practicable.

661 (b) If there is a Condition of Shortage because of errors in physical operations  
662 of the Project, drought, other physical causes beyond the control of the Contracting Officer or  
663 actions taken by the Contracting Officer to meet current and future legal obligations, except as  
664 provided in Article 17 of this Contract, then no liability shall accrue against the United States or  
665 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

666 (c) Omitted.

667 (d) Project Water furnished under this Contract will be allocated in  
668 accordance with the then-existing "Central Valley Project M&I Water Shortage Policy". Such  
669 policy shall be amended, modified, or superseded only through a public notice and comment  
670 procedure. The parties agree that as of the date of execution of this Contract, the Assigned  
671 Water will only be afforded Irrigation Water reliability under the existing "Central Valley  
672 Project M&I Water Shortage Policy".

673 (e) By entering into this Contract, the Contractor does not waive any legal  
674 rights or remedies it may have to file or participate in any administrative or judicial proceeding  
675 contesting (i) the sufficiency of the "Central Valley Project M&I Water Shortage Policy," (ii) the  
676 substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in which  
677 such policy is implemented in order to allocate Project Water between municipal and industrial  
678 and irrigation purposes; *Provided*, That the Contractor has commenced any such judicial  
679 challenge or any administrative procedures necessary to institute any judicial challenge within  
680 six months of the policy becoming final. By agreeing to the foregoing, the Contracting Officer

681 does not waive any legal defenses or remedies that it may then have to assert in such a  
682 proceeding. Nothing contained herein shall be interpreted to validate or invalidate the “Central  
683 Valley Project M&I Water Shortage Policy.”

684 UNAVOIDABLE GROUNDWATER PERCOLATION

685 13. Omitted.

686 RULES, REGULATIONS, AND DETERMINATIONS

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

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

695 PROTECTION OF WATER AND AIR QUALITY

696 15. (a) Project facilities used to make available and deliver water to the  
697 Contractor shall be operated and maintained in the most practical manner to maintain the quality  
698 of the water at the highest level possible as determined by the Contracting Officer; *Provided,*  
699 That the United States does not warrant the quality of the water delivered to the Contractor and is  
700 under no obligation to furnish or construct water treatment facilities to maintain or improve the  
701 quality of water delivered to the Contractor.

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

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

711 WATER ACQUIRED BY THE CONTRACTOR  
712 OTHER THAN FROM THE UNITED STATES

713 16. (a) Omitted.

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

719 (1) The Contractor may introduce non-Project water into Project  
720 facilities and deliver said water to lands within the Contractor's Service Area, subject to  
721 payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
722 appropriate rate as determined by the applicable Central Valley Project Ratesetting Policy  
723 and the Reclamation Reform Act each as amended, modified or superseded from time to  
724 time. In addition, if electrical power is required to pump non-Project water through the  
725 facilities, the Contractor shall be responsible for obtaining the necessary power and  
726 paying the necessary charges therefore.

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

733 (3) Neither the United States nor the Operating Non-Federal Entity  
734 shall be responsible for control, care or distribution of the non-Project water before it is  
735 introduced into or after it is delivered from the Project facilities. The Contractor hereby  
736 releases and agrees to defend and indemnify the United States and the Operating



737 Non-Federal Entity, and their respective officers, agents, and employees, from any claim  
738 for damage to persons or property, direct or indirect, resulting from the Contractor's or its  
739 officers', employees', agents' or assigns', act of (i) extracting or diverting non-Project  
740 water from any source, or (ii) diverting such non-Project water into Project facilities.

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

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

749 OPINIONS AND DETERMINATIONS

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

760 COORDINATION AND COOPERATION

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

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

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

781 (1) The Contracting Officer will, at the request of the Contractor,  
782 assist in the development of integrated resource management plans for the Contractor.

783 Further, the Contracting Officer will, as appropriate, seek authorizations for  
784 implementation of partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

800 CHARGES FOR DELINQUENT PAYMENTS

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

809 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt  
810 collection services associated with a delinquent payment.

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

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

818 EQUAL OPPORTUNITY

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

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

830 (b) The Contractor will, in all solicitations or advertisements for employees  
831 placed by or on behalf of the Contractor, state that all qualified applicants will receive  
832 consideration for employment without discrimination because of race, color, religion, sex, or  
833 national origin.

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

840 (d) The Contractor will comply with all provisions of Executive Order  
841 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders  
842 of the Secretary of Labor.

843 (e) The Contractor will furnish all information and reports required by said  
844 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
845 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting

846 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with  
847 such rules, regulations, and orders.

848 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
849 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be  
850 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared  
851 ineligible for further Government contracts in accordance with procedures authorized in said  
852 amended Executive Order, and such other sanctions may be imposed and remedies invoked as  
853 provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as  
854 otherwise provided by law.

855 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
856 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
857 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
858 provisions will be binding upon each subcontractor or vendor. The Contractor will take such  
859 action with respect to any subcontract or purchase order as may be directed by the Secretary of  
860 Labor as a means of enforcing such provisions, including sanctions for noncompliance:  
861 *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with,  
862 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request  
863 the United States to enter into such litigation to protect the interests of the United States.

864 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

869 (b) The payment of charges becoming due pursuant to this Contract is a  
870 condition precedent to receiving benefits under this Contract. The United States shall not make  
871 water available to the Contractor through Project facilities during any period in which the  
872 Contractor is in arrears in the advance payment of water rates, any operation and maintenance  
873 charges due the United States or is in arrears for more than 12 months in the payment of any  
874 construction charges due the United States. The Contractor shall not deliver water under the  
875 terms and conditions of this Contract for lands or parties which are in arrears in the advance  
876 payment of water rates or operation and maintenance charges as levied or established by the  
877 Contractor.

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

880 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

881 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
882 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as

883 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,  
884 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990  
885 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and  
886 with the applicable implementing regulations and any guidelines imposed by the U.S.  
887 Department of the Interior and/or Bureau of Reclamation.

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

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

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

905 PRIVACY ACT COMPLIANCE

906 23. Omitted.

907 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

914 to in writing in advance by the Contractor. This Article shall not apply to costs for routine  
915 contract administration.

916 WATER CONSERVATION

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

934 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
935 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall  
936 implement the "Best Management Practices" identified by the time frames issued by the

937 California Urban Water Conservation Council for such M&I Water unless any such practice is  
938 determined by the Contracting Officer to be inappropriate for the Contractor.

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

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

948 (e) If the Contractor is engaged in direct groundwater recharge, such activity  
949 shall be described in the Contractor's water conservation plan.

950 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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



958 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

959 27. (a) The O&M of a portion of the Project facilities which serve the Contractor,  
960 and responsibility for funding a portion of the costs of such O&M, have been transferred to the  
961 San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate  
962 agreement (8-07-20-X0354) between the United States and the Operating Non-Federal Entity  
963 San Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere with or  
964 affect the rights or obligations of the Contractor or the United States hereunder.

965 (b) The Contracting Officer has previously notified the Contractor in writing  
966 that the O&M of a portion of the Project facilities which serve the Contractor has been  
967 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and  
968 therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &  
969 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under  
970 the terms and conditions of the separate agreement between the United States and the Operating  
971 Non-Federal Entity San Luis & Delta Mendota Water Authority described in subdivision (a) of  
972 this Article, all Rates, Charges, or assessments of any kind, including any assessment for reserve  
973 funds, which the Operating Non-Federal Entity San Luis & Delta Mendota Water Authority or  
974 such successor determines, sets, or establishes for the O&M of the portion of the Project  
975 facilities operated and maintained by the Operating Non-Federal Entity San Luis &  
976 Delta-Mendota Water Authority or such successor. Such direct payments to the Operating  
977 Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor shall not  
978 relieve the Contractor of its obligation to pay directly to the United States the Contractor's share  
979 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity San Luis

980 & Delta-Mendota Water Authority collects payments on behalf of the United States in  
981 accordance with the separate agreement identified in subdivision (a) of this Article.

982 (c) For so long as the O&M of any portion of the Project facilities serving the  
983 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
984 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
985 Rates for Water Delivered under this Contract representing the cost associated with the activity  
986 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
987 Authority or its successor.

988 (d) In the event the O&M of the Project facilities operated and maintained by  
989 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by  
990 the United States during the term of this Contract, the Contracting Officer shall so notify the  
991 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include  
992 the portion of the Rates to be paid by the Contractor for Project Water under this Contract  
993 representing the O&M costs of the portion of such Project facilities which have been re-assumed.  
994 The Contractor shall, thereafter, in the absence of written notification from the Contracting  
995 Officer to the contrary, pay the Rates and Charges specified in the revised Exhibit "B" directly to  
996 the United States in compliance with Article 7 of this Contract.

997 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

998 28. The expenditure or advance of any money or the performance of any obligation of  
999 the United States under this Contract shall be contingent upon appropriation or allotment of  
1000 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
1001 obligations under this Contract. No liability shall accrue to the United States in case funds are  
1002 not appropriated or allotted.

1003 BOOKS, RECORDS, AND REPORTS

1004 29. (a) The Contractor shall establish and maintain accounts and other books and  
1005 records pertaining to administration of the terms and conditions of this Contract, including the

1006 Contractor's financial transactions; water supply data; project operation, maintenance, and  
1007 replacement logs; Project land and rights-of-way use agreements; the water users' land-use  
1008 (crop census), land-ownership, land-leasing, and water-use data; and other matters that the  
1009 Contracting Officer may require. Reports shall be furnished to the Contracting Officer in such  
1010 form and on such date or dates as the Contracting Officer may require. Subject to applicable  
1011 Federal laws and regulations, each party to this Contract shall have the right during office hours  
1012 to examine and make copies of the other party's books and records relating to matters covered by  
1013 this Contract.

1014 (b) Notwithstanding the provisions of subdivision (a) of this Article, no  
1015 books, records, or other information shall be requested from the Contractor by the Contracting  
1016 Officer unless such books, records, or information are reasonably related to the administration or  
1017 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1018 time within which to provide the requested books, records, or information.

1019 (c) At such time as the Contractor provides information to the Contracting  
1020 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided  
1021 to the Operating Non-Federal Entity.

1022 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1023 30. (a) The provisions of this Contract shall apply to and bind the successors and  
1024 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1025 therein by either party shall be valid until approved in writing by the other party.

1026 (b) The assignment of any right or interest in this Contract by either party  
1027 shall not interfere with the rights or obligations of the other party to this Contract absent the  
1028 written concurrence of said other party.

1029 (c) The Contracting Officer shall not unreasonably condition or withhold  
1030 approval of any proposed assignment.

1031 SEVERABILITY

1032 31. In the event that a person or entity who is neither (i) a party to a Project contract,  
1033 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor

1034 (iii) an association or other form of organization whose primary function is to represent parties to  
1035 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1036 enforceability of a provision included in this Contract and said person, entity, association, or  
1037 organization obtains a final court decision holding that such provision is legally invalid or  
1038 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),  
1039 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such  
1040 final court decision identify by mutual agreement the provisions in this Contract which must be  
1041 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).  
1042 The time periods specified above may be extended by mutual agreement of the parties. Pending  
1043 the completion of the actions designated above, to the extent it can do so without violating any  
1044 applicable provisions of law, the United States shall continue to make the quantities of Project  
1045 Water specified in this Contract available to the Contractor pursuant to the provisions of this  
1046 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1047 RESOLUTION OF DISPUTES

1048 32. Should any dispute arise concerning any provisions of this Contract, or the  
1049 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to  
1050 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1051 Officer referring any matter to Department of Justice, the party shall provide to the other party  
1052 30 days' written notice of the intent to take such action; *Provided*, That such notice shall not be  
1053 required where a delay in commencing an action would prejudice the interests of the party that  
1054 intends to file suit. During the 30 day notice periods, the Contractor and the Contracting Officer  
1055 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,

1056 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the  
1057 United States may have.

1058 OFFICIALS NOT TO BENEFIT

1059 33. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1060 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1061 manner as other water users or landowners.

1062 CHANGES IN CONTRACTOR'S SERVICE AREA

1063 34. (a) While this Contract is in effect, no change may be made in the  
1064 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,  
1065 or otherwise, except upon the Contracting Officer's written consent.

1066 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1067 Officer will notify the Contractor of any additional information required by the Contracting  
1068 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1069 schedule for timely completion of the process. Such process will analyze whether the proposed  
1070 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;  
1071 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or  
1072 to pay for any Federally-constructed facilities for which the Contractor is responsible; and  
1073 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,  
1074 the Contracting Officer shall comply with the National Environmental Policy Act and the  
1075 Endangered Species Act. The Contractor will be responsible for all costs incurred by the  
1076 Contracting Officer in this process, and such costs will be paid in accordance with Article 24 of  
1077 this Contract.

1078 FEDERAL LAWS

1079 35. By entering into this Contract, the Contractor does not waive its rights to contest  
1080 the validity or application in connection with the performance of the terms and conditions of this  
1081 Contract of any Federal law or regulation; *Provided*, That the Contractor agrees to comply with  
1082 the terms and conditions of this Contract unless and until relief from application of such Federal

1083 law or regulation to the implementing provision of the Contract is granted by a court of  
1084 competent jurisdiction.

1085 NOTICES

1086 36. Any notice, demand, or request authorized or required by this Contract shall be  
1087 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
1088 delivered to the Area Manager, South-Central California Area Office, Mid-Pacific Region,  
1089 Bureau of Reclamation, 1243 N Street, Fresno, CA 93721, and on behalf of the United States,  
1090 when mailed, postage prepaid, or delivered to the City Manager, c/o Public Works Department,  
1091 520 Tracy Blvd., Tracy CA 95376. The designation of the addressee or the address may be  
1092 changed by notice given in the same manner as provided in this article for other notices.

1093 CONFIRMATION OF CONTRACT

1094 37. Promptly after the execution of this Contract, the Contractor shall provide  
1095 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the  
1096 Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the  
1097 Contractor. This Contract shall not be binding on the United States until such evidence has been  
1098 provided to the Contracting Officer's satisfaction.

CONTRACT DRAFTING CONSIDERATIONS

1099 38. This Contract has been, negotiated and reviewed by the parties hereto,  
1100 each of whom is sophisticated in the matters to which this Contract pertains. The double-spaced  
1101 articles of this Contract have been drafted, negotiated, and reviewed by the parties, and no one  
1102 party shall be considered to have drafted the stated articles.

1103 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of  
1104 the day and year first above written.

1105 UNITED STATES OF AMERICA

1106  
1107  
1108 

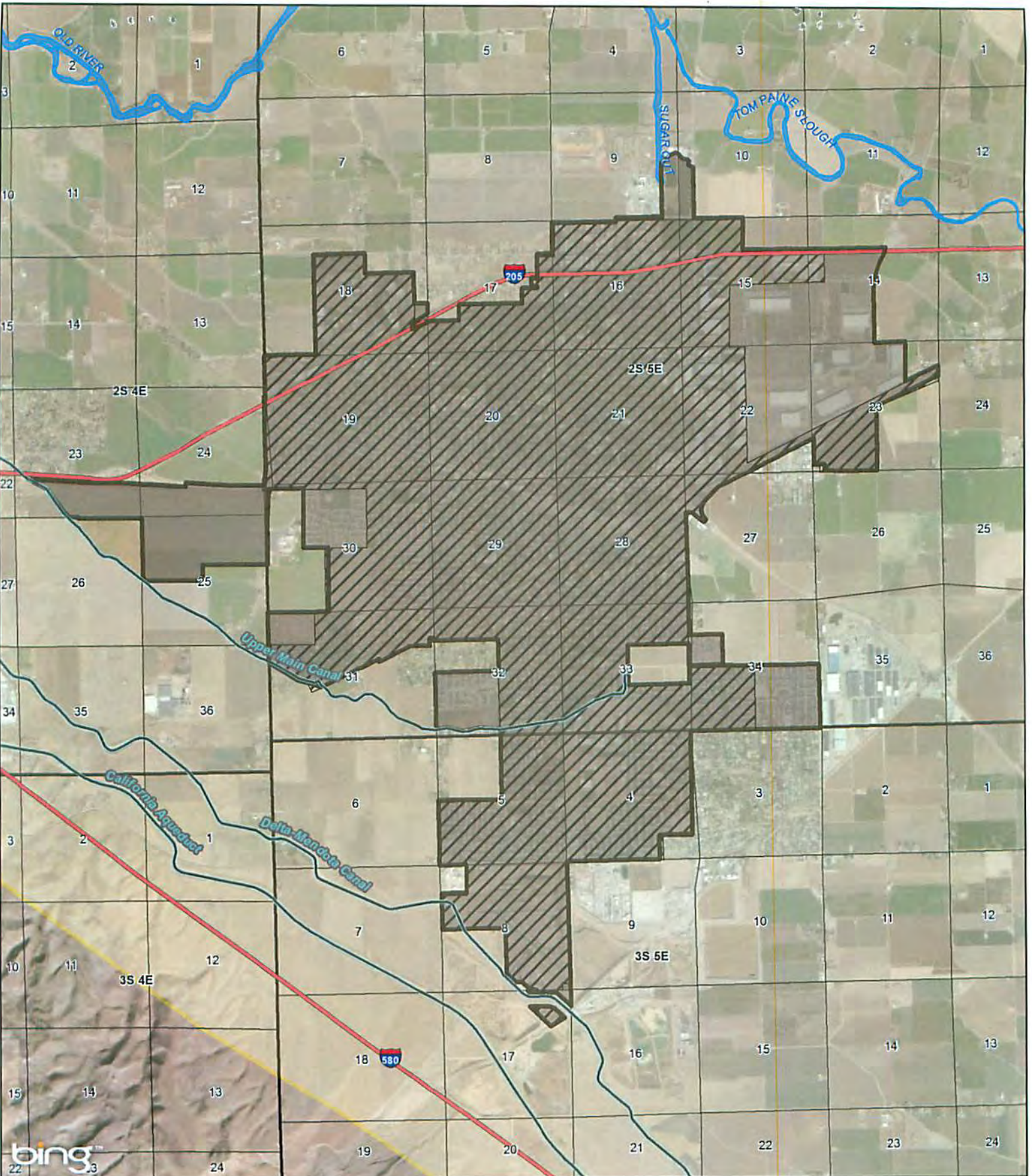
ACTING FOR John R. Anner  
Regional Director, Mid-Pacific Region  
Bureau of Reclamation

1109 CITY OF TRACY

1110 By: J. Don Clark Jr.  
1111 City Manager

1112 Attest:

1113 By: Sandra Edwards  
1114 Secretary City Clerk

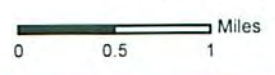


- Consolidated POU
- Contractor's Service Area
- Contractor's Boundary

# City of Tracy

14-06-200-7858A-IR1  
Exhibit A

**RECLAMATION**  
*Managing Water in the West*





**EXHIBIT B**  
**City Of Tracy**

**2013 Rates and Charges**  
**(Per Acre-Foot)**

	<b>M&amp;I Water</b>
<b>COST-OF-SERVICE (COS) RATE</b>	
Construction Cost	\$22.00
O&M Cost	
Water Marketing	\$4.69
Storage	\$9.92
Conveyance	
Conveyance Pumping <sup>1</sup>	*
Conveyance Pumping - Extraordinary O&M	\$0.37
American Recovery and Reinvestment Act	\$0.04
Other Costs	\$0.00
Deficit Cost Component	\$0.00
<b>TOTAL COS RATE</b>	<b>\$37.02</b>
<b>CHARGES AND ASSESSMENTS</b> ( <i>Payments in addition to Rates</i> )	
P.L. 102-575 Surcharge	
Restoration Fund Payments [Section 3407(d)(2)(A)]	\$19.98
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.05

**EXPLANATORY NOTES**

<sup>1</sup> Conveyance and Conveyance Pumping Operation and Maintenance Costs were removed for ratesetting purposes and are to be direct billed.

The recent historic average, as defined in the existing CVP M&I Water Shortage Policy (WSP), is 10,000 acre-feet. The City of Tracy is successor of two agriculture water service contract supplies from Banta Carbona Irrigation District 5,000 acre-feet, and The Westside Irrigation District up to 5,000 acre-feet. Water shortages for these quantities will be allocated consistent with the then-existing M&I WSP.

RESOLUTION 2013-188

AUTHORIZING INTERIM RENEWAL CONTRACTS BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND THE CITY FOR PROVIDING CENTRAL VALLEY PROJECT WATER SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS

WHEREAS, In 1974, the City entered into a long-term contract with the Bureau for water service from the Delta-Mendota Canal. This contract is for delivery of 10,000 acre-feet per year and expires on December 31, 2013, and

WHEREAS, In 2004, the Bureau authorized contract assignments between the City and Banta Carbona Irrigation District (BCID), and the City and the West Side Irrigation District (WSID), and

WHEREAS, In 2007, 2008, 2010, and 2012, the City entered into Interim Renewal Contracts, the most recent of which expires on February 28, 2014, and

WHEREAS, The Bureau has prepared the Interim Renewal Contract for the long-term contract for execution by the City effective from January 1, 2014, through February 29, 2016, and

WHEREAS, A California Environmental Quality Act Categorical Exemption has been prepared as there are no impacts to the environment;

NOW, THEREFORE, BE IT RESOLVED, That the City Council authorizes Interim Renewal Contract No. 14-06-200-7858A-IR1 between the United States and the City of Tracy providing for Central Valley Project Water Service and authorizes the City Manager to execute the agreements.

\*\*\*\*\*


The foregoing Resolution 2013-188 was passed and adopted by the Tracy City Council on the 3rd day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS: MACIEL, MANNE, RICKMAN, YOUNG, IVES


NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

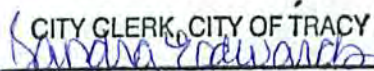
ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:

  
CITY CLERK

THE FOREGOING DOCUMENT IS CERTIFIED TO BE A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

CITY CLERK, CITY OF TRACY  
BY:   
DATE: 12.17.2013

Agreement for Additional Assignment of Entitlement of CVP Water between  
the City of Tracy and the West Side Irrigation District (December 2013)



**AGREEMENT FOR ADDITIONAL ASSIGNMENT  
OF ENTITLEMENT TO CVP WATER  
BETWEEN THE CITY OF TRACY AND  
THE WEST SIDE IRRIGATION DISTRICT**

This AGREEMENT FOR ADDITIONAL ASSIGNMENT OF ENTITLEMENT TO CVP WATER (“Agreement”) is made this 3rd day of December, 2013 by and between the CITY OF TRACY (“Tracy”), a California municipal corporation, and THE WEST SIDE IRRIGATION DISTRICT (“WSID”) an Irrigation District formed pursuant to Division 11 of the California Water Code.

**RECITALS**

WHEREAS, WSID is an irrigation district providing water for irrigation purposes to landowners within its service area; and

WHEREAS, WSID has an entitlement of 7,500 acre-feet of water pursuant to its water supply contract with the United States Bureau of Reclamation (“USBR”) through an agreement entitled “Interim Renewal Contract between the United States and The West Side Irrigation District Providing for Project Water Service” dated February 28, 2001, Contract No. 7-07-20-W0045-IR5 (“WSID Contract”), less 2,500 acre-feet of water (“Initial Assignment” or “Initial Assignment Right”) pursuant to an Agreement for Assignment of Entitlement of CVP Water Between Tracy and WSID dated (“Initial Assignment Agreement”); and

WHEREAS, Tracy provides municipal and industrial water to customers within its boundaries; and

WHEREAS, Tracy has an entitlement to 10,000 acre-feet of water pursuant to its water supply contract with the USBR through an agreement entitled “CONTRACT BETWEEN THE UNITED STATES AND CITY OF TRACY” dated July 22, 1974, Contract No. 14-06-200-7858A (“Tracy Contract”); and

WHEREAS, on January 9, 2014, Tracy tendered notice of exercise of the option granted in the Initial Assignment Agreement for the assignment of an additional 2,500 acre-feet of water under the WSID Contract to Tracy (“Additional Assignment” or “Additional Assignment Right”).

NOW, THEREFORE, the Parties, on the terms and conditions herein set forth, agree as follows:

## AGREEMENT

### 1. **EFFECTIVE DATE**

This Agreement shall become effective the date stated above immediately upon execution by all parties.

### 2. **ASSIGNMENT OF ENTITLEMENT**

A. Tracy hereby agrees to purchase from WSID, and WSID hereby agrees to assign and sell to Tracy, the permanent right to two thousand five hundred (2,500) acre-feet of the WSID Contract entitlement to water (“Additional Assignment Right” or “additional assignment”) pursuant to the terms and conditions of this Agreement, and contingent upon the parties’ compliance with applicable environmental laws, including the California Environmental Quality Act (CEQA).

B. Upon completion of Final Approval of the Additional Assignment Right, WSID’s assignment of a portion (2,500 acre-feet) of its WSID Contract shall immediately become effective and WSID shall have no further interest in the Additional Assignment Right or water provided thereunder except as specifically provided in Section 17 hereof.

### 3. **ASSUMPTION OF RIGHTS AND OBLIGATIONS**

A. Upon Final Approval of the Additional Assignment, Tracy shall assume all of the rights and obligations associated with the Additional Assignment Right, including any adjustment of costs for water service pursuant to the Additional Assignment Right made by the USBR upon and after the date approvals set forth in Section 13 are complete, and any other costs the USBR may require to be paid as a condition of approval of the Additional Assignment, provided that excepting the capital repayment obligation, costs thus due are cumulatively less than a one time charge of Five Thousand Dollars (\$5,000.00). WSID agrees that it will timely make all payments required pursuant to the WSID Contract excepting the capital repayment obligation to the extent it is not included in the applicable CVP water rates, until the date the Additional Assignment becomes effective or this Agreement terminates.

B. The parties understand and agree that the obligations to be assumed by Tracy pursuant to this Section 3 will be proportionate, on a per acre foot of entitlement basis, to the obligations of the WSID Contract (i.e., 33.3% of the obligation based upon assignment of 2,500 acre-feet of a 7,500 acre-feet contract). This Agreement shall at the option of Tracy terminate if the obligations it is required to assume exceed the foregoing, excepting the one-time charge of up to \$5,000 set forth in subsection 3A above and any increase in the CVP cost of service rate per acre-foot of water due to the change in purpose of use from agricultural to municipal and industrial.

#### 4. PAYMENT FOR ADDITIONAL ASSIGNMENT RIGHT

A. Consideration. Tracy shall pay WSID Two Million Five Hundred Thousand Dollars (\$2,500,000), in the manner and as set forth in the terms and conditions of this Agreement, as full and complete payment for the Additional Assignment Right.

B. Method of Payment. Within five business days of Tracy's receipt of the approved documentation demonstrating Final Approval of the Additional Assignment Right, and upon execution by WSID of the appropriate assignment agreements, Tracy shall deliver to WSID cash or a cashier's check issued by a California bank in the amount of \$2,500,000.

C. Reimbursement. In the event that the Additional Assignment is rendered invalid for any reason, including but not limited to resolution of any challenge in a manner adverse to the Additional Assignment or termination of the Agreement, Tracy's obligations to make payment pursuant to this Section shall be suspended pending the parties' diligent efforts to cure and reinstate or otherwise cause the Additional Assignment to become valid. In the event that the cure is not effected within a reasonable period as determined by Tracy after consultation with WSID, this Agreement shall terminate. In the event of termination of this Agreement, due to invalidity or otherwise, and after the foregoing cure period if any, WSID shall be obligated to promptly (within 30 days) refund Tracy in full for any and all Consideration paid by Tracy in consideration for the Additional Assignment Right.

D. Effect of Challenge on Payment Rights and Obligations. If a judicial or administrative challenge related to this Agreement or the Additional Assignment is filed, Tracy at its sole discretion shall have the right to suspend performance under Subsections 4A and 4B while the challenge is pending, provided that Tracy makes a good faith effort to put to beneficial use the water to which Tracy is entitled pursuant to the Additional Assignment. Tracy shall exercise its rights under this subsection 4D by giving notice to WSID of the pendency of the challenge and of Tracy's exercise of its right under this subsection 4D. Once Tracy gives WSID notice pursuant to this subsection, Tracy's obligations to pay Consideration under Subsection 4B shall be suspended until two business days after resolution of the challenge in favor of the validity of the Agreement and the Additional Assignment

E. Injunctive Relief. If injunctive relief related to this Agreement or the Additional Assignment is obtained, which injunctive relief prevents Tracy from obtaining or from exercising the Additional Assignment Right, Tracy's obligation to pay Consideration under Subsections 4A and 4B shall be suspended until two business days after the injunction is dissolved, unless Tracy has previously notified WSID of Tracy's exercise of its right to suspend pursuant to Subsection 4D, in which case the provisions of Subsection 4D shall control.

#### 5. PRIORITY OF ASSIGNMENT WATER

A. The parties acknowledge that the water provided pursuant to the Additional Assignment Right is currently considered by the USBR to be agricultural water, subject to agricultural priority. The USBR is in the process of finalizing its Draft Urban Water Supply

Reliability Policy (date), which will formalize a policy of priority to be granted to agricultural water that is converted to municipal and industrial ("M&I") use. The parties further acknowledge that the draft policy provides that such water will retain its agricultural priority, and the price for the Additional Assignment Right has been established upon that basis. WSID has represented that, without input from Tracy, WSID has been and may continue to seek approval of an M&I priority for the Additional Assignment Right, thereby increasing its reliability. If WSID is successful in obtaining the USBR's final approval in writing that a M&I priority will be afforded to the Additional Assignment Right on a permanent basis, the purchase price for the Additional Assignment Right will be increased by that percentage increase, if any, in reliability of the Additional Assignment Right as a result of the conversion to M&I priority, not to exceed twelve and one half per cent (12.5%). This Section 5A shall apply for ten (10) years following the Effective Date of this Agreement, whereupon Section 5A shall terminate and be of no further force or effect.

B. The parties agree that neither this agreement nor this Section B in any way represent or indicate Tracy's position with respect to the CVP M&I Water Shortage Policy and that Tracy expressly reserves the right to take any position or action with respect to that Policy, including without limitation opposition to WSID's position.

## **6. JOINT DEFENSE; SHARING OF REGULATORY AND LITIGATION COSTS**

A. The parties mutually agree to vigorously defend any litigation or regulatory challenge to the Additional Assignment contemplated in this Agreement, including any Final Approval necessary thereto, except as provided herein. The parties agree to cooperate fully in the defense of such action in furtherance of Final Approval of the Additional Assignment. The parties agree to share the costs of such defense equally, unless the challenge is to the water entitlement under the WSID Contract, before or after the Additional Assignment becomes effective, in which case WSID shall be solely responsible for the defense. Except as provided herein, to the extent that the parties undertake joint defense, any attorney fees or costs recovered shall be equally shared between the parties.

B. Tracy shall have the right to reasonably approve the choice of defense counsel and participate equally in strategic and other decision-making. The parties shall attempt to coordinate their respective defense in response to such litigation upon terms mutually agreed upon, provided that Tracy's exercise of discretion with respect to such litigation shall not be restricted or impaired. WSID and Tracy shall communicate promptly to the other party any offers for the settlement of the litigation and each party shall secure the other's consent to any settlement, which consent shall not unreasonably be withheld or delayed. The parties agree that it is in their best interests to avoid unnecessary duplication of work with respect to maintaining the action, thereby reducing fees and expenses and promoting efficiency during pretrial and trial proceedings.

C. The parties agree that, in the event of a challenge to the Additional Assignment pursuant to this Agreement, they have interests in common and shall litigate common claims and have legal theories in common, and each party may benefit from open communication with one another about all matters relating to the litigation. The parties agree that such disclosures and



communications are wholly consistent with the purpose of the attorney work product privilege, which is to safeguard mental impressions, opinions, strategies, work product and trial preparation. The parties agree that, from time to time, the mutual interests of the parties can best be served by sharing documents, factual material, mental impressions, memoranda, interview reports, legal research, expert data and other information hereinafter referred to as "confidential materials." These confidential materials are privileged from disclosure to adverse parties or other third parties as a result of the attorney-client privilege, the attorney work product privilege, and other applicable privileges. All information, which is provided by a party to the other or to litigation counsel in furtherance of this Agreement, shall be considered confidential in nature and may not be used for any other purpose.

D. The parties recognize that much of the information required to be provided to assist in defense of any challenge may be provided by or under the supervision of a party's counsel. As such the information may be protected by the work product or the attorney-client privilege. When providing information to one of the other parties, or to special counsel, a party is intending to fulfill its obligations to cooperate in defense of challenges, and such communications are not intended to constitute a waiver of the applicable privileges. Similarly, information provided by, or to the other party, is not intended to waive any applicable privilege, but to further the common interests of the parties.

E. In addition to the foregoing, and not in derogation thereof, the parties are each entitled to defend their interests in any litigation or regulatory action challenging the validity of any aspect of the Additional Assignment, including but not limited to the USBR's actions, and environmental compliance at its own cost. The parties shall be separately responsible financially and otherwise to defend and/or advocate their interests with respect to matters related to the parties' respective underlying contract entitlements, which matters are not caused by and exist independent of the Additional Assignment.

## **7. RELATIONSHIP TO OTHER CONTRACTS**

This Agreement shall be implemented in a manner consistent with the terms of the WSID Contract and the Tracy Contract and is not intended to be inconsistent with those contracts. This Agreement modifies the Initial Assignment Agreement as expressly provided herein, but is not intended to be inconsistent with the Initial Assignment Agreement. The parties anticipate that the assignment contemplated herein shall be effected through the execution and delivery of a new or amended contract(s) between the USBR and each party.

## **8. QUALITY OF WATER**

WSID makes no warranty or representations as to the quality or fitness for use of the water delivered to Tracy by the USBR pursuant to the Additional Assignment Right. The parties acknowledge that Tracy is familiar with the quality of water received from the USBR, and that Tracy shall be responsible for all necessary measures at its own expense for any testing, treatment, and other steps required for the intended uses of water delivered to Tracy pursuant to the Additional Assignment Right.

## **9. POINT OF DELIVERY**

Additional Assignment Right water shall be delivered by the USBR pursuant to the terms of any new or amended contract between each of the parties and the USBR. The parties acknowledge that Tracy anticipates the possibility of taking delivery of water by the USBR pursuant to the Additional Assignment Right from a new delivery point on the State Water Project California Aqueduct, and that this, among other things, may be a term of the new or amended contract between Tracy and the USBR, however, success in obtaining a new delivery point is not a condition precedent to assignment.

## **10. USE WITHIN HISTORICAL BOUNDARIES OF WSID**

Tracy hereby agrees that the Initial Assignment water is intended primarily for use within the original historic boundaries of WSID, much of which is now within Tracy's city limits. Notwithstanding the foregoing, the parties agree that Tracy is acquiring all rights to the Initial Assignment Right now held by WSID, and can commingle, store, exchange, transfer, and otherwise use the Initial Assignment Right water in any manner and location allowed by law, and can require reasonable charges, terms and conditions, without limitation, in connection with all uses of such water.

## **11. ENVIRONMENTAL REVIEW**

A. The parties acknowledge that they attempted to obtain all regulatory and environmental approvals at one time for the Initial and Additional Assignments (5,000 acre-feet of water) when approvals for the Initial Assignment were obtained. To the extent further approvals are required in connection with this Additional Assignment, the parties will use their best good faith efforts to prevent duplication of regulatory and environmental approvals obtained with respect to the Initial Assignment. WSID will be the lead agency for purposes of the California Environmental Quality Act ("CEQA") for any environmental documentation and other regulatory requirements needing to be completed to obtain final approval of the Additional Assignment. Tracy shall be a responsible agency for that portion of the CEQA environmental review completed for the water supply provided under this Agreement. The parties also acknowledge that the USBR may be required to comply with the requirements of the National Environmental Policy Act ("NEPA") in order to provide the approvals required by this Agreement if acceptable to the USBR. If so, the parties agree to coordinate the CEQA process and documentation with the NEPA process and documentation in order to facilitate completion of the approvals required by this Agreement.

B. The parties will jointly approve the choice of consultant(s), all work product and billings, including any draft CEQA documents before they are made public. WSID and Tracy will form a subcommittee to efficiently and cooperatively address such issues. The same procedures shall apply to NEPA and any other required environmental compliance to the extent possible.

## 12. PAYMENT OF COSTS

Any and all costs and expenses for all environmental review and documentation for which either WSID or Tracy would be responsible for purposes of obtaining Final Approval of the Additional Assignment shall be paid by Tracy. If the assignments contemplated by this Agreement fail to occur due to termination by WSID, failure of the USBR or any other governmental agency to provide any necessary approval, or order of any state or federal court, or any combination thereof, WSID shall reimburse Tracy for fifty percent (50%) of the costs of any additional environmental review and documentation required for this Additional Assignment, or Ten Thousand Dollars (\$10,000.00), whichever is less. Costs shall not include costs associated with time spent by WSID or Tracy staff, or legal counsel, or elected officials.

## 13. APPROVAL OF THE BUREAU OF RECLAMATION

The parties acknowledge that the approval of the USBR, and other governmental approvals, will be required before the Additional Assignment contemplated by this Agreement can be completed. Consequently, the obligations of the parties under this Agreement are subject to the occurrence of all of the following conditions, which are for their joint benefit:

A. The approval by the USBR of the permanent assignment of the Additional Assignment Right to Tracy pursuant to this Agreement, and the due execution of the appropriate contracts, agreements or amendments with the USBR.

B. WSID's compliance with CEQA as lead agency and Tracy's compliance with CEQA as responsible agency.

C. "Final Approval" has been obtained, meaning that all governmental approvals, consents, and other requirements necessary to complete and finalize the Additional Assignment provided for herein have been obtained, including but not limited to (i) approval by the USBR, WSID and Tracy, and (ii) compliance with applicable environmental laws, including but not limited to NEPA, CEQA, and the ESA, has occurred, and (iii) Tracy is fully entitled to order and receive water from the USBR pursuant to this Additional Assignment. A validation action judgment pursuant to Section 33 shall not be required for Final Approval.

## 14. TERMINATION

The parties to this Agreement shall have the right of termination for cause as set forth in this Section:

A. Failure of Conditions. If any condition set forth in Section 13 above is not satisfied within three (3) years from the effective date of this Agreement, either party may terminate this Agreement; provided, however, that said three (3) year period shall be extended during the pendency of any litigation filed in any way challenging or seeking to validate or invalidate the Additional Assignment, including but not limited to any approval, consent or other action necessary thereto:

B. Conditions Imposed. Should the USBR, or any other state or federal agency or any state or federal court, exercising jurisdiction over this Agreement and/or the operations of the parties or their water rights, impose any requirements, limitations, operations restrictions, fees, charges, costs, water rights restrictions or operating criteria (collectively "Requirements") upon either or both of the parties in whole or in part as a result of the assignment of entitlement under this Agreement, which Requirements (individually or collectively) actually and substantially reduce the value of this transaction for either party, then the party burdened by such Requirements or any of them may reasonably determine that compliance with such Requirements, or any of them, would be overly burdensome for that party, and terminate this Agreement.

C. Litigation. If the costs required to be paid by either party of litigation, regulatory review, compliance with regulatory conditions, including but not limited to CEQA or NEPA compliance and/or mitigation, or relief afforded to plaintiffs in an action brought in State or Federal court involving this Agreement exceeds \$200,000 and, in the reasonable judgment of that party, are too costly for that party in relation to the benefits to be received, then that party may terminate this Agreement.

D. Notice. A party shall give thirty (30) days' advance written notice to the other party prior to terminating this Agreement pursuant to this Section. Prior to giving such notice, the party electing to terminate pursuant to this Section shall have met and conferred with representatives of the other party to discuss the concerns.

In the event of termination under this Section, the parties shall thereafter be under no further obligation or responsibility hereunder except as specified in this Agreement, including but not limited to Section 4C, and will release each other from further obligations under this Agreement, except for their respective share of costs incurred prior to the effective date of termination. Any costs required or liabilities incurred due to the termination itself shall be paid or otherwise borne by the party terminating the Agreement.

## 15. REPRESENTATIONS AND WARRANTIES

The parties represent and warrant, each to the other, that as of the Effective Date and as of the date of the Additional Assignment:

A. Each party is validly organized and existing under and by virtue of the laws of the State of California.

B. Each party has authority to execute and perform this Agreement, and has authorized the execution and performance of this Agreement.

C. Neither party's execution and performance of this Agreement will result in the breach of any other agreement to which that party is a party or to which that party is otherwise subject or bound.

## 16. USE OF WATER

Consistent with the provisions of Water Code Section 475 and 1244, the parties agree that neither the Additional Assignment nor this Agreement is evidence of the availability of surplus water beyond the terms of this Agreement or the lack of beneficial use of the water involved in this Agreement, and they shall not contend otherwise.

## 17. EMERGENCY WATER

The parties acknowledge that the water available under the WSID Contract has been available to be used as a primary water supply in the event that WSID's primary water supply source failed. Completion of the assignment contemplated by this Agreement will reduce the volume of water available to WSID pursuant to the WSID Contract for that purpose. In consideration of that:

A. Emergency Supply. Tracy hereby agrees to provide WSID with an emergency supply of water, subject to USBR approval and compliance with all applicable laws, in the event that two or more of WSID's pumps from Old River concurrently fail, which emergency supply will be available for a thirty (30) day period after failure of the second pump.

B. Limit. The emergency water provided pursuant to this Section shall not exceed five hundred (500) acre-feet or the amount provided from the USBR pursuant to the annual allocation pursuant to the Additional Assignment Right, whichever is less. The availability of emergency water expires ten (10) years from the effective date of the Initial Assignment Agreement.

C. Repayment. WSID shall use its best good faith efforts to reimburse Tracy with one acre foot of water for each acre foot of water used by WSID pursuant to this Section within the same water year in which it is provided by Tracy, unless Tracy requests otherwise. If WSID determines that such repayment cannot be paid, Tracy shall have the right to elect whether to be (1) repaid with water available to WSID in the next water year; or (2) reimbursed for the water at the contract rate that Tracy paid to the USBR for such water, plus administrative, carrying, and other costs reasonably and directly attributable to that water with payment made within 60 days of receipt of an invoice from Tracy. If the water can be obtained at lower cost due to its agricultural purpose of use, without any inconvenience, cost or other burden to Tracy, then the costs paid by WSID shall be appropriately reduced.

## 18. RECIPROCAL INDEMNIFICATION

A. Tracy shall hold harmless, indemnify, and defend WSID (with counsel of WSID's choice) and its members, directors, officers, employees, agents, and contractors (collectively "WSID's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or connected with this Agreement and caused by the negligence, gross negligence, or intentional misconduct of Tracy, except to the extent

caused by the negligence, gross negligence or intentional misconduct of any of WSID's Indemnified Parties.

B. WSID shall hold harmless, indemnify, and defend Tracy (with counsel of Tracy's choice) and its members, directors, officers, employees, agents, and contractors (collectively "Tracy's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or connected with this Agreement and caused by the negligence, gross negligence, or intentional misconduct of WSID, except to the extent caused by the negligence, gross negligence or intentional misconduct of any of Tracy's Indemnified Parties. WSID shall further hold harmless, indemnify and defend Tracy's Indemnified Parties (with counsel of Tracy's choice) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of actions, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or connected with WSID's acquisition and use of water pursuant to Section 17 hereof.

#### **19. NO LIABILITY**

The parties acknowledge that Tracy is familiar with the risks associated with delivery of CVP water due to its position as a CVP contractor. The parties further acknowledge that WSID is providing Tracy only with whatever rights it has pursuant to the portion of the WSID Contract to be assigned (the Additional Assignment Right), and that the right to receive water pursuant to the Additional Assignment right may be restricted or reduced by the United States in the future as allowed by law. Tracy shall hold WSID, its officers, agents, servants, employees, and consultants harmless from and against any and all losses, claims, liens, demands and causes of action of every kind and character and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of, the availability of water under that portion of the WSID Contract assigned to Tracy pursuant to this Agreement.

#### **20. ATTORNEY'S FEES**

If it shall be necessary for any party hereto to commence legal action or arbitration to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys fees, expenses and costs incurred. The expenses and costs incurred shall include, without limitation to other reasonable types of outlay directly caused by or reasonably required by the litigation or dispute, the costs of any experts employed in either the preparation or presentation of any evidence in such proceedings incurred in preparing for or participating in such litigation.

#### **21. COOPERATION**

To the extent reasonably required, each party to this Agreement shall, in good faith, execute such further agreements or documents and take such further actions as are needed to consummate this Additional Assignment. The parties agree to cooperate and assist each other in

good faith in meeting such requirements of regulatory agencies as may be applicable to performance of any terms of this Agreement.

## 22. NOTICES

All notices that are required, either expressly or by implication, to be given by any party to the other under this Agreement shall be delivered, sent by facsimile, or mailed, United States first-class postage prepaid, addressed as follows:

THE WEST SIDE IRRIGATION DISTRICT  
Post Office Box 177  
Tracy, California 95378-0177  
Phone: (209) 835-0503  
Fax: (209) 835-2702

CITY OF TRACY  
Director of Public Works  
520 Tracy Boulevard  
Tracy, California 95376  
Phone: (209) 831-6300  
Fax: (209) 831-4472

Notice shall be deemed given (a) two (2) calendar days following mailing via regular or certified mail, return receipt requested, (b) one (1) business day after deposit with any one day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile to the correct number, whichever is earlier. The parties shall promptly give written notice to each other of any change of address and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

## 23. OTHER AGREEMENTS

Nothing contained herein restricts WSID from providing water services and sales to others as authorized by law, which do not interfere with WSID's obligations to Tracy or Tracy's rights pursuant to this Agreement.

## 24. SURVIVAL

Each of the provisions of and covenants contained in this Agreement, to the extent applicable, shall survive the performance of the executory provisions of this Agreement, and the transfer of entitlements.

## 25. ASSIGNABILITY

Until completion of the approvals set forth in Section 13 of this Agreement, neither party shall sell, assign, transfer, convey or encumber this Agreement or any right or interest herein or

thereunder, or suffer or permit any such assignment, transfer or encumbrance to occur by operation of law without the prior written consent of the other party, and such consent shall not be unreasonably withheld.

Subject to the provisions of this Section, this Agreement shall be binding upon the successors and assigns of the parties hereto.

**26. NO BENEFIT TO THIRD PARTIES**

This Agreement is made for the sole benefit of the parties hereto and their respective successors and assigns and no other person or persons shall have any right of action hereon.

**27. TIME**

Time is of the essence in the performance of the parties' respective obligations contained in this Agreement.

**28. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between WSID and Tracy and supersedes any oral agreement, statement or promise between them relating to the subject matter of the Agreement, other than the Initial Assignment Agreement except as expressly set forth herein. Any amendment, including oral modification, must be reduced to writing and signed by both parties to be effective.

**29. CONTROLLING LAW**

The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

**30. CONSTRUCTION**

Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the assignments contemplated herein, which is the purpose of this Agreement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with that purpose that would render the provision valid shall be favored over any interpretation that would render it invalid.

The parties agree that this Agreement is the product of mutual full and fair negotiation, and that both parties were represented by counsel. This Agreement shall therefore be interpreted as drafted equally by both parties.

The captions contained in this Agreement are for convenience only and shall not be interpreted so as to change or affect the meaning of the provisions of this Agreement.



**31. SEVERABILITY**

If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**32. COUNTERPARTS**

The parties may execute this Agreement in two counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**INTENTIONALLY LEFT BLANK**

33. **VALIDATION ACTION**

Tracy shall have the right to conduct a validation action with respect to this Agreement, the Additional Assignment, revision to the Tracy Contract as a result of the Additional Assignment, or any new Contract between Tracy and the Bureau which results from the Additional Assignment, or any of them, pursuant to the provisions of California Code of Civil Procedure section 860 et seq., or other authority, at Tracy's own cost. WSID shall cooperate therewith.

THE WEST SIDE IRRIGATION  
DISTRICT, a political subdivision of the State of  
California

Date: 1-20-14

By Jack Alvarez  
Jack Alvarez, President

ATTEST:

APPROVED AS TO FORM:

Caryl Peltz  
Secretary

VCSD sign  
Counsel for The West Side Irrigation District

Date: 1/21/14

CITY OF TRACY, a California municipal corporation

Date: 1/7/14

By Brent H. Ives  
Brent H. Ives, Mayor

ATTEST:

APPROVED AS TO FORM:

Sandra Edwards  
City Clerk

David S. Odeger  
City Attorney of the City of Tracy

Date: 12/30/13

RESOLUTION

AUTHORIZING EXECUTION OF AGREEMENT FOR ADDITIONAL ASSIGNMENT BETWEEN THE WEST SIDE IRRIGATION DISTRICT AND THE CITY OF TRACY FOR 2,500 ACRE-FEET OF CENTRAL VALLEY PROJECT WATER SUPPLY FOR \$2.5 MILLION

WHEREAS, The West Side Irrigation District (WSID) and the City of Tracy (City) entered into an agreement in 2001, for the City to purchase the contract right to 5,000 acre-feet of WSID's Central Valley Project (CVP) water entitlement, and;

WHEREAS, an Agreement for Assignment of Portion of Water Service Contract was entered into with the City in 2004, providing immediate contract right of 2,500 acre-feet of WSID's CVP water entitlement while optioning the remaining 2,500 acre-feet until February 2014, and;

WHEREAS, the City authorized exercise of the option to purchase the additional contract right of 2,500 acre-feet on December 3, 2013, and;

WHEREAS, it is in the best interest of the District to execute the agreement to assign the contract right of 2,500 acre-feet of its CVP water entitlement to the City, and;

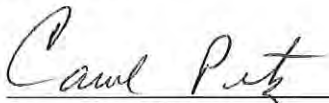
NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors that Board President Jack Alvarez, and the Secretary of the Board of Directors are hereby authorized and directed to execute on behalf of the District the above mentioned Agreement for Additional Assignment of Entitlement to CVP Water between The City of Tracy and The West Side Irrigation District.

PASSED AND ADOPTED THIS 11th day of December 2013 by unanimous vote of the Board of Directors of The West Side Irrigation District.



Jack Alvarez, President  
The West Side Irrigation District

ATTEST:



Carol Petz, Secretary  
The West Side Irrigation District

RESOLUTION 2013-186

AUTHORIZING EXERCISE OF OPTION TO PURCHASE FROM THE WEST SIDE IRRIGATION DISTRICT THE CONTRACT RIGHT TO 2,500 ACRE-FEET OF CENTRAL VALLEY PROJECT WATER SUPPLY FOR \$2.5 MILLION AND AUTHORIZING THE MAYOR TO EXECUTE THE ASSIGNMENT AGREEMENT

WHEREAS, The West Side Irrigation District (WSID) and the City entered into an agreement in 2001, for the City to purchase the contract right to 5,000 acre-feet of WSID's Central Valley Project (CVP) water entitlement, and

WHEREAS, It is appropriate to execute the option agreement at this time so that the option will not be lost, the water supply will be available to the City's US Bureau of Reclamation renewed contracts, and

WHEREAS, The City has planned for this variability in annual water supply by banking water in the Semitropic Water Storage District and in the City's Aquifer Storage and Recovery program, and

WHEREAS, Acquisition of this water supply has been planned for and incorporated into the City's Urban Water Management Plan;

NOW, THEREFORE, BE IT RESOLVED, That the City Council, authorizes exercise of option to purchase from the West Side Irrigation District the contract right to 2,500 acre-feet of Central Valley Project Water Supply for \$2.5 million and authorizes the Mayor to execute the Assignment Agreement.

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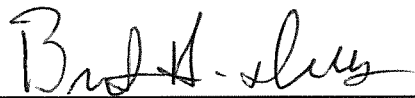
The foregoing Resolution 2013-186 was passed and adopted by the Tracy City Council on the 3rd day of December, 2013, by the following vote:

AYES: COUNCIL MEMBERS: MACIEL, MANNE, RICKMAN, YOUNG, IVES

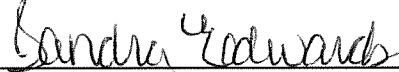
NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

Agreement Between City of Tracy and Plain View Water District (PVWD)  
for Central Valley Project (CVP) Supplies  
for Patterson Pass Business Park  
(September 1991)



*Safeway  
P. H. H. H.  
10/20/00*

WATER SUPPLY AND  
SEWAGE SERVICES AGREEMENT

This Water Supply and Sewage Services Agreement (this "Agreement") is made and entered into effective as of the full execution of this Agreement (the "Effective Date"), as evidenced by the latest date set forth next to the signatures below, by and among King & Lyons - Tracy Industrial, a California limited partnership ("K&L") (on behalf of itself and as agent for its affiliates, Tracy Industrial Partners and Bay Cities Truck Stop), Safeway Inc., a Delaware corporation ("Safeway") and the City of Tracy (the "City").

RECITALS

This Agreement is entered into on the basis of the following facts and mutual understandings:

A. K&L and Safeway are the owners of, or hold the right to purchase, that certain unimproved parcel of real property (the "Property") comprised of approximately six (6) acres and located on West Valpico Road, Tracy, California, as more particularly described on Exhibit A attached hereto. The Property was a part of an approximately twenty (20) acre parcel (the "Parcel") which is improved with an industrial facility. Three hundred ninety thousand (390,000) gallons per day of sewage discharge rights were allocated to and reserved for the benefit of the owners of the Parcel. K&L and Safeway hold the Property for investment or development in accordance with the industrial zoning applicable to the Property. In connection with the acquisition of the Property, K&L and Safeway have acquired or shall acquire from the seller of the Property ownership of certain sewage discharge rights (the "Discharge Rights") which consist of the right to discharge three hundred nineteen thousand (319,000) gallons of wastewater per day into the City's municipal sewage treatment system with a maximum waste strength equal to three thousand sixty-seven (3,067) lbs./day of total suspended solids and three thousand one hundred eight (3,108) lbs./day of Biochemical Oxygen Demand<sub>5</sub>. The Discharge Rights shall be allocated to and reserved for the benefit of the owners of the Property by recordation of the instrument described in Paragraph 1(a) below and shall be subject to the terms and conditions of this Agreement.

B. K&L and Safeway desire to use the Discharge Rights and to obtain from the City water treatment and delivery services for the Property and the Assignment Property (as defined in Paragraph 2(b) below). The City desires to provide such services on the terms and conditions set forth in this Agreement.

C. The City's wastewater treatment plant (the "Plant") currently has a full capacity of approximately nine million (9,000,000) gallons per day. All of such capacity is currently either utilized or allocated to and reserved for the benefit of various parties and properties in accordance with the City's applicable ordinances and procedures. The Discharge Rights purchased from a private party by K&L and Safeway and allocated to the Property as described above are a portion of such reserved capacity.

D. Despite the fact that the full capacity of the Plant is either utilized or allocated to approved projects or property within the City limits, the City intends to permit K&L and Safeway to reserve the use of the Discharge Rights in accordance with the terms of this Agreement. The City acknowledges such use may be for the benefit of the owners and users of the Assignment Property, which property is located outside of the current City limits. At the time of execution of this Agreement, the parties contemplate that the City may annex the Assignment Property and have, accordingly, entered into that certain Agreement to Annex to the City of Tracy (the "Annexation Agreement") on or about the Effective Date of this Agreement. In connection with the transfer of ownership and control of the Discharge Rights from a private third party to K&L and Safeway, the City has determined to permit the reservation and use of the Discharge Rights for the benefit of the owners and users of the Property and the Assignment Property, despite the limitations upon the capacity of the Plant and possible detriment to residents of the City, because the City has found the development projects proposed by K&L and Safeway for such properties: (1) shall be in the best interests of the City and its residents, (2) promote the growth and diversity of the City's economy, (3) create employment opportunities for the residents of the City, (4) assist in addressing the jobs/housing imbalance existing in the City and its environs, and (5) assist in attaining air quality goals by developing employment opportunities in close proximity to residential areas of the City.

#### AGREEMENT

NOW, THEREFORE, K&L, Safeway and the City hereby agree as follows:

1. Consent to Transfer; Confirmation of Capacity; Required Payments.

(a) Consent; Acquisition and Transfer Procedures. The City hereby consents to the allocation of the Discharge Rights by Navarra Properties, a California general partnership, to the Property in accordance with the terms of an agreement by and among Navarra Properties, K&L and Safeway. K&L and Safeway represent to the City that the terms of such agreement are not



inconsistent or in conflict with the terms of this Agreement. In connection with K&L and Safeway's acquisition from Navarra Properties of the Discharge Rights and the Property, the City, K&L and Safeway agree that: (i) a minor subdivision or lot split must be effected in accordance with the City's applicable ordinances and procedures to create the Property as a separate legal parcel; (ii) an instrument in a form reasonably satisfactory to the City shall be recorded against the title to the Property and the retained portion of the Parcel in connection with such subdivision or lot split which sets forth: (A) a specific description of the amount and characteristics of sewage discharge rights retained by Navarra Properties for the benefit of the owners and users of that portion of the Parcel reserved by Navarra Properties, (B) a specific description of the Discharge Rights allocated to and reserved for the benefit of the owners and users of the Property and subject to the assignment provisions hereof, (C) provisions by which the holder of any mortgage or deed of trust encumbering the Parcel consents to the partition of the Parcel and the allocation of discharge rights set forth in such instrument, (D) provisions by which the owners of the retained portion of the Parcel and the Property (and their successors in interest) defend, release and hold the City and its elected officials, officers, agents and employees harmless from any liability or damage arising from or related to the allocation of the discharge rights between the retained portion of the Parcel and the Property which may be asserted by any future owner of the retained portion of the Parcel or the Property, and (E) the allocation of the discharge rights capital charge due the City from the owners of the Property and the retained portion of the Parcel; and (iii) the Discharge Rights' characteristics of waste strength (total suspended solids and Biochemical Oxygen Demand<sub>5</sub>) shall not be separately assigned or transferred by K&L or Safeway except on a pro rata basis in connection with an assignment or transfer in accordance with the provisions of this Agreement of all or a portion the right to discharge up to three hundred nineteen thousand (319,000) gallons of wastewater per day into the City's municipal sewage treatment system. Notwithstanding the above, K&L and Safeway (or their successors and assigns of the Property or the Assignment Property) may separately transfer and assign disproportionate characteristics of waste strength (i.e., the right to discharge a higher volume of total suspended solids or place a greater maximum Biochemical Oxygen Demand<sub>5</sub> per gallon of wastewater on an average basis) only to an owner or user of all or a portion of the Property or the Assignment Property.

(b) Confirmation; Payment. The City acknowledges and confirms that the Discharge Rights are of the quantity and include the characteristics of waste strength described in Recital A above. K&L shall pay a capital charge equal to One Thousand Seven Hundred Ninety-Eight Dollars (\$1,798) per month and Safeway shall pay a capital charge equal to Six Hundred

Ninety Dollars (\$690) per month in order for each party to reserve its right to use the Discharge Rights in accordance with this Agreement, and any default by K&L or Safeway in the payment of monthly fees and charges after performance of the construction and capital improvement funding obligations set forth herein shall not affect the rights of the other under this Agreement. Upon such payment and the performance by K&L and Safeway of their obligations hereunder, the City shall reserve use of the Discharge Rights for the benefit of K&L and Safeway as provided herein.

2. Provision of Sewage Services.

(a) Service. The City shall accept wastewater and provide treatment and disposal services (the "Sewage Services"), up to the full amount and strength of the Discharge Rights, to K&L and Safeway, and their assignees and successors in interest to the Property and the Assignment Property. Notwithstanding the above, nothing in this Agreement shall require the City to accept wastewater prior to K&L and Safeway's performance of their construction and capital improvement funding obligations set forth in this Agreement or to accept wastewater with characteristics or qualities which do not meet wastewater standards of general application established by any local, regional, state or federal agency with jurisdiction. The Sewage Services for the Assignment Property shall be provided by the City via the Corral Hollow Line (as defined in Paragraph 3 below), subject to the limitations imposed by the capacity of such line as constructed by K&L and Safeway or the amount of Discharge Rights held by K&L and Safeway, whichever is less. In the event that: (i) the City constructs and operates the Hansen Line (as defined in Paragraph 4 below), the Sewage Services for the Assignment Property shall be provided via the Hansen Line, or (ii) the City does not construct the Hansen Line, and the capacity of the main sewer trunk line to which the Corral Hollow Line shall be connected is required by the owners or users of properties for which such main sewer trunk line was originally designed and installed, then the City shall provide the Sewage Services for the Assignment Property via an alternative means (the "Alternative Means"), the location and specifications of which have not been finalized as of the Effective Date. The City, K&L and Safeway agree that the following conditions shall apply in the event the City provides Sewage Services via the Alternative Means: (A) the City shall design and construct the Alternative Means, (B) there shall be no interruption in the provision of Sewage Services by the City as a result of the transition to the Alternative Means, and (C) K&L and Safeway shall contribute all of the costs to design and construct the Alternative Means, provided that such contribution shall in no event exceed Four Million Dollars (\$4,000,000) less the Credit (as such term is defined in Paragraph 4(c) below). In the event the Alternative Means become necessary at such time as the

letters of credit delivered by K&L and Safeway pursuant to Paragraph 4(d) below are still held by the City, the City shall draw against such letters of credit to fund construction of the Alternative Means and such draws shall be made in accordance with the provisions of Paragraph 4(d). The City acknowledges and agrees that the maximum contribution required of K&L and Safeway with respect to the design and construction of the Alternative Means and/or the Hansen Line (whether drawn from the letters of credit or paid by K&L or Safeway) shall be an aggregate amount equal to Four Million Dollars (\$4,000,000) less the Credit.

(b) Assignment and Assignment Property. The parties acknowledge and agree that K&L owns seventy-two and twenty-six hundredths percent (72.26%) (the "K&L Percentage") of the Discharge Rights and that Safeway owns twenty-seven and seventy-four hundredths percent (27.74%) (the "Safeway Percentage") of the Discharge Rights, and that the Discharge Rights are held by K&L and Safeway in connection with the contemplated development of the Property. Subject to retention for the benefit of the Property of a minimum wastewater disposal capacity as required by the applicable City ordinance in effect at the time of assignment, which the parties acknowledge and agree is currently an amount equal to one thousand three hundred seventy-five (1,375) gallons per day per acre, either K&L or Safeway may assign all or a portion of its interest in the Discharge Rights to the owners or users of (or the successors in interest of either K&L or Safeway to) the Property or the Assignment Property. Such assignment shall be completed by delivery of written notice to the City by the current holder of a portion of the Discharge Rights identifying the transferee of the interest (who shall be an owner or user of the Property or the Assignment Property) and setting forth: (i) the exact number of gallons per day of wastewater disposal capacity and related characteristics of waste strength so assigned, (ii) the portion of the obligation to pay the Discharge Rights capital charge delegated to such assignee, and (iii) the written assumption by such assignee of its obligations to pay its pro rata share of capital charges, connection fees, sewage use fees and similar charges of general application. In the event such assignment is to a purchaser of a fee interest in a portion of the Property or the Assignment Property, such instrument shall be in recordable form and shall be recorded upon transfer of title to such assignee. No assignment by a party which is in default of its obligation under this Agreement shall be permitted. The Assignment Property consists of approximately three hundred seventy-eight (378) acres and is owned by K&L (or its affiliates) and Safeway, and is more particularly described on Exhibit B attached hereto.

(c) Payment of Costs. K&L and Safeway (or their successors or assigns) shall each pay for the Sewage Services provided to such parties by the City in accordance with the

City's standard charges and procedures applicable to properties of similar use then in effect.

3. Corral Hollow Line.

(a) Construction. The Sewage Services shall be provided by the City to the Assignment Property via the sewer line (the "Corral Hollow Line") to be constructed by K&L and Safeway at their cost in the location set forth on Exhibit C attached hereto. K&L and Safeway shall construct the Corral Hollow Line in accordance with plans and specifications therefor approved by the City, which are set forth on Exhibit D attached hereto. K&L and Safeway shall be responsible for obtaining all necessary permits and approvals required to construct the Corral Hollow Line. K&L and Safeway shall pay all fees and charges related to the construction of such line as though it was located within the City. The City shall cooperate with K&L and Safeway in order to permit such parties to complete construction of the Corral Hollow Line on or before December 31, 1991.

(b) Ownership and Operation. Upon completion satisfactory to the City of the Corral Hollow Line, K&L and Safeway shall dedicate the Corral Hollow Line to the City, and the City shall accept and thereafter fully own, operate and maintain the Corral Hollow Line, provided, however, that prior to such acceptance the City shall receive an easement, license agreement or similar interest from the County of San Joaquin, on terms reasonably acceptable to the City, evidencing the City's ownership of the Corral Hollow Line, and its right to maintain, repair and reconstruct the same, notwithstanding that such line is installed in the County's right of way. Delivery of such documentation shall be deemed a construction obligation of K&L and Safeway for the purposes of this Agreement.

(c) City Processing. The City shall promptly process all City approvals and permits which are required in connection with the construction of the Corral Hollow Line, including, but not limited to, processing required to comply with the California Environmental Quality Act ("CEQA"). K&L and Safeway shall pay all fees and costs required in connection with the City's processing under CEQA and required under the City's ordinances and procedures of general application as the same are applicable to CEQA processing.

4. Hansen Line.

(a) Construction. The parties acknowledge that the City intends, but shall not be obligated, to construct an alternative sewer line (the "Hansen Line") to provide Sewage Services to the Assignment Property and certain other properties to be designated by the City. The Hansen Line shall be constructed, if at all, approximately in the location set forth

on Exhibit C attached hereto. In the event that the City constructs and operates the Hansen Line, the City shall thereafter provide Sewage Services to the Assignment Property via the Hansen Line, without interruption of Sewage Services in connection with such transition. The Hansen Line shall be constructed by the City, subject to the funding obligations of K&L and Safeway set forth below. Upon completion satisfactory to the City of the Corral Hollow Line, but prior to acceptance thereof, K&L and Safeway shall deliver to the City an easement, license agreement or similar interest from the County of San Joaquin, on terms reasonably acceptable to the City, which shall permit construction of the Hansen Line as described herein and acknowledge and agree to the subsequent ownership, control, maintenance and repair of the Hansen Line by the City, notwithstanding that the Hansen Line shall be installed in the County's right of way.

(b) Costs, Allocation. The actual cost to construct the Hansen Line and those portions of such cost which are properly allocable to: (i) the owners of the properties subject to the I-205 Corridor Specific Plan dated February, 1991, which are located to the west of Corral Hollow Road (the "I-205 Project"), (ii) K&L, and (iii) Safeway, shall be reasonably determined upon completion of the Hansen Line by the City's Director of Public Works after consultation with the parties hereto.

(c) K&L and Safeway Contribution. K&L shall contribute the K&L Percentage and Safeway shall contribute the Safeway Percentage of the K&L/Safeway Share (as defined below) of the fees, charges and costs to construct the Hansen Line. City fees and charges will be paid as though the Hansen Line was located within the City. K&L and Safeway's contribution shall be effected by delivery of letters of credit as described in and in accordance with the terms of Paragraph 4(d) below. The K&L/Safeway Share of all fees, charges and costs applicable to the Hansen Line shall be Four Million Dollars (\$4,000,000) less a credit (the "Credit") in an amount equal to: (i) the actual costs incurred by K&L and Safeway to design and construct that portion of the Hansen Line to be located in Schulte Road, which portion shall be installed by K&L and Safeway, provided that the credit for such costs shall not exceed Nine Hundred Thousand Dollars (\$900,000), plus (ii) Four Hundred Thousand Dollars (\$400,000), which sum K&L and Safeway shall pay to the City within five (5) business days of the Effective Date to fund engineering and design work for the Hansen Line. The amount of the Credit for the portion of the Hansen Line to be installed in Schulte Road shall be reasonably determined by the City's Director of Public Works after completion thereof and in consultation with the parties. After the City has collected the necessary funds to construct the Hansen Line from K&L, Safeway and the owners of the I-205 Project, the City shall thereafter withdraw such funds to

perform such construction on a pro rata basis in proportion to each party's percentage contribution. If the Hansen Line is not built, K&L and Safeway shall not be entitled to any refund of the Four Hundred Thousand Dollars (\$400,000) advanced to the City for design of the Hansen Line, except to the extent any balance of such amount is held by the City following completion of the Hansen Line or the Alternative Means, or abandonment of construction thereof.

(d) Security. In fulfillment of the obligation to contribute their respective percentages of the K&L/Safeway Share as set forth in Paragraph 4(c) above, K&L and Safeway shall each deliver a letter of credit substantially in the form attached hereto as Exhibit E for the benefit of the City to secure each such party's payment of its percentage of the K&L/Safeway Share less the Credit. Such letters of credit shall be in a form acceptable to the City and shall be delivered on or before the date (the "Delivery Date") that K&L or Safeway first receives Sewage Services through the Corral Hollow Line. Such letters of credit shall be maintained or renewed by K&L and Safeway for a period of seven (7) years from the Delivery Date. All draws against the letters of credit shall be made pro rata against both letters of credit in amounts corresponding to the K&L Percentage and the Safeway Percentage. The City shall draw upon the letters of credit only if: (i) K&L and/or Safeway have failed, within fifteen (15) days of the City's written request therefor, to deposit with the City funds in the amount of their respective percentages of the K&L/Safeway Share less the Credit, and (ii) the City intends to award the contract for construction of the Hansen Line (or the Alternative Means) within fifteen (15) days of such draw. In the event the contract for construction of the Hansen Line (or the Alternative Means) is not awarded within thirty (30) days of any draw on the letters of credit, all funds drawn against the letters of credit shall be refunded to K&L and Safeway at such time as the letters of credit are reinstated by K&L or Safeway, provided, however, that either K&L or Safeway shall at any time have the option to place its respective contribution in an account in the name of the City with interest accruing for the benefit of K&L or Safeway, as the case may be. The immediately preceding provisions shall not apply to a draw resulting from failure to renew or extend a letter of credit in accordance with the requirements of this Agreement, in which case the latest date which the City shall be entitled to hold any funds so drawn without commencing construction of the Hansen Line or the Alternative Means shall be the date (the "Outside Date") which is seven (7) years from delivery of the letters of credit. The City shall promptly refund to K&L and Safeway the remaining balance of the amounts drawn against the letters of credit or placed in the account(s) described above, if any, upon the earlier of the completion of the Hansen Line or the Outside Date (unless the City is constructing the Hansen Line or the Alternative Means on such date, in which case the City may retain

funds until completion of such construction and refund any remaining balance upon such completion).

(e) Reimbursement. Upon completion and acceptance of the Hansen Line and annexation of the Assignment Property, the City shall initiate and conclude appropriate proceedings for the formation of a benefit district in accordance with applicable law in order to reimburse K&L and Safeway for that portion of the K&L/Safeway Share which exceeds the share of such costs payable by K&L and Safeway based upon their pro rata use of the Hansen Line. The parties acknowledge and agree that, unless there is an increase in the Discharge Rights allocated to the Assignment Property above the amount contemplated at the Effective Date, the share of the costs of the Hansen Line which should be ultimately borne by K&L and Safeway based upon their use of the Hansen Line is set forth on Exhibit D attached hereto. The engineering estimate of the costs to construct the Hansen Line is also set forth on Exhibit D. No increase in the estimated or actual cost to construct the Hansen Line over such amount, however, shall have any effect upon the parties' rights and obligations set forth herein. In the event that the City determines to provide any Sewage Services through the Hansen Line or the Alternative Means to owners of property which is not located within the City limits, the City, in lieu of establishing a benefit district in order to effect reimbursement to K&L and Safeway, shall charge a sewer connection fee to such user and reimburse K&L and Safeway a portion of the K&L/Safeway Share based on the share of such user's projected use of Sewage Services via the Hansen Line or the Alternative Means in proportion to the capacity of the Hansen Line as set forth on Exhibit D or of the Alternative Means. All funds available for reimbursement in connection with the Hansen Line or the Alternative Means shall be paid to K&L and Safeway in amounts corresponding to the K&L Percentage and the Safeway Percentage, respectively, at such time as the City receives such funds.

#### 5. Water Supply Services.

(a) Provision of Services. Subject to supply limitations of the Central Valley Water Project, K&L and Safeway may be entitled to receive from the Plain View Water District (the "District") a water supply allocation for the benefit of the Assignment Property. K&L and Safeway must apply to the District for delivery of all or a portion of each party's maximum allocation by March 1 and July 1 of each fiscal year of the District. K&L and Safeway (and their successors and assigns) shall: (i) advise the City of the amount of water (collectively, the "Developer's Water") which such parties have requested and are entitled to receive from the District promptly following application for such amount to the District, and (ii) provide the City with the District's verification of such amount in a form reasonably acceptable to the City. The City shall thereafter, to

the extent that the Developer's Water is available and is delivered to the City's turnout on the Delta-Mendota Canal, or such other point of diversion which may be agreed to by the parties hereto, treat such water at its water treatment plant and deliver such water to the Assignment Property via the water service line (the "Water Service Line") up to a maximum daily average of one million five hundred twenty thousand two hundred fifty-nine (1,520,259) gallons per day, provided that the Water Service Line constructed by K&L and Safeway has the capacity to serve such flow. The City, K&L and Safeway shall cooperate in good faith to establish mutually agreeable accounting and billing procedures with respect to the Developer's Water, which procedures shall be subject to the approval of the Bureau of Reclamation and the District. Subject only to the provisions of Paragraph 5(e) below and notwithstanding anything else in this Agreement to the contrary, the City shall be obligated to treat and deliver only that amount of water which K&L and Safeway (and their successors and assigns) receive from the District and deliver to the City's turnout up to the maximum daily average amount set forth above. The City shall not, however, restrict or limit the amount of said water treated and delivered to and for the benefit of the Assignment Property on any basis other than a supply restriction imposed by a third party other than the City. The Water Service Line shall be constructed by K&L and Safeway, at their cost, in the location set forth on Exhibit C attached hereto and in accordance with plans and specifications therefor approved by the City, which are set forth on Exhibit D attached hereto. K&L and Safeway shall be responsible for obtaining all necessary permits and approvals required to construct the Water Service Line and the City shall promptly process all City approvals and permits which are required in connection with such construction. K&L and Safeway shall reimburse the City for costs, fees and charges incurred in connection with the construction of the Water Service Line on the same basis and to the same extent set forth in Paragraphs 3(a) and 3(c) above for reimbursement to the City of such costs, fees and charges incurred in connection with City processing and construction of the Corral Hollow Line. The City shall cooperate with K&L and Safeway in order to permit such parties to complete construction of the Water Service Line on or before December 31, 1991. Upon completion satisfactory to the City of the Water Service Line, K&L and Safeway shall dedicate the Water Service Line to the City, and the City shall accept and thereafter fully own, operate and maintain the Water Service Line provided, however, that prior to such acceptance the City shall receive an interest from the County of San Joaquin evidencing the City's ownership of the Water Service Line on the terms and conditions applicable to the similar interest described in Paragraph 3(b) above in connection with the Corral Hollow Line.

(b) Restrictions on Use and Amount. The parties acknowledge that K&L and Safeway's respective contracts with the



District restrict delivery and use of the Developer's Water to locations within the boundaries of the District. Further, the amount of Developer's Water cannot exceed the maximum allocation to K&L and Safeway under each party's contract with the District. The City covenants and agrees that no action by the City shall violate such restrictions.

(c) Reimbursement. Upon completion and acceptance of the Water Service Line and annexation of the Assignment Property, the City shall initiate and conclude proceedings in accordance with applicable law to form a benefit district for the purpose of reimbursing K&L and Safeway for the share of the costs of constructing the Water Service Line borne by such parties in excess of the share of such costs determined by such parties' collective use of the Water Service Line. The parties agree that the share of the costs of constructing the Water Service Line which shall ultimately be borne by K&L, Safeway and the owners of the I-205 Project shall be reasonably determined by the City's Director of Public Works after consultation with the parties, and that K&L and Safeway's use of the Water Service Line shall include the capacity reserved in the Water Service Line to meet K&L and Safeway's required fire fighting flow and pressure capacity. Notwithstanding anything to the contrary set forth herein, the City shall reimburse K&L and Safeway for the share of the costs of designing and constructing the Water Service Line allocated to the I-205 Project, which shall be determined by the City's Director of Public Works as set forth above, from the proceeds of the assessment bonds issued to pay such costs by or on behalf of the I-205 Project as soon as such funds are available to the City. In the event that the City determines to provide water treatment and supply services through the Water Service Line to owners of property which is not located within the City limits, the City, in lieu of establishing a benefit district to effect reimbursement to K&L and Safeway, shall charge a water service connection fee to such user and reimburse K&L and Safeway a portion of the costs of designing and constructing the Water Service Line based on the proportionate share of such new user's projected use of water treatment and supply services via the Water Service Line in proportion to the capacity of the Water Service Line set forth on Exhibit D attached hereto. All funds available for reimbursement in connection with the Water Service Line shall be paid forty-one and twenty-nine hundredths percent (41.29%) to K&L and fifty-eight and seventy-one hundredths percent (58.71%) to Safeway at such time as the City receives such funds.

(d) No Detachment. The City shall not, except upon an application of K&L or Safeway (or their successors and assigns) for such action which is approved by the City, take or support any action to detach any portion of the Assignment Property from the Plain View Water District or any successor thereto.

(e) Emergency Supply. In the event of any scheduled or unscheduled maintenance of the Delta-Mendota Canal, or any natural disaster, vandalism or other action or event which causes a complete interruption in water supply delivery services through the Delta-Mendota Canal (collectively an "Emergency"), the City shall, subject to the conditions set forth below, provide a water supply to and for the benefit of the owners and users of the Assignment Property from the City's alternative sources of water supply. The City's agreement to provide a water supply to the Assignment Property in the event of an Emergency shall be subject to the following conditions: (i) such supply shall be furnished to the Assignment Property for a maximum period of ninety (90) days, (ii) following such Emergency and resumption of water supply deliveries through the Delta Mendota Canal, K&L and Safeway (or their successors and assigns) shall promptly deliver to the City the amount of water supplied to the Assignment Property during the interruption of services resulting from the Emergency, (iii) water supply restrictions and mandatory rationing provisions shall not be in effect in the City at the time of the Emergency which cause the City to reasonably determine that delivery of a water supply to the Assignment Property would be detrimental to the health, safety and welfare of the citizens of the City, and, (iv) K&L and Safeway (and their successors and assigns) shall pay all costs incurred by the City in connection with delivery of the emergency water supply described above.

6. Specifications. The parties have agreed upon certain plans and specifications applicable to the construction of the Corral Hollow Line, the Schulte Road portion of the Hansen Line and the Water Service Line. Such plans and specifications are set forth on Exhibit D attached hereto.

7. Additional Developer Covenants.

(a) In-Lieu Fees. In consideration of the City's execution of this Agreement and the continuing supply of water and sewer services as provided herein, K&L shall annually pay an amount equal to Forty-One Thousand Two Hundred Ninety Dollars (\$41,290) and Safeway shall annually pay an amount equal to Fifty-Eight Thousand Seven Hundred Ten Dollars (\$58,710) to the City, as a payment in lieu of taxes for City services provided to the Assignment Property. Such amount shall be adjusted annually on the anniversary of the Effective Date of this Agreement to reflect the percentage change in the Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose (1982-84 = 100) published by the United States Department of Labor or the replacement thereof. Upon issuance of a building permit for a project located on that portion of the Assignment Property to the west of Patterson Pass Road, the K&L portion of such fee shall be increased by Twenty Five Thousand Dollars (\$25,000), with such increased fee also subject to the annual adjustment set forth

above after the first year or portion thereof. Equal quarterly payments of such in-lieu fees shall commence upon the full execution of this Agreement and shall terminate upon the annexation of the Assignment Property to the City.

(b) Urban Management Plan Participation. K&L and Safeway shall participate in the City's urban growth management plan process. Within five (5) days of the Effective Date of this Agreement, K&L shall contribute an amount equal to Fifty-One Thousand Nine Hundred Eighty-One Dollars (\$51,981) and Safeway shall contribute an amount equal to Seven Thousand Nine Hundred Thirty Dollars (\$7,930) to such project.

8. Reservation of Future Capacity.

(a) Additional Discharge Rights. In the event K&L and/or Safeway acquire additional rights to discharge wastewater into the City's municipal sewage treatment system from any source, and capacity to serve such additional amount is available in any of the Corral Hollow Line, the Hansen Line or the Alternative Means, the City shall provide Sewage Services for such additional capacity on the same terms as are generally applicable to other similar users of the system. Provision of such services shall be limited to and for the benefit of the Property or the Assignment Property only and shall require K&L and/or Safeway (and/or their successors and assigns) to pay all connection fees, capital charges and perform other similar obligations of general application in effect at such time.

(b) General Application. Upon any expansion of the Plant by the City, K&L and/or Safeway shall be entitled to apply for additional rights to discharge wastewater from the Property or the Assignment Property into the City's municipal sewage treatment system on the same basis and on the same terms and conditions as are applicable to all other applicants for such additional discharge rights.

9. Obligations are Separate. After K&L and Safeway's performance of their construction and capital improvement funding obligations set forth in this Agreement, the City agrees that unless K&L or Safeway (or their successors and assigns) are in default of their respective obligations under this Agreement, each such party shall be entitled to all the rights and benefits set forth herein. Any default by either K&L or Safeway (or their successors and assigns) shall have no impact or effect upon the rights and benefits of the other parties, so long as such other parties fully perform their obligations under this Agreement.

10. Effect of Legal Challenge. In the event any legal action is brought or threatened by any third party in connection with the services or projects contemplated by this Agreement before the date (the "Initial Service Date") on which sewer and

water services are ready for use and available to the Assignment Property, the City, K&L and Safeway shall each have the right to terminate each such party's obligations under this Agreement upon written notice to the other parties of such termination, which notice shall be effective upon delivery. In the event the City exercises such right, such termination may be avoided by K&L or Safeway provided the party(ies) seeking to keep this Agreement in full force and effect shall indemnify, defend and hold the City harmless from any and all liabilities which may arise in connection with such legal challenge. In the event of a termination under this Paragraph 10, all funds or instruments delivered by the terminating party or parties which the City possesses at such time shall be promptly refunded or returned, and such terminating party or parties shall have no further rights or obligations hereunder. Unless the termination rights described in this Paragraph 10 have been exercised by a party prior to the Initial Service Date, the provisions of this Paragraph 10 shall automatically terminate and be of no further force or effect from and after the Initial Service Date.

11. Miscellaneous.

(a) Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

(b) Entire Agreement. This Agreement and the Annexation Agreement set forth the entire agreement of the parties with respect to the subject matter hereof, and supersede any prior or contemporaneous oral agreements or representations. This Agreement may not be amended except in a writing signed by the parties hereto. The terms and conditions of this Agreement and the Annexation Agreement are interdependent and the valid execution and delivery of each agreement is conditioned upon the execution and delivery of the other.

(c) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument binding upon the parties.

(d) Attorneys' Fees. In the event any action or proceeding is brought to interpret or enforce any of the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs incurred in connection therewith, including reasonable attorneys' and expert witness fees.

(e) Exhibits. All exhibits attached hereto are incorporated into this Agreement by this reference as if set forth herein in full.

(f) Further Assurances; Covenant to Sign Documents. Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgement or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

(g) Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstances and the same shall remain in full force and effect.

(h) Excuse. It is agreed that the time for City's performance of the terms of this Agreement may be delayed, without liability therefor, as a result of acts of God, other natural conditions which delay the performance, strikes, boycotts or similar obstructive action by employees or employee organizations, or other events beyond the reasonable control of the City. Notwithstanding the above, the periods during which K&L and Safeway must maintain the letters of credit or the City may retain the proceeds thereof set forth in Paragraph 4(d) above shall not be extended by the provisions of this Paragraph 11(h).

(i) Term. This Agreement shall terminate upon the earlier of: (A) the date of annexation of the Assignment

Property to the City, or (B) the expiration of the maximum term provided by law for agreements of this nature.

IN WITNESS WHEREOF, K&L, Safeway and the City have executed this Agreement to indicate their intent to be bound by the provisions set forth herein.

K&L

King & Lyons - Tracy  
Industrial, a California  
limited partnership

By: *Irving F. Lyons, III*  
Irving F. Lyons, III  
General Partner

8/20/91  
Date

Safeway

Safeway Inc., a Delaware  
corporation

By: *Gary D. Scott*  
Its: Assistant Vice President

By: *[Signature]*  
Its: Assistant Secretary

City

City of Tracy

By: *Clare D. Ward*  
Its: Mayor

9/5/91  
Date



September 19, 1991  
Date

## WATER DELIVERY AND BILLING AGREEMENT

This Water Delivery and Billing Agreement (this "Agreement") is made and entered into effective as of the 19<sup>th</sup> day of November, 1991, by and among King & Lyons - Tracy Industrial, a California limited partnership (on behalf of itself and as agent for its affiliates, Tracy Industrial Partners and Bay Cities Truck Stop) (collectively "K&L"), Safeway Inc., a Delaware Corporation ("Safeway"), the City of Tracy (the "City") and the Plain View Water District, a California water district (the "District").

### RECITALS

This Agreement is entered into on the basis of the following facts and mutual understandings:

A. K&L and Safeway have each entered into an Agreement Regarding Water Supply with the District dated December 12, 1989 (in the case of K&L) and January 9, 1990 (in the case of Safeway). Such agreements provide for a water supply allocation from the District for the benefit of K&L and Safeway on the terms and conditions set forth therein.

B. K&L, Safeway and the City have entered into that certain Water Supply and Sewage Services Agreement (the "Services Agreement") dated September 19, 1991, by which, among other things, the City agrees to provide water treatment and delivery services for the benefit of certain real property owned by K&L and Safeway located within the District.

C. The parties hereto intend to request that the United States Department of Interior, Bureau of Reclamation (the "Bureau") permit the City to divert the water supply allocation allocated by the District to K&L and Safeway at the City's existing turnout on the Delta-Mendota Canal. The parties further intend that, pursuant to the Services Agreement, the City shall thereafter treat such diverted water at its existing water treatment facility and deliver such water to certain property owned by K&L and Safeway located in the District.

D. The parties desire to set forth herein the terms and conditions on which the diversion, treatment and delivery of the water shall be accounted for and the procedures by which the charges applicable thereto shall be assessed.

## AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Condition Precedent - Consent of Bureau. The effectiveness of this Agreement shall be conditioned upon the written consent of the Bureau to the terms and conditions hereof, including, but not limited to, the Bureau's agreement: (a) that the City's existing turnout on the Delta-Mendota Canal may be an additional point of diversion for the District, and that the City may divert the K&L and Safeway water supply allocation on behalf of the District as provided herein, and (b) not to charge (or to credit) the City for the costs of the amount of the K&L and Safeway water allocation which is diverted by the City, treated and delivered to certain property owned by K&L and Safeway located in the District, the costs of which shall be paid by the District to the Bureau in accordance with the existing payment procedures established under Contract No. 14-06-200-785 between the District and the Bureau.

2. Ordering and Payment Procedures.

(a) Notice and Payment to District. By March 1 and July 1 of each year, or at such other dates as may hereafter be established by the District, K&L and Safeway shall advise the District of the anticipated amount of water which such parties shall require for the applicable period (not to exceed applicable limitations) and shall pay the District for the costs of such water allocation at the then applicable municipal and industrial rates charged by the District for the anticipated amount of required water and the then applicable agricultural rate charged by the District for the balance of the full water allocation. K&L and Safeway shall each advise the designated official of the City of the amount of water each such party anticipates it will divert during the applicable period. The District shall independently confirm such amount to the designated official of the City.

(b) City Delivery and Charges. The City, to the extent that such water is available and is delivered to the City's turnout on the Delta-Mendota Canal, or such other point of diversion which may be agreed to by the parties hereto and consented to by the Bureau, shall, pursuant to the Services Agreement, treat such water at the City's water treatment plant and, subject to any loss in the treatment process, deliver such water to certain property owned by K&L and Safeway located within the District. The amount of water delivered by the City to certain property owned by K&L and Safeway in the District (the "Measured Amount") shall be measured by meters installed at the expense of K&L or Safeway. K&L and Safeway shall install at least one (1) meter for each parcel which is under separate



ownership. The City shall charge its water service fees and rates of general application in effect from time to time with respect to the Measured Amount of water. The City shall deliver separate water bills to each separate owner. Not less than twice each calendar year, the City shall reimburse (or credit) K&L and Safeway for that portion of the City's water service charges which is applicable to the water supply (i.e., no reimbursement or credit shall be required for treatment or delivery services, but only for that portion of the charge applicable to the water supply allocation).

(c) District Charges and Reimbursements. The District shall charge K&L and Safeway the costs established by the District for municipal and industrial water for the Measured Amount of water. The difference between the full water supply allocation available to K&L or Safeway and the Measured Amount of water shall be available to the District for assignment and sale to other water users in the District in accordance with the District's existing policies and procedures. In the event any such excess water is purchased by another water user in the District, K&L and/or Safeway, as the case may be, shall be reimbursed in accordance with the rules of the District regarding such reimbursement, as amended and in effect from time to time.

3. No Representations Regarding Quality or Fitness. K&L, Safeway and the City acknowledge that the District has made no representations or warranties of any kind with regard to the quality or fitness for any particular use of the water to be supplied by the District to the City's turnout on the Delta-Mendota Canal.

4. Restrictions on Use and Amount. The City acknowledges and agrees that the City: (a) has no claim or right to receive any water supply from the District beyond that which K&L and Safeway are entitled to receive under their respective agreements with the District, and (b) shall not deliver or permit the use of any water supply by the District under this Agreement outside the boundaries of the District.

5. No Impact on Existing Agreements. K&L and Safeway acknowledge and agree that the execution and delivery of this Agreement by the parties hereto shall have no impact or effect upon the obligations of K&L and Safeway to: (a) the District under K&L and Safeway's respective agreements with the District, and (b) the City under the Services Agreement.

6. Successors and Assigns. Subject to the limitations and restrictions of the Services Agreement, the terms "K&L" and "Safeway", when used in this Agreement, shall refer to each such party's successors and assigns to the real property owned by such parties and located within the District. The terms of this

Agreement shall be separately implemented by the City and the District with respect to K&L, Safeway and their successors and assigns.

7. Miscellaneous Provisions.

(a) Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

(b) Amendment. This Agreement may not be amended except in a writing signed by the parties hereto.

(c) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument binding upon the parties.

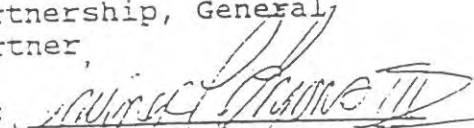
(d) Further Assurances; Covenant to Sign Documents. Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgement or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

IN WITNESS WHEREOF, K&L, Safeway, the City and the District have executed this Agreement to indicate their intent to be bound by the provisions set forth herein.

"K&L"

King & Lyons - Tracy  
Industrial, a California  
limited partnership

By: King & Lyons, a  
California general  
partnership, General  
Partner,

By:   
Irving F. Lyons, III  
General Partner

"Safeway"

Safeway Inc., a Delaware  
corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Agreement shall be separately implemented by the City and the District with respect to K&L, Safeway and their successors and assigns.

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(d) Further Assurances; Covenant to Sign Documents. Each party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgement or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

IN WITNESS WHEREOF, K&L, Safeway, the City and the District have executed this Agreement to indicate their intent to be bound by the provisions set forth herein.

"K&L"

King & Lyons - Tracy  
Industrial, a California  
limited partnership

By: King & Lyons, a  
California general  
partnership, General  
Partner

By: \_\_\_\_\_  
Irving F. Lyons, III  
General Partner

"Safeway"

Safeway Inc., a Delaware  
corporation

By: Gay D. Scott  
Its: Vice President

"City"

City of Tracy

By: Chad Fleming  
Its: \_\_\_\_\_

"District"

Plain View Water District, a  
California water district

By: Sam Jones  
Its: DIRECTOR

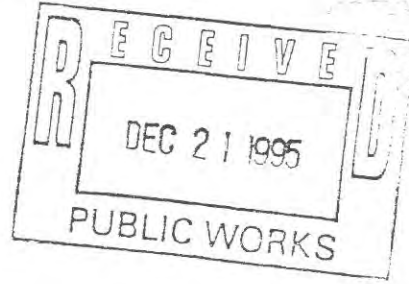
By: Tim Hadden  
Its: SECRETARY

Agreement Between City of Tracy and  
South San Joaquin Irrigation District (SSJID) for Water Supply  
(October 1995)





**SOUTH  
SAN JOAQUIN  
IRRIGATION DISTRICT**



December 13, 1995

Mr. Fred Diaz  
City Manager  
City of Tracy  
325 E. 10th Street  
Tracy, California 95376

*Steve  
Bayley*

Dear Fred:

I am pleased to advise you that the Board of Directors, at its regular meeting held on December 12, 1995, approved execution of the Water Supply Development Agreement dated October 1, 1995 by and between the District and the City of Tracy. Enclosed are two copies of said agreement, one copy is to be retained for your files, please return the other copy executed by the City for the District's files.

Your prompt response will be appreciated.

Sincerely,

Richard Martin  
General Manager

Enclosures

*Handwritten signature*  
EXECUTION COPY

WATER SUPPLY DEVELOPMENT AGREEMENT

Dated as of October 1, 1995

By and Between

SOUTH SAN JOAQUIN IRRIGATION DISTRICT

and

CITY OF TRACY



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WATER SUPPLY DEVELOPMENT AGREEMENT

This Agreement, dated as of October 1, 1995, by and between the South San Joaquin Irrigation District (the "District"), an irrigation district duly organized and existing pursuant to the Irrigation District Act (the "Irrigation District Act"), commencing with California Water Code, Section 20500 and the City of Tracy (the "City"), a municipal corporation created pursuant to the constitution and laws of the State of California.

WITNESSETH:

WHEREAS, the City and certain other water purveyors in San Joaquin County have expressed interest in purchasing treated water from the District (capitalized terms used herein and not otherwise defined shall have the meanings set forth below);

WHEREAS, in order for the City to receive treated water, certain facilities, including the Project, must be constructed;

WHEREAS, by entering into this Agreement, the City intends to preserve its ability to receive treated water from the Project in the future through subsequent construction of project facilities, in addition to those initially constructed, sufficient to serve the City.

WHEREAS, the District and the City now wish to enter into this Agreement to provide for the construction, operation and financing of the Project, for the sale by the District to the City of the City's Project Allotment and certain other matters;

NOW THEREFORE, the parties hereto do agree as follows:

Section 1. Definitions.

The following terms shall, for all purposes of this Agreement have the following meanings:

"Additional Project Participant" means any public district, agency or entity or private water company, other than those entities listed in Part I of Appendix A hereto, which executes a Water Supply Agreement in accordance with Section 18 hereof, together with their respective successors or assigns.

"Bonds" mean all bonds, notes or similar obligations (but not including Contracts) of the City authorized and issued by the City under and pursuant to applicable laws of the State of California after the date of execution of this Agreement, the principal of and interest on which are an operation and maintenance expense of the City Water System determined in accordance with generally accepted accounting principles and which are secured by a pledge or a lien on City Net Water System

Revenues and which are on a parity with the obligations of the City under this Agreement.

"Bond Resolution" means the resolution or resolutions providing for the issuance of District Bonds and the terms thereof.

"City" shall have the meaning assigned thereto in the preamble hereto.

"City Fiscal Year" means the twelve month period commencing on October 1 of each year and ending on the following June 30 or such other twelve month period which may be designated by the City as its fiscal year.

"City Net Water System Revenues" means, for any City Fiscal Year, the City Water System Revenues for such City Fiscal Year less the City Operation and Maintenance Expenses for such City Fiscal Year.

"City Operation and Maintenance Expenses" means the costs spent or incurred by the City for maintaining and operating the City Water System, calculated in accordance with generally accepted accounting principles, including (among other things) the expenses of management and repair and other expenses necessary to maintain and preserve the City Water System, in good repair and working order, and including administrative costs of the City, salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and all other reasonable and necessary costs of the City, but excluding in all cases (i) depreciation, replacement and obsolescence charges or reserves therefor, (ii) amortization of intangibles or other bookkeeping entries of a similar nature, and (iii) charges for the payment of principal and interest on City Prior Debt, Bonds or Contracts.

"City Prior Debt" means notes, bonds or other obligations of the City existing prior to the date of execution hereof, which are identified in Exhibit D hereto and which are payable from City Water System Revenues.

"City Water System" means all properties and assets, real and personal, tangible and intangible, of the City now or hereafter existing, used or pertaining to the acquisition, treatment, reclamation, transmission, distribution and sale of water, including all additions, extensions, expansions, improvements and betterments thereto and equipment relating thereto; provided, however, that to the extent the City is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described water purposes, only the City's ownership interest in such asset or property or only the part of the asset or property so used for

water purposes shall be considered to be part of the City Water System.

"City Water System Revenues" means all income, rents, rates, fees, charges, and other moneys derived by the City from the ownership or operation of City Water System including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing, and supplying of water and other services, facilities, and commodities sold, furnished, or supplied through the facilities of City Water System, including standby and availability charges, capital water facilities fees for design, construction and reconstruction expenses, development fees and other fees allocable to the City Water System, (ii) such taxes or assessments as may be imposed for payment of Fixed Project Costs, Variable O&M Costs or Fixed O&M Costs if the levy thereof and payment hereunder is permitted by law and (iii) the earnings on and income derived from amounts set forth in clauses (i) and (ii) above, and shall not include (y) customers' deposits or any other deposits subject to refund until such deposits have become the property of the City and (z) proceeds of any taxes or assessments except taxes or assessments described in clause (ii) above.

"Contract Payments" means the Fixed Project Costs payable by the City hereunder in any City Fiscal Year and provided that the term Contract Payments shall also include the sum of:

(1) the interest accruing during such City Fiscal Year on all outstanding Bonds, assuming that all outstanding serial Bonds are retired as scheduled and that all outstanding term Bonds are redeemed or paid from sinking fund payments as scheduled (except to the extent that such interest is to be paid from the proceeds of the sale of any Bonds);

(2) that portion of the principal amount of all outstanding serial Bonds maturing during such City Fiscal Year;

(3) that portion of the principal amount of all outstanding term Bonds required to be redeemed or paid during such City Fiscal Year; and

(4) that portion of payments under Contracts (other than under this Agreement) constituting principal and interest required to be made at the times provided in the Contracts.

"Contracts" means this Agreement and all contracts of the City authorized and executed by the City under and pursuant to the applicable laws of the State of California after the date of execution of this Agreement, the payments under which are an operation and maintenance expense of the City Water System

determined in accordance with generally accepted accounting principles and which are secured by a pledge of or lien on the City Net Water System Revenues and which are on a parity with the obligations of the City under this Agreement.

"Debt Service" means, as of the date of calculation and with respect to District Bonds, an amount equal to the sum of (i) interest payable during such District Fiscal Year on District Bonds, except to the extent that such interest is to be paid from capitalized interest and (ii) that portion of principal of District Bonds payable during such District Fiscal Year. Such interest and principal installments for such series shall be calculated on the assumption that no District Bonds outstanding at the date of calculation will cease to be outstanding except by reason of the payment of principal on the due date thereof;

provided further that, as to any such District Bonds bearing or comprising interest at other than a fixed rate, the rate of interest used to calculate Debt Service shall be one hundred ten percent (110%) of the greater of (a) the daily average interest rate on such District Bonds during the twelve (12) calendar months preceding the date of calculation (or the portion of the then current District Fiscal Year that such District Bonds have borne interest) or (b) the most recent effective interest rate on such District Bonds prior to the date of calculation; and

provided further that, as to any such District Bonds or portions thereof bearing no interest but which are sold at a discount and which discount accretes with respect to such District Bonds or portions thereof, such accreted discount shall be treated as interest in the calculation of Debt Service; and

provided further that the amount on deposit in a debt service reserve fund on any date of calculation of Debt Service shall be deducted from the amount of principal due at the final maturity of the District Bonds for which such debt service reserve fund was established and in each preceding District Fiscal Year until such amount is exhausted.

"District Bonds" means bonds, notes or other evidences of indebtedness of the District issued to finance or refinance the Project and includes additional District Bonds to complete the Project.

"District Fiscal Year" means the twelve month period commencing on January 1 of each Year and ending on the following December 31 or such other twelve month period which may be designated by the District as its fiscal year.

"Feasibility Certificate" means a certificate of a consulting engineer to the effect that, based on contracts awarded by the District for construction of the Project and the consulting engineer's estimates of the cost of the portions of

the Project for which contracts have not been awarded, the District has sufficient District Bond proceeds together with estimated proceeds to be derived from any authorized but unissued District Bonds and moneys on deposit with the District and legally available for the Project to complete the Project.

"Fixed O&M Costs" means operation, maintenance, power, replacement and other costs, including Project Operation and Maintenance Expenses and a reasonable reserve for contingencies, in each case incurred by the District with respect to the Project, irrespective of the amount of water delivered to the Project Participants.

"Fixed Project Costs" means capital costs, including Debt Service and reserves for the payment of Debt Service of the Project, incurred by the District in accordance with Sections 13 and 14 hereof.

"Independent Certified Public Accountant" means any firm of certified public accountants appointed by the City, or the District, as the case may be, and each of whom is independent pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

"Operating Committee" means the Operating Committee created in accordance with Section 4 of the Water Supply Agreements.

"Project" means certain facilities necessary to deliver treated water to the Project Participants, including the following: (i) a raw water pipeline from the District's existing raw water system to the Treatment Plant, (ii) the Treatment Plant, and (iii) treated water pipelines from the Treatment Plant to the Project Participants. The District and the City acknowledge that the feasibility of the Project is currently being investigated by the District and that the definition of the Project shall be revised prior to commencement of construction as provided in Section 4 hereof without amendment to this Agreement and that the City may elect to cause certain Project facilities to be sized to include the City's Project Allotment and may elect to cause certain Project facilities to not be sized to include the City's Project Allotment.

"Project Allotment" means 10,000 acre-feet of water per year for Phase I as identified in Exhibit "A" and 53,009 acre-feet of water per year for Phase II unless such Project Allotment for Phase II is reduced in accordance with the Water Supply Agreement.

"Project Milestones" means the events described in Section 4(b) hereof.

"Project Operation and Maintenance Expenses" means the costs spent or incurred by the District for maintaining and operating

the Project, calculated in accordance with generally accepted accounting principles and Section 20 hereof, including (among other things) the expenses of management and repair and other expenses necessary to maintain and preserve the Project, in good repair and working order, and including administrative costs of the District, salaries and wages of employees, payments to the Public Employees Retirement System, overhead, insurance, taxes (if any), fees of auditors, accountants, attorneys or engineers and insurance premiums, and including all other reasonable and necessary costs of the District, or charges required to be paid by it to comply with the terms of the District Bonds or of this Agreement, but excluding in all cases (i) depreciation, replacement and obsolescence charges or reserves therefor, (ii) amortization of intangibles or other bookkeeping entries of a similar nature, (iii) costs of capital additions, replacements, betterments, extensions or improvements to the Project, which under generally accepted accounting principles are chargeable to a capital account or to a reserve for depreciation and (iv) charges for the payment or principal and interest on the District Bonds.

"Project Participant" mean the City and each entity listed in Part I of Appendix A hereto executing Water Supply Agreements with the District, and each Additional City.

"Reaches" means the segments of the Project from or through which Project Participants receive water which will be determined in accordance with Section 5(a) hereof.

"Request" means a written certificate of the City Manager of the City specifying the portion of the City's Project Allotment which the City requests be delivered by the District to the City in each month of a Year in accordance with Section 6 hereof.

"Treatment Plant" means water treatment facilities to be located at a site to be determined by the District after consultation with the Operating Committee and with capacity sufficient so as to treat the Project Allotments of all Project Participants, including all associated facilities, rights, properties, electrical facilities and improvements appurtenant thereto as provided and necessary therefor.

"Trustee" means the entity or entities designated by the District pursuant to any Bond Resolution to administer any funds or accounts required by such Bond Resolution or otherwise.

"Variable O & M Costs" means the operation, maintenance, power, replacement and other costs, including Project Operation and Maintenance Expenses and water supply costs at a cost per acre-foot established in accordance with this Agreement (which cost shall be lower for Project Participants located within the District and higher for those Project Participants located outside the District), incurred by the District in connection

with the Project in an amount which is dependent upon and varies with the amount of water delivered to the Project Participants.

"Water Supply Agreement" means this Agreement and each Water Supply Development Agreement by and between the District and a Project Participant, as the same may be amended or supplemented from time to time.

"Year" means the twelve-month period from January 1 through December 31, both dates inclusive.

## Section 2. Purpose.

The purpose of this Agreement is for the District to sell Project Allotment to the City, to deliver Project Allotment to the City available from the Project, to provide the terms and conditions of such delivery and sale and to provide for the financing of the Project. The parties hereto confirm that this Agreement constitutes a contractual right to purchase treated water and that no water right is being transferred by the District to any Project Participant under this Agreement. Each Project Participant acknowledges that the District is entering into Agreements with cities located within the District and outside the District and upon execution hereof each Project Participant waives any claim such Project Participant may have to the Project Allotment of other Project Participants.

## Section 3. Financing, Construction and Operation.

(a) District to Develop Project. Subject to compliance with all necessary federal and state laws, including but not limited to the California Environmental Quality Act ("CEQA"), the terms and conditions of the District's water rights, permits and licenses and all agreements relating thereto, the District will use its best efforts to cause or accomplish the construction, operation and financing of the Project, the obtaining of all necessary authority and rights, consents and approvals, and the performance of all things necessary and convenient therefor.

The parties acknowledge that the construction and operation of the Project constitutes a project subject to environmental review under CEQA. At the time of execution of this Agreement, the specific nature of the Project is still uncertain and only vaguely defined. As contemplated by this Agreement, the specific nature of the Project will be developed after further study in the next feasibility and preliminary design phase of the Project development, and through those phases City retains full discretion whether to proceed. Accordingly, the District and each City agree that CEQA review should be deferred to a subsequent phase of Project development after the Project is more specifically defined. The District shall conduct and complete appropriate CEQA environmental review no later than commencement of final Project engineering design. Such environmental review



may be tiered to enable the Cities to perform related but independent CEQA analysis.

(b) Project Milestones. The District may approve a Project Milestone only in the event the District has received a certified resolution of the Operating Committee and, in the event of the Commencement of Construction, the following conditions are met: (i) the District has received a report of a consulting engineer setting forth a description of the Project, which may include amendments to the definition of the Project, (ii) has received a Feasibility Certificate with respect to the Project, (iii) the District has approved any and all conditions imposed by any federal, state or local agency on Project approvals, and (iv) evidence that any approvals, permits, licenses or similar actions required by the State Water Resources Control Board necessary to permit the District to deliver treated water to the Project Participants shall have been received or progress satisfactory to the District and the City has been achieved.

(c) Termination of Participation or Reduction of Project Allotment. The City may terminate its participation in the Project or reduce its Project Allotment (i) on or prior to the issuance of any District Bonds, (ii) on or prior to the commencement of final design of the Project or (iii) on or prior to the commencement of construction determined in accordance with Section 3(b) hereof by delivery of a certified resolution of the City Council delivered to the District. In the event of a termination after the issuance of any District Bonds, the City shall have the option of (a) paying to the District all Fixed Project Costs allocable to the City in accordance with Section 14 hereof, in which case this Agreement shall terminate, or (b) to remain obligated to pay Fixed Project Costs allocable to the City in accordance with Section 14 hereof until paid in full, in which case this Agreement shall not terminate until such payment in full. On and after the date such resolution is delivered to the District, the City shall not be obligated to pay any Fixed Project Costs with respect to construction of the Project or any Fixed O&M Costs or Variable O&M Costs relating to delivery of treated water. Within ten days of notice to the District of a termination of participation or a reduction in the Project Allotment by any Project Participant, the District shall provide written notice thereof to the City. The District shall not issue any District Bonds within 30 days of such notice to the City without written approval thereof by the City.

(d) Obligation to Pay Construction Costs. The District shall not incur any Fixed Project Costs with respect to costs of construction prior to commencement of construction in accordance with Section 3(b) hereof and the City shall not be obligated to pay any Fixed Project Costs with respect to construction prior to such commencement of construction. In the event that the City elects to terminate its participation in the Project prior to commencement of construction in accordance with Section 3(c)

hereof, the City shall have no obligation to pay any Fixed Project Costs with respect to costs of construction.

Section 4. Operating Committee.

(a) General. The District shall establish an Operating Committee for the Project. The Operating Committee shall consist of the General Manager of the District and the City Manager of each Project Participant unless the District or a Project Participant designates another staff member or consultant to serve on the Operating Committee and shall be chaired by the General Manager of the District or his or her designee. The Operating Committee shall meet at least quarterly and at other times when a meeting is called by the chair of the Operating Committee or upon written request thereof by two Project Participants. The Operating Committee shall (i) have authority to approve Project Milestones, (ii) develop operating procedures and may recommend to the District that the District and the Project Participants enter into operating agreements to supplement this Agreement from time to time, and (iii) meet to review, evaluate and recommend to the District by majority vote items related to the acquisition, construction, financing, operation and maintenance of the Project and the status of any water rights issues relating to the District's ability to deliver treated water to the City, including but not limited to review of the construction budget, the annual operations and maintenance budget and other financial and operational matters relating to delivery of treated water to the Project Participants.

(b) The District shall give written notice to the Operating Committee 45 days prior to commencing any Project Milestone. The District may commence any Project Milestone on or after the 45th day following such written notice unless a Project Participant shall have disapproved commencement of such Project Milestone in writing on or before such 45th day. Such disapproval shall include the reason or reasons for the disapproval. In the event the District receives a written disapproval from a Project Participant the District shall work to address and resolve such Project Participant's concerns and then request the written authorization to proceed for the Project Milestone. In the event that the District and such Project Participant cannot resolve such disapproval within 60 days, either the District or the Project Participant may terminate this Agreement by giving written notice to the other party subject to such Project Participant's obligation to pay Fixed Project Costs Incurred prior to said date. The Project Milestones are:

(i) Commencement of Final Design. Prior to commencing with the final design phase under an engineering services contract, the District shall provide the City with the preliminary design plans and preliminary cost estimate. The District shall not

award a contract for final design work until Section 3(a) and (b) have been complied with.

(ii) Commencement of Construction. Prior to commencing construction, the District shall provide the City with the final design work, including construction-ready final plans and specifications and final cost estimate and a final pricing and delivery policy for raw water. The District shall not commence construction until Section 3(a) and (b) have been complied with.

(iii) Financing. Prior to issuing District Bonds to finance the Project, the District shall give written notice of the District's finance plan and proposed not-to-exceed terms which shall be binding upon the District. The District shall not issue any District Bonds until Section 3(a) and (b) have been complied with.

(c) Compliance with Agreements. No action by the Operating Committee pursuant to the Water Supply Agreements or otherwise shall in any way affect the ability of the District to act with respect to any Bond Resolution, any agreement entered into by the District for the construction or operation of the Project or any applicable licenses, permits or regulatory provisions and the District shall be responsible for executing contracts relating to construction and operation of the Project and fulfilling the obligations of the District thereunder.

#### Section 5. Construction of the Project.

(a) Determination of Capacities of Reaches and Treatment Plant. Unless otherwise determined by the District after consultation with the Operating Committee, the capacity of the Reaches of the Project will be determined by the Consulting Engineer based upon the Contract Project Allotment and Treatment Plant capacity, at one or more turnouts for the City as agreed to by the District and the City. Unless otherwise agreed by the District and the City in writing, and subject to Section 4 hereof, the Treatment Plant will have sufficient capacity to serve the City its full Project Allotment.

Subject to the rights of the City under subsection (b) of this Section and the other provisions of this Agreement, the District shall provide in each appropriate Reach of the Project and in the Treatment Plant capacity to serve the City with the daily amount requested by the City as agreed to by the City and the District in writing prior to the commencement of the construction of the Project.

(b) Criteria for Determining Capacity of Project. The District shall design and construct the Project with the Reaches

and Treatment Plant capacity determined as set forth in subsection (a) of this Section and necessary to enable delivery of daily delivery of water in each Year to the City and to other Project Participants and at the locations, times, maximum rates and minimum pressure agreed to by the District and the City.

(c) Inspection of Project Plans and Specifications; Preparation of Bid Materials; Award of Contracts. Unless otherwise determined by the District, the District shall prepare and put out to public bid a single set of bid materials (which may include multiple schedules) relating to construction and acquisition of each Reach and of the Treatment Plant. Prior to the award of any such contract or contracts, the District shall determine whether the total amount of such contract or contracts, together with contracts previously awarded with respect to the Project, together with the estimated costs for those portions of the Project for which contracts have not been awarded as determined by a consulting engineer, can be funded from the proceeds derived from District Bonds, estimated proceeds to be derived from any authorized but unissued District Bonds and other amounts then on deposit with the District and legally available therefor, including estimated investment earnings thereon. The District shall not award any contracts which would cause the District to be obligated for an amount which is in excess of the proceeds to be derived from District Bonds and other amounts on deposit with the District and legally available for the Project.

#### Section 6. Delivery of Water.

(a) Request by City. Pursuant to the terms of this Agreement, the District shall provide to the City, and the City shall take, or cause to be taken, in each Year an amount of water equal to the amount set forth in a Request of the City, but in no event shall the District be obligated to deliver an amount of water in excess of the City's Project Allotment. Subject to the Project Participant's payment obligations hereunder, the District agrees to use its best efforts to deliver water pursuant to this Agreement meeting all applicable local, state and federal water quality standards as such standards may be in effect from time to time.

~~(b) Maximum Project Allotment. The District is currently entitled to appropriate water from the Stanislaus River and the District shall make available to the City its Project Allotment from such appropriated water, subject to the availability of water and compliance with all local, state and federal laws, rules and regulations.~~

(c) Points of Delivery. The District will deliver or cause to be delivered to or for the account of the City the amount of water specified in each request at a point along the Project to be agreed upon by the District and the City. The District will remain available to make or cause to be made all necessary and

possible arrangements for transmission and delivery of such water in accordance with this Agreement.

(d) Procedure for Determining Water Delivery Schedule. The amounts, times and rates of delivery of water to the City during any Year shall be in accordance with a water delivery schedule for that Year, such schedule to be determined in the following manner:

(1) On or before October 15 of each year, the City shall submit in writing to the District a preliminary water delivery schedule indicating the amounts of water desired by the City during each month of the succeeding three Years or such lesser or greater period as the District shall determine.

(2) Upon receipt of a preliminary schedule the District shall review it and, after consultation with the City, shall make such modifications in it as are necessary to insure that the amounts, times, and rates of delivery to the City will be consistent with the District's overall delivery ability, considering the then current delivery schedules of all Project Participants and the District.

(3) A water delivery schedule may be amended by the District upon the City's written request. Proposed amendments shall be submitted by the City within a reasonable time before the desired change is to become effective, and shall be subject to review and modification by the District in like manner as the schedule itself.

(e) Limit on Peak Deliveries of Water. In no event shall the District contract to deliver to the City from the Project in any Year nor to deliver to the City from the Project in any one day a total amount of Project Allotment in any one day an amount of Project Allotment greater than that agreed to by the District and each Project Participant prior to the issuance of any District Bonds.

(f) Limit on Rate of Delivery to City. In no event shall the District be obligated to deliver water to the City through any delivery structure at a total combined instantaneous rate of flow exceeding the cubic feet per second and minimum pressure which will be determined upon the initial operation date, except as this rate of flow or pressure may be revised by mutual written agreement of the District and the City.

(g) Delivery of Water Not Delivered in Accordance with Schedule. If in any Year the District, as a result of causes beyond its control, is unable to deliver any portion of the City's Project Allotment for such Year as provided for in the delivery schedule established for that Year, the City may elect to receive the amount of water which otherwise would have been

delivered to it during such period at other times during the Year, to the extent that such water is then available and such election is consistent with the District's overall delivery ability, considering the then current delivery schedules of all Project Participants and the District.

Section 7. Curtailment of Delivery for Maintenance Purposes.

(a) District May Curtail Deliveries. The District may temporarily discontinue or reduce the delivery of water to the City hereunder for the purposes of necessary investigation, inspection, maintenance, repair, or replacement of any of the Project facilities necessary for the delivery of water to the City. The District shall notify the City as far in advance as possible of any such discontinuance or reduction, except in cases of emergency, in which case notice need not be given.

(b) City May Receive Later Delivery of Water Not Delivered. In the event of any discontinuance or reduction of delivery of water pursuant to subsection (a) of this Section, the City may elect to receive the amount of water which otherwise would have been delivered to it during such period under the water delivery schedule for that Year at other times during the Year to the extent that such water is then available and such election is consistent with the District's overall delivery ability, considering the then current delivery schedules of all Project Participants and the District.

Section 8. Shortage in Water Supply.

(a) Shortages. In any Year in which there may occur a shortage or interruption due to drought or other cause in the supply of water available for delivery to the Project Participants, including but not limited to shortages or interruptions caused by changes in laws, regulations or rulings relating to or affecting the District's water rights, permits and licenses, with the result that such supply is less than the total of the annual Project Allotments of all Project Participants for that Year, the District shall reduce the delivery of water to the City pro rata with deliveries to all Project Participants based upon the Project Allotment of the City and each Project Participant without preference or priority among the City and the Project Participants.

(b) Allocation of Shortages. The District shall allocate any shortage or interruption in the supply of water available for delivery by District hereunder between agricultural users and the Project Participants such that any percentage reduction in the delivery of water to the City is approximately equal to the percentage reduction in the delivery of water to the District's agricultural customers.

(c) Future Annexations of Land to District. The District shall not annex any land to the District other than land the acquisition of which has been approved by the Board of Directors prior to the effective date of this Agreement unless said annexation shall include an express condition that the lands so annexed shall have an entitlement to receive water from District that is subordinate in priority to the right of City to receive water from District pursuant to this Agreement. In any Year in which there may occur a shortage or interruption in the supply of water available hereunder with the result that such supply is less than the total of the annual Project Allotment of all Project Allotments of all Project Participants for the Year, the District shall reduce or suspend the delivery of water by District to lands annexed to District following the effective date of this Agreement.

(d) Future Transfers of Water by District. In the event that, following the effective date of this Agreement, District enters into any agreement for the sale or transfer of water to any retail or wholesale water provider for consumptive use outside District boundaries, the District shall ensure that such transfer agreement includes an express condition that the transferee shall have an entitlement to receive water from the District that is subordinate in priority to the right of City hereunder. In any Year in which there may occur a shortage or interruption in the supply of water with the result that said supply available to the Project Participants is less than the annual Project Allotment of all Project Participants for the year, District will reduce or suspend the delivery of water by the District to such transferee. The District represents and warrants that, as of the effective date of this Agreement, it has not entered into any agreement, other than this Agreement, for the sale or transfer of water for use outside the District's boundaries which is not subordinate in priority to the right of the City and the Project Participants hereunder.

(e) No Liability for Shortages. Neither the District nor any of its officers, agents, or employees shall be liable for any damage, direct or indirect, arising from the shortages in the amount of water to be made available for delivery to the City under this Agreement caused by drought or any other cause beyond its control; provided however that nothing in this clause (e) shall excuse the District from compliance with clauses (a), (b), (c) and (d) hereof.

#### Section 9. Measurement of Water Delivered.

The District shall measure, or cause to be measured, all water delivered to the City and shall keep and maintain accurate and complete records thereof. For this purpose and in accordance with Section 6 hereof, the District shall install, operate, and maintain, or cause to be installed, operated and maintained, at

all delivery structures for delivery of water to the City such measuring devices and equipment as are satisfactory and acceptable to both parties. Said devices and equipment shall be examined, tested, and serviced by the District regularly to insure their accuracy. At any time or times, the City may inspect such measuring devices and equipment, and the measurements and records taken therefrom.

Section 10. Responsibility for Delivery and Distribution of Water.

(a) Neither the District nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of water supplied to the City after such water has passed the delivery structures established in accordance with Sections 5(a) and 6(c) hereof; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond said delivery structures and including attorneys fees and other costs of defense in connection therewith; the City shall indemnify and hold harmless the District and its officers, agents, and employees from any such damages or claims of damages.

(b) Neither the City nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of water to be supplied to the City until such water has reached the Project facilities, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, used, disposal or distribution of such water before it has reached said delivery structures and including attorneys fees and other costs of defense in connection therewith; the District shall indemnify and hold harmless the City and its officers, agents, and employees from any such damages or claims of damages.

Section 11. Sale or Other Disposition of Project Allotment By City.

~~(a) Sale or Other Disposition of Project Allotment Without Approval. The City may sell or otherwise dispose of all or any portion of its Project Allotment within its boundaries and within its sphere of influence as determined by the San Joaquin County Local Agency Formation Committee, or any successor entity thereto, or to another Project Participant without approval by the District.~~

(b) Sale or Other Disposition of Project Allotment Subject to Approval. The City may sell or dispose of all or any portion of its Project Allotment to retail water providers within San Joaquin County, with the approval of the District, provided however that such sale shall be subject to a right of first



refusal of all Project Participants and the District on a pro rata basis to take delivery of such Project Allotment on the same terms and conditions.

(c) No Other Sales or Other Disposition. The City may not sell or otherwise dispose of all or any portion of its Project Allotment or its rights or obligations with respect thereto except as set forth in subsections (a) and (b) of this Section or Section 17 hereof.

(d) No Reduction in City Obligation. In no event shall any sale or other disposition of all or any portion of the City's Project Allotment relieve the City of any of its obligations hereunder.

(e) Notice of Sale or Other Disposition. The City shall give ninety (90) days' advance written notice to the District of any proposed sale or other disposition pursuant to this Section.

#### Section 12. Rates and Charges.

(a) Establishment of Rates and Charges. The District shall fix charges to the City under this Agreement to produce revenues to the District from the Project equal to the amounts anticipated to be needed by the District to meet the following costs of the District to deliver the City's Project Allotment (including treatment plant capacity) through the Project: (i) Fixed Project Costs, (ii) Fixed O&M Costs, and (iii) Variable O&M Costs. The District shall fix charges to the City to produce revenues to the District from the Project to meet the costs described in (i) and (ii) above as set forth in Section 14 hereof and to meet the cost described in (iii) above based on Requests of the City for water and the amount of water received by the District.

(b) Insufficiency of Funds. Because costs determined in accordance with this Agreement are based on estimates if such funds are not sufficient for such purposes, the City shall pay to the District an amount equal to such City's share of the total cost to pay Fixed Project Costs in the proportions established in accordance with Section 14 hereof. The obligation of this Section is incurred by the City for the benefit of future owners of District Bonds, and shall commence and continue to exist and be honored by the City whether or not water is furnished to it from the Project at all times or at all (which provision may be characterized as an obligation to pay all costs on a take-or-pay basis whether or not water is delivered or provided and whether or not the Project is completed or is operable.)

(c) Source of Payments. The obligation of the City to make payments under this Agreement is not a general obligation of the City and the City shall make payments under this Agreement solely from City Water System Revenues as a City Operation and Maintenance Expense. The City shall make such payments prior to

any payment therefrom, other than City Prior Debt and on a parity with other City Operation and Maintenance Expenses. Nothing herein shall be construed as prohibiting (i) the City from using any other funds and revenues for purposes of satisfying any provisions of this Agreement or (ii) from incurring obligations payable on a parity with the obligations under this Agreement so long as the City complies with subsection (a) of Section 19(a) hereof.

(d) Obligation Is Not Subject To Reduction. The City shall make payments under this Agreement whether or not the Project is completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of operation of the Project or of water contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the District or any other Project Participant under this Agreement or any other agreement.

(e) Several Obligation. The City shall not be liable under this Agreement for the obligations of any other Project Participant. The City shall be solely responsible and liable for performance of its obligations under this Agreement. The obligation of the City to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

### Section 13. Annual Budget and Billing Statement.

The District will prepare a preliminary annual budget for the first year of Project operation at least six months prior to the projected date of Operation. Thereafter, the District will prepare a preliminary annual budget for each applicable Year for credits, costs and expenses relating to the Project, including Fixed Project Costs, Variable O&M Costs and Fixed O&M Costs on or before September 1 of each Year. The District shall submit a draft of such budget to the Operating Committee on or prior to each September 15 for review and comment by the Operating Committee. District staff shall use its best efforts to resolve any questions or concerns caused by a Project Participant during such review. The Board of Directors of the District will adopt a final annual budget for the applicable Year on or before December 1 of each Year after at least one public hearing on the budget and shall allow any Project Participant which may object to any provision of the budget to present such objection during such hearing. The District shall supply a copy of said final annual budget to the City on or before December 15 of each Year. Any amendment to the budget shall be submitted to the Operating Committee for review and comment at least 30 days prior to action thereon by the District Board of Directors. Any such amendment shall be subject to the same hearing requirements applicable to the budget set forth above.

Section 14. Allocation of Costs and Expenses.

For the purpose of allocations of costs and expenses pursuant to this Agreement, the Project shall be allocated (i) to such Reaches as are determined by the District to be necessary for such allocations of costs and (ii) to the Treatment Plant. Except as permitted herein, the District shall not allocate costs and expenses in any way which discriminates among Project Participants which take delivery through the same Reaches except that the cost of raw water included in Variable O&M Costs may be varied between Project Participants within the boundaries of the District and those outside the boundaries of the District. After the execution of this Agreement and prior to commencement of construction of the Project, the District and the Project Participants shall develop a cost allocation method for District general fund and other general overhead and allocable raw water system costs to be allocated to the Project.

(a) Method of Computation of Fixed Project Costs. The Fixed Project Costs shall be sufficient to return to the District those capital costs of the District necessary to treat and deliver water to the City. The total amount of Fixed Project Costs of the Treatment Plant and each Reach of the Project utilized by the City shall be allocated to the City based upon the ratio of the Project Allotments (including treatment plant capacity) of the City to the Project Allotments (including treatment plant capacity) of all Project Participants utilizing the Treatment Plant and such Reach. The City and the District acknowledge that if the City has not elected to have all facilities which are a part of the Project sized to enable the City to take treated water, the City shall not be liable for any Fixed Project Costs for such unconstructed facilities.

(b) Method of Computation of Fixed O&M Costs. The Fixed O&M Costs shall return to the District those costs of the Project necessary to deliver water to the Project Participants which constitute Fixed O&M Costs. The total amount of Fixed O&M Costs of the Treatment Plant and each Reach of the Project for each Year shall be allocated among all Project Participants entitled to delivery of water from or through the Treatment Plant and each Reach based upon the ratio of the Project Allotment (including treatment plant capacity) of each Project Participant to which water is treated at the Treatment Plant or delivered through the Reach to the total Project Allotment (including treatment plant capacity) of all Project Participants for which water is treated at the Treatment Plant or delivered through the Reach, as the case may be. The City and the District acknowledge that if the City has not elected to have all facilities which are a part of the Project sized to enable the City to take treated water, the City shall not be liable for any Fixed O&M Costs for such unconstructed facilities.

(c) Method of Computation of Variable O&M Costs. The Variable O&M Costs shall return to the District those costs of the Project which constitute Variable O&M Costs. There shall be computed for the Treatment Plant and for each Reach of the Project a charge per acre-foot of water which will return to the District the total projected Variable O&M Costs of the Treatment Plant and each Reach for each Year, which computation will reflect the differing cost of raw water to Project Participants within the District and those outside the District. The amount of the Variable O&M Costs the Treatment Plant and for each Reach of the Project shall be the sum of the products obtained when the charges per acre-foot of water determined above for the Treatment Plant and for each Reach necessary to deliver water to the City are multiplied by the number of acre-feet of water treated by the Treatment Plant and water delivered to the City from or through that Reach during the Year, as the case may be. The City and the District acknowledge that if the City has not elected to have all facilities which are a part of the Project sized to enable the City to take treated water, the City shall not be liable for any Variable O&M Costs.

(d) Adjustments of Allocation. On or after the date the Project is in operation, the District shall update the values and amounts of Fixed Project Costs, Fixed O&M Costs and Variable O&M Costs a quarterly basis, including year-to-date comparisons to the approved Project budget in order that the costs and expenses to the City may accurately reflect increases or decreases from Year to Year in projected costs, principal and interest payments on District Bonds, annual Project Allotments, estimated deliveries, and all other factors which are determinative of such charges. In addition, each such determination shall include an adjustment to be paid by the City for succeeding Years which shall account for the differences, if any, between projections of costs used by the District in determining the amounts of said costs and expenses for all preceding Years and actual costs incurred by the District during such Years.

Section 15. Time and Method of Payment.

(a) Fixed Project Costs. Payments by the City of the Fixed Project Costs shall commence on December 1, 1995. Thereafter, the City shall pay to the District, on or before January 1 of each Year, 100% of the charge to the City for the next succeeding District Fiscal Year of the Fixed Project Costs.

(b) Fixed O&M Costs. Payments by the City of the Fixed O&M Costs shall commence on December 1, 1995. Thereafter, the City shall pay to the District, on or before January 1 of each Year, the sum of the charges to the City for the Year for the Fixed O&M Costs.

(c) Variable O&M Costs. Payments by the City of the Variable O&M Costs shall commence on the January 1, April 1, July

1 or October 1 which is closest to, but is at least three months immediately preceding, the date on which initial water delivery is estimated to be made to the City. Thereafter, the City shall pay to the District the charges to the City for the Variable O&M Costs for the three-month period commencing on the next succeeding January 1, April 1, July 1 or October 1 so that the District receives quarterly payments of Variable O&M Costs three months in advance of the time when such Variable O&M Costs will begin to be incurred by the District.

(d) Statement of Charges. The District shall furnish the City with a written statement of the estimated Fixed Project Costs and Fixed O&M Costs of the City for the next succeeding District Fiscal Year, taking into account applicable credits received by the District and estimated investment earnings on moneys related to the Project held by the District. The District shall, on or before March 15, June 15, September 15 and December 15 of each Year, commencing with the District Fiscal Year in which the initial operation date is estimated to occur furnish the City with a statement of the charges to the City for the Variable O&M Costs for the three-month period commencing on the July 1, October 1, January 1 or April 1, commencing three and one-half months subsequent to such date.

(e) Contest of Accuracy of Charges. If a City questions or disputes the correctness of any billing statement by the District, it shall pay the District the amount claimed when due and shall within thirty (30) days of receipt of such billing statement request an explanation from the District. If the bill is determined to be incorrect, the District will adjust the bill to such City in the next District Fiscal Year. If the District and the City fail to agree on the correctness of a bill within thirty (30) days after the City has requested an explanation, the parties shall promptly submit the dispute to arbitration under Section 1280 et seq. of the Code of Civil Procedure.

#### Section 16. Obligation in the Event of Default.

(a) Written Demand Upon Failure to Make Payment. Upon failure of the City to make any payment in full when due under this Agreement or to perform any other obligation hereunder, the District shall make written demand upon the City, and if said failure is not remedied within thirty (30) days from the date of such demand or, if District Bonds are outstanding, for such additional time as is reasonably required, in the sole discretion of the Trustee, to correct the same, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each other Project Participant by the District. Upon failure of the District to perform any obligation of the District hereunder, the City shall make written demand upon the District, and if said failure is not remedied within thirty (30) days from the date of such demand or, if District Bonds are outstanding, for such additional time as is

reasonably required, in the sole discretion of the Trustee, to correct the same, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each Project Participant by the City making such written demand.

In addition to any default resulting from breach by the District or the City of any agreement, condition, covenant or term hereof, if the District or the City shall file any petition or institute any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby the District or the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or if the District or the City shall make a general or any assignment for the benefit of its creditors, then in each and every such case the District or the City, as the case may be, shall be deemed to be in default hereunder.

(b) Transfer for Defaulting City's Account. Upon the failure of the City to make any payment which failure constitutes a default under this Agreement, the District shall use its best efforts to transfer for the City's account all or a portion of the City's Project Allotment for all or a portion of the remainder of the term of this Agreement. Notwithstanding that all or any portion of the City's Project Allotment is so transferred, the City shall remain liable to the District to pay the full amount of its share of costs hereunder as if such sale or transfer has not been made, except that such liability shall be discharged to the extent that the District shall receive payment from the transferee thereof.

(c) Termination of Entitlement to Project Allotment; Continuing Obligations. Upon the failure of the City to make any payment which failure constitutes a default under this Agreement and causes the District to be in default under any Bond Resolution, the District may (in addition to the remedy provided by subsection (b) of this Section) give notice of termination of the provisions of this Agreement insofar as the same entitle the City to its Project Allotment which notice shall be effective within 30 days thereof unless such termination shall be enjoined, stayed or otherwise delayed by judicial action. Irrespective of such termination, the City shall remain liable to the District to pay the full amount of costs hereunder.

(d) Enforcement of Remedies. In addition to the remedies set forth in this Section, upon the occurrence of an Event of

Default as defined herein, the District or the City, as the case may be, shall be entitled to proceed to protect and enforce the rights vested in such party by this Agreement by such appropriate judicial proceeding as such party shall deem most effectual, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in such party by this Agreement or by law. The provisions of this Agreement and the duties of each party hereof, their respective boards, officers or employees shall be enforceable by the other party hereto by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, with the losing party paying all costs and attorney fees. Without limiting the generality of the foregoing, the District or the City, as the case may be, shall have the right to bring the following actions:

(1) Accounting. By action or suit in equity to require an accounting by the District or the City, as the case may be, including its officers, employees and assigns.

(2) Injunction. By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the District or the City, as the case may be.

(3) Mandamus. By mandamus or other suit, action or proceeding at law or in equity to enforce its rights against the other party hereto (and its board, officers and employees) and to compel the other party hereto to perform and carry out its duties and obligations under the law and its covenants and agreements as provided herein.

(e) Waiver. The waiver by the District or the Trustee of any breach by the City of any agreement, condition, covenant or term hereof shall not operate as a waiver of any subsequent breach of the same or any other agreement, condition, covenant or term hereof.

(f) Trustee is Third Party Beneficiary. Any Trustee for District Bonds shall have the right, as a third party beneficiary, to initiate and maintain suit to enforce this Agreement to the extent provided in any Bond Resolution.

Section 17. Transfers, Sales and Assignments of Project Allotment or Water System.

(a) Transfer of Project Allotment. The City has rights to make transfers, sales, assignments and exchanges (collectively "transfers") of its Project Allotment or its rights or obligations with respect thereto only as expressly provided in Section 11 hereof or in clause (b) of this Section.

(b) Transfer of Ownership. Except as may be expressly required by law, the City shall not transfer ownership of all or any substantial portion of its Water System to another entity except in an annexation, consolidation, merger or reorganization with another governmental entity or a change in governmental form in accordance with the Cortese-Knox Local Government Reorganization Act of 1985, as amended (commencing with California Government Code Section 56000, et seq.) or any similar successor statute, in which the surviving entity or entities assume in the aggregate all obligations of the City under this Agreement, and in which the rights under this Agreement may be enforced as provided in Government Code Section 56121 is not deemed a transfer of ownership.

(1) The City shall not consent to such annexation, consolidation, merger or reorganization or change in governmental form unless the City shall have delivered to the District a certificate of an independent financial advisor certifying that, based upon the rates and charges of the surviving entity in effect on the date of such annexation, consolidation, merger or reorganization or change in governmental form, shall be in compliance with Section 19(a) hereof and the surviving entity agrees in writing on or prior to such date to assume all obligations of the City hereunder.

(2) The City shall give ninety (90) days advance written notice to the District of any proposed transfer pursuant to this subsection. Appendix A to this Agreement shall be amended as appropriate to reflect any transaction pursuant to this subsection.

Section 18. Additional Project Participants. The City acknowledges that the District may enter into Water Supply Agreements with Additional Project Participants subsequent to the execution of this Agreement to the extent the District determines that sufficient capacity exists to supply such Additional Project Participant's Project Allotment consistent with the District's overall delivery abilities. Prior to the execution of a Water Supply Agreement with an Additional Project Participant, the District shall promptly provide to the City a revised Exhibit A to this Agreement setting forth the revised list of Project Allotments of the Project Participants. No Water Supply Agreement with an Additional Project Participant shall be executed with an Additional Project Participant outside the boundaries of the District unless the District shall first offer such Project Allotment to each Project Participant on the same terms and conditions as offered to such Additional Project Participant. The Water Supply Agreement with such Additional Project Participant shall establish a price to be paid by the Additional Project Participant to the City an amount which reasonably compensates the City for Fixed Project Costs and Fixed O&M Costs previously paid by the City which are fairly allocable



to the Additional Project Participant, including but not limited to costs incurred by the City in connection with the Project prior to execution of this Agreement, and, if such Additional Project Participant is located outside of the boundaries of the District, is not less than the highest price paid by any Project Participant.

Section 19. Covenants of the City.

(a) Amount of Rates and Charges. The City will fix, prescribe and collect rates and charges for the City Water System which will be at least sufficient to yield during each City Fiscal Year City Net Water System Revenues (excluding Contract Payments) equal to one hundred twenty-five percent (125%) of the Contract Payments for such City Fiscal Year. The City may make adjustments from time to time in such rates and charges and may make such classification thereof as it deems necessary, but shall not reduce the rates and charges then in effect unless the City Net Water System Revenues from such reduced rates and charges will at all times be sufficient to meet the requirements of this section.

(b) Against Sale or Other Disposition of Property. The City will not sell, lease or otherwise dispose of the City Water System or any part thereof, except as provided in Section 17 hereof, unless the City determines that such sale, lease or other disposition will not materially adversely affect the City's ability to comply with subsection (a) of this Section. The City will not enter into any agreement or lease which impairs the operation of the City Water System or any part thereof necessary to secure adequate City Net Water System Revenues for the payment of the obligations imposed under this Agreement or which would otherwise impair the rights of the District with respect to the City Water System Revenues or the operation of the City Water System.

(c) Against Competitive Facilities. To the extent permitted by existing law and within the scope of its powers but only to the extent necessary to protect the rights of the owners of District Bond, the City will not acquire, construct, maintain or operate and will use its best efforts not to permit any other public or private agency, corporation, district or political subdivision or any person whomsoever to acquire, construct, maintain or operate within the boundaries of the City any water system competitive with the City Water System which might have the effect of materially adversely affecting the City's ability to pay Fixed Project Costs, Fixed O&M Costs and Variable O&M Costs.

(d) Maintenance and Operation of the City Water System; Budgets. The City will maintain and preserve the City Water System in good repair and working order at all times and will operate the City Water System in an efficient and economical

manner and will pay all City Operation and Maintenance Expenses as they become due and payable. On or before the first day of each City Fiscal Year thereafter, the City will adopt and file with the District a budget approved by the legislative body of the City, including therein in the estimated City Operation and Maintenance Expenses for such City Fiscal Year the estimated Fixed Project Costs, Fixed O&M Costs and Variable O&M Costs payable. Any budget may be amended at any time during any City Fiscal Year and such amended budget shall be filed by the City with the District. The District may enforce this clause (d) only to the extent necessary to protect the rights of the owners of District Bonds.

(e) Insurance. The City shall procure and maintain or cause to be procured and maintained insurance on the City Water System with responsible insurers so long as such insurance is available from reputable insurance companies, or, alternatively, shall establish a program of self-insurance, or participate in a joint powers agency providing insurance or other pooled insurance program, in such amounts and against such risks (including accident to or destruction of the City Water System) as are usually covered in connection with water systems similar to the City Water System.

(f) Accounting Records and Financial Statements.

(i) The City will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the City Water System, which records shall be available for inspection by the District and the Trustee at reasonable hours and under reasonable conditions.

(ii) The City will prepare and file with the District annually within one hundred eighty (180) days after the close of each City Fiscal Year (commencing with the City Fiscal Year ending June 30, 1995) financial statements of the City for the preceding City Fiscal Year prepared in accordance with generally accepted accounting principles, together with a report of an Independent Certified Public Accountant thereon. The City will promptly furnish a copy of such report to the District and to the Trustee.

(g) Protection of Security and Rights of the District. The City will preserve and protect the rights of the District and the Trustee to the obligations of the City hereunder and will warrant and defend such rights against all claims and demands of all persons.

(h) Payment of Taxes and Compliance with Governmental Regulations. The City will pay and discharge all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the City Water System or any part thereof

or upon the City Water System Revenues when the same shall become due. The City will duly observe and conform with all valid regulations and requirements of any governmental authority relative to the operation of the City Water System or any part thereof, but the City shall not be required to comply with any regulations or requirements so long as the validity or application thereof shall be contested in good faith.

(i) Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to effect the financing and refinancing of the Project, to assure the District of the City's intention to perform hereunder and for the better assuring and confirming unto the District and the Trustee of the rights and benefits provided to them herein.

(j) Maintenance of Tax-Exempt Status of District Bonds. Notwithstanding any other provision of this Agreement, the City shall not take any action or omit to take any action, directly or indirectly, in any manner, which would result in any of the District Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1986, as amended, by reason of classification of such District Bond as a "private activity bond" within the meaning of Section 141 of said Code or for any other reason.

Section 20. Covenants of the District.

(a) Insurance. The District shall procure and maintain or cause to be procured and maintained insurance on the Project with reputable insurers so long as such insurance is available from reputable insurance companies, or, alternatively, shall establish a program of self-insurance, or participate in a joint powers agency providing insurance or other pooled insurance program, covering such risks, in such amounts and with such deductibles as shall be determined by the District. The District shall indemnify and hold harmless the City from any liability for personal injury or property damage resulting from any accident or occurrence arising out of or in any way related to the construction or operation of the Project.

~~(b) Accounting Records and Financial Statements.~~

(i) The District will keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Project, which records shall be available for inspection, copying and audit by the City and its accountants, attorneys and agents at reasonable hours and under reasonable conditions.

(ii) The District will prepare annually within one hundred eighty (180) days after the close of each District Fiscal Year (commencing with the District Fiscal Year ending

December 31, 1995) financial statements of the District for the preceding District Fiscal Year prepared in accordance with generally accepted accounting principles, together with a report of an Independent Certified Public Accountant thereof. The District will promptly furnish a copy of such report to the City and to the Trustee.

(c) Compliance with Law. The District shall comply with all local, state and federal laws applicable to the Project.

(d) Against Sale or Other Disposition of Project. The District will not sell, lease or otherwise dispose of the Project or any part thereof unless the Board of Directors of the District determines that such sale, lease or other disposition will not materially adversely affect the District's ability to comply with its obligations hereunder and such determination is approved by the Operating Committee.

(e) Maintenance and Operation of the Project. Subject to the payment obligations of the Project Participants hereunder, the District will maintain and preserve the Project in good repair and working order at all times and will operate the Project in an efficient and economical manner.

#### Section 21. Term.

(a) No provision of this Agreement shall take effect until it and Water Supply Agreements with all Project Participants (other than Additional Project Participants) have been duly executed and delivered to the District together with an opinion for each Project Participant of an attorney or firm of attorneys in substantially the form attached hereto as Exhibit B and an opinion for the District of Brown & Wood, Special Counsel to the District, in substantially the form attached hereto as Exhibit C.

(b) Notwithstanding the delay in effective date of this Agreement until all Project Participants have complied with subsection (a) of this Section, it is agreed by the City that in consideration for the District's signature hereto, and for its commitment to use its best efforts to obtain the commitment of all Project Participants, the City upon its execution and delivery of this Agreement to the District along with the required opinion and any required evidence of compliance as required by subsection (a) of this Section shall be immediately bound not to withdraw its respective offer herein made to enter into this Agreement as executed and/or supplemented or to decrease or terminate its Project Allotment before December 1, 1995.

(c) Unless terminated in accordance with Section 3(c), the term of this Agreement shall continue until the later of December 31, 2029 and the final maturity of District Bonds. The parties hereto agree to negotiate in good faith to amend this

Agreement on or prior to such date to extend the term hereof and to include terms and conditions as are mutually agreeable to the parties, provided that the price to be paid with respect to the Project Allotment in such amendment shall reflect the payment of capital costs to such date. In the event that the District and all Project Participants cannot agree to amend the Agreement, the District agrees to cause ownership of the Project to be transferred to a joint powers agency or similar entity created by the Project Participants and to enter into a raw water sale agreement with such entity on terms and conditions consistent with the raw water pricing and delivery policy in effect under this Agreement at the time of such transfer.

In the event the ownership of the Project is transferred pursuant to this subparagraph (c), the quantity of raw water that will be made available to the entity created by the Project Participants shall not be reduced from the quantity of raw water being made available by the District to the Project Participants immediately prior to the expiration of the term of this Agreement. Should the ownership of the Project be transferred to a new entity, the price paid to the District for raw water shall be on the same terms as prior to the transfer, plus any costs incurred by the District for operation, maintenance or capital improvement reimbursements relating to facilities necessary to deliver raw water to the Project.

Section 22. Assignment.

The District may pledge and assign to any Trustee for District Bonds, all or any portion of the payments received under this Agreement from the City and the District's other rights and interests under this Agreement. Such pledge and assignment by the District shall be made effective for such time as the District shall determine and provide that the Trustee shall have the power to enforce this Agreement in the event of a default by the District under a Bond Resolution. The City may assign its rights or obligations under this Agreement only in accordance with Section 17 hereof.

Section 23. Amendments.

Except as otherwise provided in this Agreement, on and after the date District Bonds are issued and so long as any District Bonds are outstanding in accordance with the applicable Bond Resolution, Section 11(d), 12(a), (c) and (d), 14(a), 16, 17, 19 and 21 of this Agreement shall not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for District Bonds whose consent is required under the applicable Bond Resolution. This Agreement may only be otherwise amended, modified, changed or rescinded in writing by each of the parties hereto.

Notwithstanding the foregoing, the sections of this Agreement set forth in the prior paragraph of this Section may be amended without the consent of each Trustee for District Bonds for any of the following purposes:

(a) to add to the agreements, conditions, covenants and terms contained herein required to be observed or performed by the District or the City other agreements, conditions, covenants and terms hereafter to be observed or performed by the District or the City, or to surrender any right reserved herein to or conferred herein on the District or the City, and which in either case shall not adversely affect the interests of the owners of any District Bonds;

(b) to make such provisions for the purpose of curing any ambiguity or of correcting, curing or supplementing any defective provision contained herein or in regard to questions arising hereunder which the District or the City may deem desirable or necessary and not inconsistent herewith, and which shall not materially adversely affect the interests of the owners of any District Bonds;

(c) to make any modifications or changes necessary or appropriate in the opinion of a firm of nationally recognized standing in the field of law relating to municipal bonds to preserve or protect the exclusion from gross income of interest on the District Bonds for federal income tax purposes;

(d) to make any modifications or changes to this Agreement in order to enable the execution and delivery of District Bonds on a parity with any District Bonds previously issued and to make any modifications or changes necessary or appropriate in connection with the execution and delivery of District Bonds;

(e) to make any other modification or change to the provisions of this Agreement which does not materially adversely affect the interests of the owners of any District Bonds;

~~(f) to make changes to the definition of "Project", including but not limited to changes resulting from the operation of Sections 3 and 4 hereof.~~

#### Section 24. Additional Water in Future

The District agrees that on or about January 1, 2005, to the extent the Board of Directors of the District determines that water surplus to the needs of agricultural water users within the District is then available and subject to compliance with federal and state laws, including CEQA, and to the District's water rights, permits and licenses, and to state laws applicable

thereto, the District shall commence proceedings to expand the Project to make additional treated water available to the Project Participants, but such expansion shall occur only on terms and conditions reasonably agreeable to the District and the Project Participants. In the event that the District and the Project Participants cannot agree upon terms and conditions for expansion of the Project and delivery of additional treated water, the District shall not be obligated to expand the Project or to make additional treated water available to the Project Participants. Nothing in this Agreement shall be construed to require the District to deliver treated water to the City in excess of the City's Project Allotment or to enter into any agreement to deliver treated water to the City in excess of the City's Project Allotment unless the District Board of Directors determines that water surplus to the needs of agricultural water users within the District is available to the District.

Section 25. Miscellaneous.

The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

If any one or more of the covenants or agreements provided in this Agreement to be performed should be determined to be invalid or contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF the City has executed this Agreement with the approval of its governing body, and caused its official seal to be affixed and the District has executed this Agreement in accordance with the authorization of its Board of Directors, and caused its official seal to be affixed.

SOUTH SAN JOAQUIN  
IRRIGATION DISTRICT

[SEAL]

Attest:

By *Lloyd Stewart*  
President

By *Richard Marton*  
Secretary

CITY OF TRACY

[SEAL]

Attest:

By \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

Approved as to form

By: \_\_\_\_\_  
City Attorney



EXHIBIT A

PHASE 1 - UP TO YEAR 2010

<u>City</u>	<u>Project Allotment</u>
1. City of Escalon	2,015
2. City of Lathrop	8,007
3. City of Manteca	12,700
4. City of Ripon	1,232
5. City of Tracy	10,000
	<u>33,954</u>

PHASE II - UP TO YEAR 2025  
SCHEDULE OF PROJECT ALLOTMENTS

<u>City</u>	<u>Project Allotment</u>
1. City of Escalon	2,799
2. City of Lathrop	11,791
3. City of Manteca	24,500
4. City of Ripon	3,919
5. City of Tracy	10,000
	<u>53,009</u>



SSJID Lathrop-Tracy Purchase, Sale and Amendment Agreement  
(August 2013)



AGENDA ITEM 1.E

REQUEST

**RESCIND RESOLUTION 2013-076, APPROVE THE REVISED LATHROP-TRACY PURCHASE, SALE AND AMENDMENT AGREEMENT, AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT, AUTHORIZE A SUPPLEMENTAL APPROPRIATION FROM THE WASTEWATER FUND AND ESTABLISH A LOAN TO THE WATER FUND IN THE AMOUNT OF \$5 MILLION**

EXECUTIVE SUMMARY

On June 4, 2013, Tracy City Council authorized the water purchase agreement (Resolution 2013-076). This agreement required approval by all five participating agencies. Unfortunately, the City of Manteca's staff did not move the item forward for Manteca City Council consideration. A revised three party agreement has been prepared to allow acquisition by Tracy of two million gallons per day surplus of treated water capacity and 1,120 acre-feet of surplus water supply in the South County Water Supply Project from the City of Lathrop. The City of Tracy has need for this additional capacity and water supply and the subject agreement provides for its acquisition by Tracy.

DISCUSSION

The South San Joaquin Irrigation District constructed, and now operates, the South County Water Supply Project (SCWSP). The project includes the Nick DeGroot Water Treatment Plant at Woodward Reservoir and 40 miles of pipeline delivering water to the cities of Manteca, Lathrop, Tracy, and in the future, Escalon. The project commenced delivering water in 2005. In recent years, this project has delivered approximately 70% of the water used in Tracy.

The City of Lathrop has updated its Water Master Plan and determined that because of changed urban growth land use projections, water conservation, water use efficiency, and future use of recycled water that it has more capacity and water supply in the SCWSP than needed for their current or projected needs. Therefore, the City of Lathrop is proposing to sell Tracy two million gallons per day of surplus capacity and 1,120 acre-feet of surplus water supply.

Tracy desires to increase its participation in the SCWSP in order to improve water quality to its customers, increase its water supply and decrease the salinity of its wastewater effluent. The purchase and use of this capacity and water supply will allow further reduction in the salinity level of the treated wastewater discharged into the Delta. No physical facilities need to be constructed for Tracy to utilize this capacity and water supply. The SCWSP has approved environmental documents and the proposed water use in Tracy in-lieu of Lathrop will not divert additional water from the Stanislaus River. The Purchase, Sale and Amendment Agreement is not a project as defined by CEQA. Tracy intends to put this additional capacity and water supply to immediate use.

Therefore, staff is recommending that the City Council rescind Resolution 2013-076 and approve the revised Lathrop-Tracy Purchase, Sale and Amendment Agreement.

### STRATEGIC PLAN

This agenda item is a routine operational item and does not relate to the Council's four strategic plans.

### FISCAL IMPACT

There is no fiscal impact to the General Fund. The purchase price for the capacity and allocation is \$5 million. The original cost to Lathrop to construct this capacity in 2003 was \$4.6 million. Lathrop has incurred considerable interest expense from the bonds issued for construction.

The operating cost associated with the increased capacity and allocation is approximately \$250,000 per year. Tracy currently budgets \$3.2 million per year for SSJID water supply and the purchase results in a minimal water rate impact.

To fund this purchase, staff recommends a supplemental appropriation and loan from the Wastewater Enterprise Fund. Payments will include interest at the rate of 2.5% annually. The term of the loan is anticipated to be approximately 2 years. During that time, it is anticipated, that adequate funds from development will be collected to retire the loan. The Lathrop-Tracy Purchase Agreement will not be effective until reimbursement agreements have been entered into to cover the City's costs and required security is provided to the City.

### RECOMMENDATION

That the City Council, by resolution:

- (1) Rescind Resolution 2013-076;
- (2) Approve the revised Lathrop-Tracy Purchase, Sale and Amendment Agreement and authorize the Mayor to execute the agreement; and
- (3) Authorize a supplemental appropriation from the Wastewater Fund, and establish a loan to the Water Fund in the amount of \$5 million.

Prepared by: Steve Bayley, Project Specialist

Reviewed by: Rod Buchanan, Interim Director of Public Works

Approved by: R. Leon Churchill, Jr., City Manager

Attachment A: Lathrop – Tracy Purchase, Sale and Amendment Agreement

RESOLUTION 2013-110

RESCINDING RESOLUTION 2013-076; APPROVING THE REVISED LATHROP-TRACY PURCHASE, SALE AND AMENDMENT AGREEMENT, AUTHORIZING A SUPPLEMENTAL APPROPRIATION FROM THE WASTEWATER FUND AND ESTABLISHING A LOAN TO THE WATER FUND IN THE AMOUNT OF \$5 MILLION AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, On June 4, 2013, Tracy City Council authorized the water purchase agreement (Resolution 2013-076), and

WHEREAS, The agreement required approval by five agencies, and

WHEREAS, The City of Manteca staff did not move this item forward for consideration, and

WHEREAS, A revised three party agreement has been prepared to allow acquisition by Tracy of two million gallons per day surplus of treated water capacity and 1,120 acre-feet of surplus water supply in the South County Water Supply Project from the City of Lathrop, and

WHEREAS, The City of Lathrop will retain sufficient capacity and water supply for their community needs while proposing to sell Tracy two million gallons per day of surplus capacity and 1,120 acre-feet of surplus water supply, and

WHEREAS, The environmental documents for the South County Water Supply Project were previously approved and the proposed water use in Tracy in-lieu of Lathrop will not divert additional water from the Stanislaus River and no physical facilities are to be constructed, and

WHEREAS, The Lathrop – Tracy Purchase, Sale and Amendment Agreement is not a project as defined by CEQA, and

WHEREAS, The City of Tracy intends to put this additional capacity and water supply to immediate use, and

WHEREAS, The Lathrop-Tracy Purchase Agreement is not effective until reimbursement agreements have been entered into to cover the City's costs and required security has been provided to the City;

NOW, THEREFORE, BE IT RESOLVED that:

1. The City Council rescinds Resolution 2013-076;
2. The City Council authorizes a supplemental appropriation from the Wastewater Fund and establishes a two year loan to the Water Fund in the amount of \$5 million with 2.5% interest;
3. The City Council approves the revised Lathrop-Tracy Purchase, Sale and Amendment Agreement, and authorizes the Mayor to execute the agreement; and

4. This Resolution shall be effective only at such time that reimbursement agreements have been entered into to cover the City's costs (and required security has been provided to the City) with all of the following parties: Prologis, L.P.; GBC Global Investments, Inc.; TWL Investors, LLC; R&B Delta, LLC.

\*\*\*\*\*


The foregoing Resolution 2013-110 was adopted by the Tracy City Council on the 6th day of August, 2013, by the following vote:

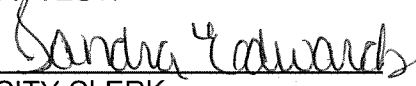
AYES: COUNCIL MEMBERS: MACIEL, MANNE, RICKMAN, YOUNG, IVES

NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:  
  
CITY CLERK



## **SOUTH COUNTY WATER SUPPLY PROJECT**

### **LATHROP-TRACY PURCHASE, SALE AND AMENDMENT AGREEMENT**

This Purchase, Sale and Amendment Agreement ("Purchase and Amendment Agreement") is made this 6<sup>st</sup> day of August, 2013 by and between the City of Tracy ("Tracy") and the City of Lathrop ("Lathrop"), each a municipal corporation, and the South San Joaquin Irrigation District ("SSJID") a California irrigation district. Tracy, Lathrop and SSJID are each a Party to this Purchase and Amendment Agreement and collectively are the Parties hereto.

#### **RECITALS**

A. SSJID has constructed and now owns, operates and maintains the South County Water Supply Project ("Project"). The Project includes without limitation, water treatment and pumping facilities, storage facilities, raw water and treated water pipelines, pumps and turnout facilities, as needed for the purpose of supplying treated drinking water to Tracy and Lathrop, as well as the other Project Participants, Escalon and Manteca.

B. Tracy and Lathrop have each entered into a Water Supply Development Agreement (the "WSDA's") with SSJID, each dated as of October 1, 1995. The Lathrop WSDA was amended in 2000 by Amendment No. 1. There have not been any amendments to the Tracy WSDA. These WSDA's, as amended from time to time, are incorporated herein by reference and referred to herein individually as the Tracy WSDA and the Lathrop WSDA.

C. The Tracy WSDA and Lathrop WSDA provided for Lathrop and Tracy's participation in Project construction and financing. The WSDA's further provide Tracy and Lathrop with rights to purchase from SSJID, and have treated and delivered to them by SSJID, water up to the amounts specified in their respective WSDA's (their "Project Allotments".) Under the Tracy WSDA, Tracy has a Phase I Project Allotment of 10,000 acre-feet per year (AFY) and a Phase II Project Allotment of 10,000 AFY. Under the Lathrop WSDA, Lathrop has a Phase I Project Allotment of 8,007 AFY and a Phase II Project Allotment of 11,791 AFY. The Project Allotments are shown in Exhibit A to the Tracy WSDA and Exhibit E to the Lathrop, Escalon and Manteca WSDA's (see Section 2.G of Amendment No. 1).

D. The Project operates at varying rates of flow from time to time, expressed in million gallons per day (mgd) ("Flow Rate"). The water treatment plant's average flow rate represents the daily flow to each Project Participant if

that Project Participant's Project Allotment were to be delivered evenly over a period of 365 days per year. The Project's peak flow rate ("Peak Rate") is the maximum rate of flow at which the Project is designed to produce treated drinking water at any point in time, expressed in mgd, without consideration of scheduled maintenance. SSJID operates the Project for purposes of delivery of the Project Allotments to the Project Participants. SSJID has allocated a portion of the Peak Rate to each Project Participant for this purpose. These allocations of Peak Rate correlate to the volumes of the Project Allotments specified in the WSDA's and to the share of the Project's cost which was allocated among the Project Participants based primarily on plant capacity. This relationship is affirmed in, inter alia, Section 14 of the WSDA's.

E. Pursuant to the WSDA's, SSJID treats and delivers the respective Project Allotment to each Project Participant according to a daily delivery schedule determined by the Project Participant and SSJID. SSJID allocates the Flow Rate among the Project Participants as necessary to meet the delivery schedules of the Project Participants. SSJID may exceed a Project Participant's allocation of the Peak Rate, to the extent this does not impact another Project Participant. If, at any time, the Plant is incapable of meeting the scheduled deliveries of one or more Project Participants, SSJID would allocate the available Flow Rate on a pro rata basis according to the Project Participants' shares of the Peak Rate.

F. Lathrop has determined that, because of changed urban growth projections and water use demands in its service area, the allocations of water treatment capacity, conveyance capacity, and water supply in the Project pursuant to the Lathrop WSDA exceed its current and projected needs. Some of the changes include a lower peaking factor, recent and State mandated future water conservation and anticipated use of the City's recycled water supply. These changes have resulted in a reduced need for potable water. As a result, Lathrop has identified that it has a surplus of 1,120 AFY of its Phase 1 Project Allotment. Lathrop has determined that, after implementation of this Purchase and Amendment Agreement, Lathrop's remaining share of Project Allotment, and its share of SSJID's allocation of the Project's Peak Rate that remains after the reduction described below, are sufficient to accommodate its present and future community development.

G. Tracy desires to increase its participation in the Project in order to improve the quality of water delivered to its customers, to decrease the salinity of its wastewater effluent, and to increase its water supply. Tracy intends, with this Purchase and Amendment Agreement, to purchase from Lathrop its right to obtain from SSJID 1,120 acre feet of Project Allotment. In addition, this Purchase and Amendment Agreement provides that, subject to its obligations under the WSDA's, SSJID will, as between Tracy and Lathrop, increase the share of Peak Rate allocated to Tracy, which is presently 15 mgd, by 2.0 mgd, and SSJID will reduce Lathrop's share of Peak Rate by 2 mgd.

H. This transfer is consistent with the WSDA's, which in Section 11 provide for the transfer of Project Allotment and the rights and obligations with respect thereto by one Project Participant to another Project Participant. While SSJID's approval is not required for such a transfer pursuant to Section 11(a), Lathrop and Tracy have invited SSJID's review and agreement in light of its current allocation of the Peak Rate accompanying the transferred Project Allotment. The Peak Rate allocations are an existing attribute of how the Project is operated to deliver the Project Allotments. The Parties acknowledge that such changes and amendments does not affect the allocation of Project costs or the delivery of Project Allotment to Project Participants other than as between Tracy and Lathrop.

I. The purposes of this Purchase and Amendment Agreement are (1) to memorialize Lathrop's conveyance and sale, and Tracy's acquisition and purchase, of 1,120 acre-feet per year of Project Allotment, together with the Parties' agreement that SSJID, as between Tracy and Lathrop, reduce Lathrop's share of Peak Rate by 2 mgd and will increase Tracy's share of Peak Rate by 2 mgd; and (2) to effect amendments to the Tracy and Lathrop WSDA's to reflect this transaction.

Therefore, the Parties agree as follows:

#### AGREEMENT

1. Effective Date; Term.

a. This Purchase and Amendment Agreement shall become effective on the date stated above upon execution by all Parties ("Effective Date".)

b. Provided that this Purchase and Amendment Agreement takes effect, this Purchase and Amendment Agreement shall have the same term as the Lathrop and Tracy WSDA's.

2. Transferred Project Allotment. Lathrop hereby permanently conveys and sells to Tracy, and Tracy hereby acquires and purchases, Lathrop's rights pursuant to the Lathrop WSDA to purchase 1,120 AFY of Project Allotment from SSJID. In connection therewith, Lathrop and Tracy both agree, as between Tracy and Lathrop, to a reduction in Lathrop's share of SSJID's allocation of Peak Rate by, and to an increase in Tracy's share of SSJID's allocation of Peak Rate by, 2 mgd. By execution of this Purchase and Amendment Agreement SSJID hereby acknowledges this re-allocation of a portion of the Project's Peak Rate as between Tracy and Lathrop.

3. Transferred Project Allotment and Lathrop WSDA in Good Standing. Lathrop warrants and represents that up to the Effective Date, it has diligently maintained the Lathrop WSDA as amended, including the Project

Allotment transferred pursuant to this Purchase and Amendment Agreement, in good standing, and has duly made all required payments thereunder in a timely manner.

4. Principal Payment. Within fourteen calendar days after Lathrop provides written notice to Tracy of full execution of this Purchase and Amendment Agreement, including a fully executed copy thereof, Tracy shall pay to Lathrop the sum of five million dollars (\$5,000,000), which shall be the full, final and complete payment by Tracy to Lathrop pursuant to this Purchase and Amendment Agreement.

5. Compliance with WSDA's.

- a. This Purchase and Amendment Agreement is made pursuant to Section 11 (a) of the WSDA's.
- b. Section 17 of the four WSDA's is inapplicable to this Purchase and Amendment Agreement.
- c. This Purchase and Amendment Agreement is in full compliance with the WSDA's.

6. Amendments to the WSDA's. The Tracy and Lathrop WSDA's are hereby amended to conform to the following:

- a. Lathrop's Project Allotment is 6,887 AFY in Phase I and, subject to all of the terms and conditions of Lathrop's WSDA, 10,671 AFY in Phase II. As between Tracy and Lathrop, SSJID will reduce Lathrop's allocation of Peak Rate by 2 mgd.
- b. Tracy's Project Allotment is 11,120 AFY in Phase I and subject to all of the terms and conditions of Tracy's WSDA, 11,120 AFY in Phase II. As between Tracy and Lathrop, SSJID will increase Tracy's share of Peak Rate by 2 mgd.
- c. All terms and conditions of the Tracy and Lathrop WSDA's, including any previous amendments, which are not specifically modified by this Purchase and Amendment Agreement, shall remain in full force and effect.

7. Costs. Each Party and the Consenting Entity shall bear its own costs associated with this Purchase and Amendment Agreement, except as otherwise specifically provided herein.

8. Attorney Fees. If it shall be necessary for any Party hereto to commence legal action or any other proceeding to enforce the terms and provisions of this Purchase and Amendment Agreement, the non-prevailing Party shall reimburse the prevailing Party for all of the prevailing Party's actual and reasonable expenses and costs incurred in such action or proceeding, including

without limitation reasonable attorneys' fees and the reasonable fees of any experts employed by the prevailing Party in such action or proceeding.

9. SSJID Coordination. Upon and after the Effective Date, SSJID agrees to reflect the changes in the allocation of Peak Rate as between Tracy and Lathrop and Project Allotment, along with the resulting changes to the fixed and variable Project costs for which the Parties are responsible. SSJID further agrees to amend its Project operations, records, and other functions to conform to this Purchase and Amendment Agreement as of the Effective Date.

10. Reciprocal Indemnification.

a. Tracy shall hold harmless, indemnify and defend Lathrop (with counsel of Lathrop's choice) and its members, directors, officers, employees, agents and contractors (collectively "Lathrop's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable and actual attorneys' fees, arising from or connected with this Purchase and Amendment Agreement and caused by the negligence, gross negligence or intentional misconduct of Tracy, except to the extent caused by the negligence, gross negligence or intentional misconduct of any of Lathrop's Indemnified Parties.

b. Lathrop shall hold harmless, indemnify and defend Tracy (with counsel of Tracy's choice) and its members, directors, officers, employees, agents and contractors (collectively "Tracy's Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable and actual attorneys' fees, arising from or connected with this Purchase and Amendment Agreement and caused by the negligence, gross negligence or intentional misconduct of Lathrop, except to the extent caused by the negligence, gross negligence or intentional misconduct of any of Tracy's Indemnified Parties.

11. Notices. All notices that are required, either expressly or by implication, to be given by any Party or Consenting Entity to the other Party or Consenting Entities under this Agreement shall be delivered, sent by facsimile, or mailed, United States first-class postage prepaid, addressed as follows:

CITY OF TRACY  
Director of Public Works  
520 Tracy Boulevard  
Tracy, California 95376  
Phone: (209) 831-6300  
Fax: (209) 831-4472

CITY OF LATHROP  
Director of Public Works  
390 Towne Centre Drive  
Lathrop, California 95330  
Phone: (209) 941-7430  
Fax: (209) 941-7449

SOUTH SAN JOAQUIN IRRIGATION DISTRICT  
P.O. Box 747  
Ripon, California 95366  
Phone: (209) 249-4600  
Fax: (209) 249-4640

Notice shall be deemed given (a) two (2) calendar days following mailing via regular or certified mail, return receipt requested, (b) one (1) business day after deposit with any one day delivery service assuring "next day" delivery, (c) upon actual receipt of notice, or (d) upon transmission, if by facsimile to the correct number, whichever is earliest. The Parties and Consenting Entities shall promptly give written notice to each other of any change of address, telephone or fax number, and delivery to the addresses or transmission to the fax numbers stated herein shall be deemed sufficient unless written notification of a change of address or fax number has been received.

12. Successors and Assigns. This Purchase and Amendment Agreement shall be binding upon the successors and permitted assigns of the Parties.

13. No Benefit to Third Parties. There is no intended third party beneficiary of any right or obligation assumed by the Parties. This Purchase and Amendment Agreement is made for the sole benefit of the Parties, and their respective successors and assigns.

14. Entire Agreement. This Purchase and Amendment Agreement constitutes the entire agreement between the Parties, and supersedes any oral agreement, statement or promise relating to the subject matter hereof. Any amendment of this Purchase and Amendment Agreement must be reduced to writing and signed by the Parties to be valid.

15. Controlling Law. The interpretation and performance of this Purchase and Amendment Agreement shall be governed by the laws of the State of California.

16. Construction.

a. The Parties agree that this Purchase and Amendment Agreement is the product of mutual full and fair negotiation. This Purchase and Amendment Agreement shall therefore be interpreted as drafted equally by the Parties.

b. The captions contained in this Purchase and Amendment Agreement are for convenience only and shall not be interpreted so as to change or affect the meaning of the provisions of this Purchase and Amendment Agreement.

c. The Recitals are made a part of this Agreement.

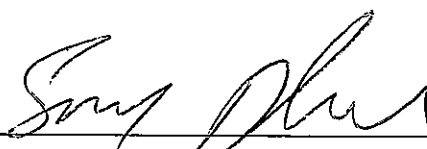
17. Counterparts; Facsimiles. The Parties may execute this Purchase and Amendment Agreement in several counterparts, which shall, in the aggregate, be signed by both Parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. Signatures may be given by facsimile, pdf or other electronic format, or by similar means with the same effect as originals.

18. Cooperation. To the extent reasonably required, each Party to this Purchase and Amendment Agreement shall, in good faith, assist the other in obtaining all necessary approvals as may be applicable to performance of any terms of this Purchase and Amendment Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Purchase and Amendment Agreement as of the Effective Date.

CITY OF LATHROP  
a California municipal corporation

Date: 8/5/13

By   
Mayor

ATTEST:

APPROVED AS TO FORM:

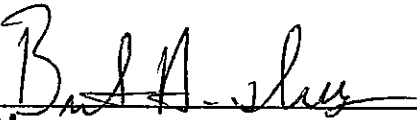
  
City Clerk

  
City Attorney, CITY OF LATHROP

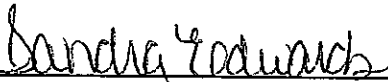
Date: 8/5/13

CITY OF TRACY,  
a California municipal corporation

Date: 8/15/13

By   
Mayor

ATTEST:

  
City Clerk

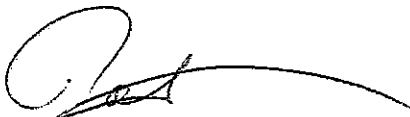
APPROVED AS TO FORM:

  
City Attorney, CITY OF TRACY

Date: 8-16-13

SOUTH SAN JOAQUIN IRRIGATION DISTRICT  
a California irrigation district

Date: 8/7/2013

By   
President, Board of Directors

ATTEST:

Date: \_\_\_\_\_

By \_\_\_\_\_



**RESOLUTION NO 13-3631**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP  
RESCINDING RESOLUTION NO 13-3589 AND APPROVING THE REVISED  
LATHROP-TRACY WATER AGREEMENT**

**WHEREAS**, On June 3, 2013, The Lathrop City Council adopted Resolution 13-3589 authorizing a 5 party Purchase, Sale and Amendment Agreement ("Five-Party Water Sale Agreement") with the City of Tracy ("Tracy"); and

**WHEREAS**, the Water Sale Agreement required approval by all five participating agencies in the South County Water Supply Project ("SCWSP"), including the Cities of Lathrop, Tracy, Escalon, and Manteca plus the South San Joaquin Irrigation District ("SSJID"); and

**WHEREAS**, the City of Manteca's staff did not move the item forward for Manteca City Council consideration; and

**WHEREAS**, the Five-Party Water Sale Agreement included an expiration date of July 5<sup>th</sup> in the event it was not executed by all parties, and a letter dated July 5<sup>th</sup> from Lathrop to Tracy extended the deadline to July 19<sup>th</sup> in the hope that Manteca would approve the Water Sale Agreement; and

**WHEREAS**, the Five-Party Water Sale Agreement was not executed by Manteca by July 19<sup>th</sup>, and so was terminated by Lathrop in a letter to all five agencies dated July 30, 2013; and

**WHEREAS**, a revised Lathrop-Tracy Purchase, Sale and Amendment Agreement ("Three-Party Water Sale Agreement") between Lathrop, Tracy and SSJID has been prepared to allow sale by Lathrop to the City of Tracy of two million gallons per day (1,120 acre-feet per year) of water supply in the SCWSP that is surplus to Lathrop's current and near term needs; and

**WHEREAS**, the City of Lathrop will retain sufficient capacity and water supply for our community needs; and

**WHEREAS**, the environmental documents for the South County Water Supply Project were previously approved and the proposed water use in Tracy in lieu of Lathrop will not divert additional water from the Stanislaus River and no physical facilities are to be constructed; and

**WHEREAS**, the Three-Party Water Sale Agreement is not a project as defined by CEQA; and

**WHEREAS**, the City of Tracy intends to put this additional capacity and water supply to immediate use.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council hereby rescinds Resolution No. 13-3589.

**BE IT FURTHER RESOLVED**, that the City Council approves the attached Lathrop-Tracy Purchase, Sale and Amendment Agreement (Three-Party Water Sale Agreement), (Exhibit "A") and authorizes the Mayor to execute the agreement.

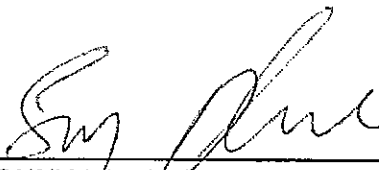
**PASSED AND ADOPTED** this 5th day of August, 2013, by the following vote:

AYES: Akinjo, Dresser, Ornelas, Salcedo and Dhaliwal.

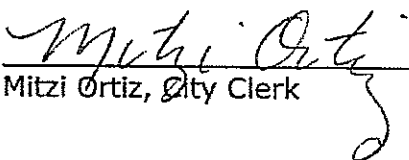
NOES: None.

ABSENT: None.

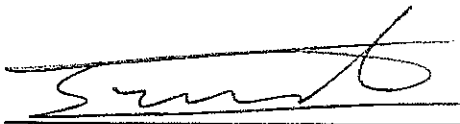
ABSTAIN: None.

  
\_\_\_\_\_  
SONNY DHALI WAL, MAYOR

ATTEST:

  
\_\_\_\_\_  
Mitzi Ortiz, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Salvador Navarrete, City Attorney

Agreement Between City of Tracy and  
Semitropic Water Storage District and Its Improvement Districts for  
Participation in the Stored Water Recovery Unit of the  
Semitropic Water Banking and Exchange Program  
(November 2012)



RESOLUTION 2012-094

AUTHORIZING AN AGREEMENT BETWEEN CITY OF TRACY AND US BUREAU OF RECLAMATION (USBR) FOR LONG-TERM WATER BANKING AT SEMITROPIC WATER STORAGE DISTRICT WATER BANKING PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, The USBR completed their environmental review in May 2011 and has prepared the subject Agreement for City Council consideration, and

WHEREAS, The Agreement defines roles, responsibilities and methods for placing water into storage and return of that water from storage, and has a term through 2035, and

WHEREAS, Water storage for dry years has been identified as a key component of water supply in the City's Urban Water Management Plan, and

WHEREAS, The City's participation in Semitropic WSD allows 3,500 acre-feet/year of water to be returned to Tracy for up to three years for a total storage capacity of 10,500 acre-feet, and

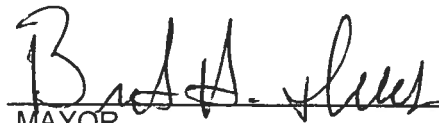
WHEREAS, Authorization of the USBR approval agreement completes the requirements contained in the City/Semitropic agreement;

NOW, THEREFORE, BE IT RESOLVED That the City Council hereby approves Approval Agreement No. 7858A-WB-2011-1 between the City and the US Bureau of Reclamation for Long-Term Central Valley Project Water Banking by the City of Tracy at Semitropic Water Storage District Bank and authorizes the Mayor to execute the agreement.


\*\*\*\*\*

The foregoing Resolution 2012-094 was passed and adopted by the Tracy City Council on the 5<sup>th</sup> day of June, 2012, by the following vote:

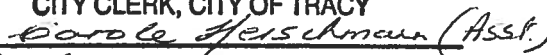
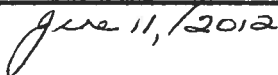
AYES: COUNCIL MEMBERS: ABERCROMBIE, ELLIOTT, MACIEL, RICKMAN, IVES  
NOES: COUNCIL MEMBERS: NONE  
ABSENT: COUNCIL MEMBERS: NONE  
ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:

  
CITY CLERK

THE FOREGOING DOCUMENT IS CERTIFIED TO BE A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE.

CITY CLERK, CITY OF TRACY  
BY:  (Asst.)  
DATE: 

**AGREEMENT BETWEEN  
CITY OF TRACY AND SEMITROPIC WATER STORAGE DISTRICT  
AND ITS IMPROVEMENT DISTRICTS FOR PARTICIPATION IN THE STORED  
WATER RECOVERY UNIT OF THE  
SEMITROPIC WATER BANKING AND EXCHANGE PROGRAM**

**THIS AGREEMENT** (this "**Agreement**"), dated as of November 16, 2010, is entered into by and between the **CITY OF TRACY** ("Participant") and the **SEMITROPIC WATER STORAGE DISTRICT** and **SEMITROPIC IMPROVEMENT DISTRICT, BUTTONWILLOW IMPROVEMENT DISTRICT** and **POND-POSO IMPROVEMENT DISTRICT** of the **SEMITROPIC WATER STORAGE DISTRICT** (collectively called "**Semitropic**") pursuant to City Resolution No. 2010-186. Participant and Semitropic may be referred to individually as Party or collectively as Parties.

**RECITALS**

- A. Participant is a California municipal corporation.
  
- B. Semitropic Water Storage District and its improvement districts are organized under the laws of the State of California under the Water Storage District Law at Division 14 of the California Water Code. As more particularly described below, Semitropic, among other things, supplies imported supplemental surface water to certain of its landowners and water users and has ongoing groundwater banking programs with other entities.
  
- C. Semitropic obtains water from the SWP through its contracts with the Kern County Water Agency ("**Agency**") under the Agency's master contract with DWR, executed on November 15, 1963, and presently providing for a total contract entitlement of 998,730 acre-feet per year. Semitropic's contracts with the Agency were originally executed December 9, 1976 (Buttonwillow Improvement District), December 9, 1976 (Pond-Poso Improvement District), and January 9, 1969 (Semitropic Water Storage District) and provided for a combined contract

entitlement of 158,000 acre-feet per year. This later amount was reduced to 155,000 acre-feet by the contract amendments required to implement the Kern Water Bank exchange under the Monterey Agreement. Semitropic Improvement District was formed in 1991, and its boundaries are coterminous with the boundaries of Buttonwillow Improvement District and Pond Poso Improvement District and, among other things, it serves as agent for Buttonwillow Improvement District and Pond-Poso Improvement District. A total of approximately 136,370 acres of land within Semitropic are irrigated with a total annual demand of approximately 477,000 acre-feet based on current cropping patterns and irrigation practices. Semitropic has entered into contracts with individual landowners comprising 42,328 acres of land which is designated as the Surface Water Service Area ("SWSA"). Semitropic has commitments to deliver 145,240 acre-feet per year to the SWSA. Additional lands outside the SWSA, in the amount of approximately 24,500 acres, have also been connected to Semitropic's distribution system so such lands may receive surface water when available. These additional lands are designated as the Temporary Water Service Area ("TWSA"), and may sometimes be referred to as the Non-Contract Service Area. Total landowner demand within the SWSA and TWSA for surface water supplies is greater than water available under Semitropic's entitlement for Agency SWP water and other surface water supplies.

D. Consistent with the California Environmental Quality Act ("CEQA"), Semitropic, acting as lead agency completed an environmental impact report (the "EIR") concerning a water banking and exchange program (the "**Original Banking Program**"). Semitropic's Board of Directors, on July 13, 1994, certified the EIR as being in compliance with CEQA. Semitropic is also responsible for implementing and monitoring the mitigation measures defined in "Findings and Mitigation Monitoring Plan" dated July 1994, adopted as part of the EIR.

E. Semitropic also entered into a Memorandum of Understanding ("MOU") with neighboring districts, dated September 14, 1994, to implement in part said monitoring and mitigation measures, which this Agreement is subject to. The MOU is on file with Semitropic and has been provided to Participant.

F. The Original Banking Program has a defined total storage capacity of 1,000,000

acre-feet. As part of the Original Banking Program, Semitropic entered into water banking and exchange Agreements with certain parties (the “Original Banking Partners”) as amended, under which, when and if fully vested, the Original Banking Partners shall have the amounts and percentages as follows:

<b>Original Banking Partners</b>	<b>Effective Date Of Agreement/Amendment</b>	<b>Amount of Storage (AF)</b>	<b>Percent of Program</b>
Metropolitan Water District of Southern California	December 12, 1994 May 6, 2003	350,000	35
Santa Clara Valley Water District	June 1, 1997 April 24, 2003	350,000	35
Alameda County Water District	July 1, 1997 Sept. 28, 2001 April 24, 2003	50,000 100,000	5 10
Zone 7 Water Agency	January 28, 1998 February 26, 2003 January 12, 2005	65,000	6.5
Vidler Water Co. Assignment Agrmts. Currently owned by San Diego County Water Authority	October 8, 1998; May 21, 2001; Sept. 28, 2001 February 26, 2003 July 1, 2005 July 1, 2008	30,000	3
The Newhall Land and Farming Company	May 21, 2001 February 26, 2003	55,000	5.5
<b>TOTAL</b>		<b>1,000,000</b>	<b>100</b>

G After the implementation of the Original Banking Program, certain of the Original Banking Partners requested that Semitropic investigate the possibility of increasing the recovery or withdrawal capacity of the Original Banking Program. Following review of various alternatives, Semitropic concluded that the withdrawal capacity increase could best be accomplished in a reliable and efficient manner by providing for additional capacity to pump Stored Water (as defined below) directly from groundwater storage into the California Aqueduct. After considering various pumping locations, pipeline alignments, and the need to minimize pumping impacts on existing groundwater users, the area in the northwest part of Semitropic was



selected as a potential well field. The identified project, known as the Stored Water Recovery Unit ("SWRU") and described further below, is based on additional pumpback capacity of up to 200,000 acre-feet per year, 150,000 acre-feet of which is to be pumped from the Well Field (as defined below) ("**150,000 AF SWRU Pumpback Capacity**") and 50,000 acre-feet from other parts of the Semitropic Improvement District ("**50,000 AF SWRU Pumpback Capacity**").

H. Semitropic prepared a Draft Supplemental Environmental Impact Report (DEIR) on the SWRU. The Final Supplemental EIR was certified on January 19, 2000. Semitropic also prepared Addenda to the Final Supplemental EIR, dated February, 2002, (clarifying the overall storage capacity of the Original Banking Program with the SWRU to be 1,650,000 acre-feet) July, 2004 (regarding the size and configuration of certain SWRU facilities) and March, 2005 (concerning the delivery point of water delivered for banking). Semitropic initially offered the additional recovery capacity of the 50,000 AF SWRU Pumpback Capacity to the Original Banking Partners, but they declined to participate, except for Zone 7 Water Agency and Vidler Water Company, which have entered amendments of their respective Original Banking Program Agreements to provide priority rights in a portion of the 50,000 AF SWRU Pumpback Capacity. As a result of Semitropic's proposal to undertake the SWRU, Semitropic and the Original Banking Partners did enter into an amendment to the Original Banking Partner agreements to confirm and clarify the rights of the Original Banking Partners established under the Original Banking Partner Agreements. The Original Banking Partner Agreements, as amended, among other provisions, generally provide Semitropic shall operate the SWRU in a manner designed so that its operation does not cause the Original Banking Program to be impaired in its ability to meet DWR water quality standards for return of Stored Water to the California Aqueduct (*First Amendment, Section 14.2.3*); provide that the Original Banking Partners shall have no responsibility and/or obligation to compensate or otherwise provide mitigation to Semitropic or SWRU participants as a result of any adverse impacts of the Original Banking Program for the SWRU, including but not limited to the "15 foot/3 year Rule" contained in the MOU referenced in Recital E above (*First Amendment, Section 14.3.1*) and also otherwise provide the Original Banking Partners specified rights in regard to the unused capacities of SWRU facilities. (*First Amendment, Section 14.1.3*). Additionally, by Agreement dated April 23, 2007, Poso Creek Water Company, LLC contracted for 20,000 acre-feet of the 50,000 AF SWRU Pumpback

Capacity and the Semitropic-Rosamond Water Banking Authority is entering an agreement to contract for 100,000 acre-feet of the 150,000 AF SWRU Pumpback Capacity.

I. The facilities planned to be constructed for the SWRU (“**SWRU Facilities**”), with a total pumpback capacity of 200,000 acre-feet per year, consist of two components. First, the “150,000 AF SWRU Pumpback Capacity” will include a well field with approximately 65 wells with a planned capacity to pump 150,000 acre-feet per year (“**Well Field**”), a collection system for transporting Stored Water to a reservoir and pumping plant, a pipeline (estimated 108” diameter) and/or canal to a second reservoir that will be constructed adjacent to the Pond Poso Canal (with appropriate interconnections), a second pumping plant and 420 cfs of two-way conveyance capacity in a 120 inch diameter pipeline to the California Aqueduct, a dual-purpose, bi-directional, connection from the Well Field and the Semitropic distribution system to the California Aqueduct a new In-Lieu service area. Second, the “150,000 AF SWRU Pumpback Capacity” will include well connections and conveyance facility improvements to increase the existing Semitropic pumpback capacity to the Aqueduct by an additional 50,000 acre-feet per year. The SWRU will also require auxiliary features including power distribution lines and operation and maintenance roads. The parties recognize that water quality standards may result in a requirement that water from the SWRU, and in particular the Well Field, be treated before being returned to the California Aqueduct or other Point(s) of Delivery. The general location of projected SWRU Facilities is shown as Area B on Exhibit A hereto.

J. Semitropic as part of the Original Banking Program has constructed facilities to provide Program Delivery Capacity consisting of 23,000 acres of In-Lieu Service Area providing, in combination with delivering capabilities in the SWSA and TWSA, approximately 90,500 acre-feet per year of delivery capacity within a portion of Area A on Exhibit A. Since initiating, the Original Banking Program Semitropic has also increased its recharge capabilities beyond that required by the Original Banking Program through construction of additional In-Lieu Service areas, participation in the Kern Water Bank and additional direct recharge facilities within the District. These additional facilities including proposed future improvements are generally shown on Exhibit A. An additional In-Lieu Service Area as shown within Area B of Exhibit A (shown as “In-Lieu Recharge and Recovery Area”) will also be constructed as part of

the SWRU Facilities. This additional In-Lieu Service Area and additional facilities within Area B will provide delivery capacity for SWRU Banking Partners participating in the 150,000 AF SWRU Pumpback Capacity, provide a portion of the recovery capacity for such SWRU Banking Partners, and may also be used to mitigate potential pumping impacts on landowners adjoining the Well Field.

K. Participant and Semitropic find that it will be mutually advantageous to enter into a groundwater banking and exchange program utilizing the SWRU whereby Semitropic will hold for Participant the water deposited by Participant hereunder. This Agreement will provide groundwater storage for Participant resulting in better utilization of its water supplies, and will provide improved reliability of supplies and overall higher groundwater levels for Semitropic.

L. This Agreement is consistent with the goal of making optimum use of water and facilities and is consistent with conservation objectives of Participant, Semitropic, Agency and DWR.

M. Pursuant to this Agreement Participant will store water from, among other sources, its entitlements to Central Valley Project (CVP) water as they may change from time to time ("Participant's CVP Water Contracts"). These include, without limitation, CVP project water contracts with the United States Bureau of Reclamation (Reclamation) now referred to as Nos. 14-06-200-7858A, 14-06-200-4305A-IR5, and 7-07-20-W0045-IR5 to which Participant is a party. Semitropic is within the State Water Resources Control Board authorized Place of Use for Participant's CVP Water. The Parties intend to accommodate the delivery and return of Participant's CVP water to and from storage in Semitropic, including return to Participant's service area north of Semitropic for ultimate beneficial use as a portion of Participant's municipal water supply portfolio.

**ARTICLE 1.**  
**DEFINITIONS**

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used. Further, each provision in this Article or in the Recitals which is stated in declarative form (for example, "will be adjusted") or is otherwise stated as an agreement between the Parties, rather than as a statement of their intent or purpose, shall be construed to be an operative part of this Agreement and shall be enforceable.

1.1 **"Agreement"** means, as of any particular time, this Agreement as amended or supplemented by the Parties through that time.

1.2 **"Banking Partner"** means, as of any particular time, Participant and any other entity, including an Original Banking Partner and on SWRU Banking Partner, which is then a party to a water banking and exchange agreement with Semitropic. The term "Banking Partner" does not include a Lower Priority Banking Partner.

1.3 **"Effective Date"** means the date this Agreement takes effect, which shall be the later of the date first hereinabove written, and the date determined pursuant to Sections 9.2 and 9.3.

1.4 **"In-Lieu Service Area"** means lands which have at least a five year history of cultivation and continuous use of groundwater, the owners of which have executed surface water service contracts with Semitropic acknowledging and agreeing to cooperate with Semitropic in fulfilling its obligation to carry out the Program, that provide for the reasonable and beneficial use of water made available to Semitropic for banking and other purposes on that land in lieu of pumping groundwater, and whose on-farm systems have been connected to Semitropic's surface water distribution system to receive water delivered to Semitropic for storage purposes. These lands also have a contractual responsibility to use existing wells to recover Stored Water.

1.5 **"Lower Priority Banking Partner"** means an entity which enters into an agreement with Semitropic to utilize all or part of the capacity during such time period when not required to be available for use by Semitropic or Banking Partners.

1.6 **"Original Banking Partners"** means the parties to the Original Banking Program which are those listed in Recital F, and which may change from time to time in event of assignments in accordance with Section 13.1 of the Original Banking Partner Agreements 14.1 (Successors and Assigns).

1.7 **"Original Banking Program"** means the original one million acre-feet (MAF) banking program developed by Semitropic within the Semitropic Bank, referred to as "Program" in Section 1.8 of the Original Banking Program Agreements.

1.8 **"Original Banking Program Agreements"** means the agreement (or agreements) that each Original Banking Partner has entered into with Semitropic containing rights and obligations related to the Original Banking Program.

1.9 **"Original Banking Program Facilities"** means the water facilities, consisting of canals, pipelines, associated pumping plants and recovery wells all as required to recharge a minimum of 90,500 acre feet per year, to recover a minimum of 90,000 acre feet per year at a maximum instantaneous flow rate of 300 cfs (Program Pumpback Capacity), and to recover up to 133,000 acre-feet per year to return water under Program Entitlement Exchange Rights provisions, the locations and description of which are shown on Exhibit A within Area A.

1.10 **"Point(s) of Delivery"** shall have the meaning set forth in the Delivery Agreements referenced in Article 9.1.

1.11 **"Program" and "Semitropic Bank"** means the entire groundwater-banking program developed, operated, and maintained by Semitropic, including both the Original Banking Program and the SWRU.

1.12 **"Program Entitlement Exchange Rights"** means the rights of Banking Partners to exchange an amount of Stored Water through entitlement exchange for an equal amount of Semitropic's allocation of Agency's SWP Entitlement Water (also referred to as Table A Amounts) from the California Aqueduct pursuant to this Agreement or other similar agreements between Semitropic and other Banking Partners, which right shall be first available to the Original Banking Partners as provided further in Article 7. The total amount of Program Entitlement Exchange Rights available to Banking Partners each year will be equal to Semitropic's SWP Entitlement allocation less the first 22,000 acre-feet (was 25,000 acre-feet prior to the implementation of Monterey Amendments). If the nature or description of Semitropic's allocation of the Agency's SWP Entitlement Water is modified, such alternative supply from the SWP shall to such extent be substituted for Semitropic's allocation of Agency's SWP Entitlement Water. Alternative supplies shall include water purchases by the SWP or from sources generally available to State water contractors, as well as water from facilities in which participation is generally made available to State water contractors. Nothing in the preceding sentence shall obligate Semitropic to participate in such programs. The maximum Program Entitlement Exchange Rights of all the Banking Partners at any time will be 133,000 acre-feet per year (derived from 158,000 acre-feet minus 25,000 acre-feet or after implementation of the Monterey Amendments derived from 155,000 acre-feet minus 22,000 acre-feet)

1.13 **"Original Program Pumpback Capacity"** means the capacity, measured in acre-feet per year and CFS, to return Stored Water to the California Aqueduct via the 78" pumpback pipeline constructed for the Original Banking Program, which capacity is first available to the Original Banking Partners as provided further in Article 7.1. The minimum annual Original Program Pumpback Capacity shall be 90,000 acre-feet per year at a maximum instantaneous flow rate of 300 CFS.

1.14 **"Share of SWRU"** means the percentage of the annual SWRU assigned to a SWRU Banking Partner. Semitropic shall assign a Share of SWRU to each SWRU Banking Partner. Participant is acquiring 1,750 acre-feet of annual 150,000 AF SWRU Pumpback Capacity within Area B, and 1,750 acre-feet of annual 50,000 AF SWRU Pumpback Capacity within Area A, which cumulatively constitutes 3,500 shares

1.15 **"Storage Account Balance"** means, with respect to a particular Banking Partner, that Banking Partner's accumulated total Stored Water less the accumulated withdrawals of Stored Water by that Banking Partner. Records of these accounts shall be maintained by Semitropic and they shall be subject to audit, review and approval by the Banking Partners, at the expense of the auditing or reviewing Banking Partner, on an annual basis.

1.16 **"Stored Water"** means, with respect to any particular Banking Partner, water delivered for storage by that Banking Partner as measured at Semitropic's turnouts in Reach 10A of the California Aqueduct or at other locations approved by the Delivery Agreement referred to in Article 9, less losses deducted in accordance with Article 4, which losses shall be accounted for concurrently with the delivery of water to Semitropic for storage.

1.17 **"Stored Water Recovery Unit"** (or "SWRU") means the program within the Semitropic Bank, developed by Semitropic to create, in addition to the Original Banking Program, an additional 650,000 acre-feet of storage as further described at Recital I and elsewhere in this Agreement.

1.18 **"Stored Water Recovery Unit Facilities"** (or "SWRU Facilities") means the proposed facilities shown and described on Exhibit A within Area B including recovery facilities for up to 50,000 acre-feet per year within Area A (for the "50,000 AF SWRU Pumpback Capacity") and additional well connections and conveyance facility improvements not part of the Original Banking Program Facilities and for up to 150,000 acre-feet per year from the Well Field and In-Lieu Service Area of the SWRU (for the "150,000 AF SWRU Pumpback Capacity").

1.19 **"SWP Entitlement Water"** means entitlement water (also known as Table A Amounts) as provided for in the state water contracts, as well as the alternative supplies provided for in the definition of Program Entitlement Exchange Rights.

1.20 **"SWRU Banking Partners"** means, as of any particular time, Participant and any other entity which is party to a water banking and exchange agreement with Semitropic to participate in the Stored Water Recovery Unit.

1.21 **"SWRU Delivery Capacity"** means the capability to deliver water for storage made available as a result of the construction of SWRU Facilities. Specifically the proposed In-Lieu Service Area with delivery capacity estimated to be 50,000 acre-feet per year, based on current cropping patterns and irrigation efficiencies on an irrigation schedule, generally shown on Exhibit B, shall be available as a first priority basis to the SWRU Banking Partners participating in the 150,000 AF SWRU Pumpback Capacity. Additional Unused Semitropic Delivery Capacity may be available from time to time, consistent with Article 7 hereof.

1.22 **"SWRU Pumpback Capacity"** means the capacity, measured in acre-feet per year and CFS, to return Stored Water to the California Aqueduct under the SWRU element of the Program. Upon completion of all necessary SWRU Facilities, the annual SWRU Pumpback Capacity shall be 200,000 acre-feet per year, comprised of (i) 150,000 acre-feet per year at an instantaneous flow rate of approximately 250 CFS for a period of approximately 10 months from the Well Field and from within the additional in-lieu service area described in Recital J (**"150,000 AF SWRU Pumpback Capacity"**) and (ii) 50,000 acre-feet per year at an instantaneous flow rate of 170 CFS for a period of approximately 5 months during the off-peak irrigation season from recovery facilities within Area A shown on the attached Exhibit A and utilizing additional well connections and conveyance facility improvements not part of the Original Banking Program Facilities (**"50,000 AF SWRU Pumpback Capacity"**). The 50,000 AF SWRU Pumpback Capacity is distinct from and over and above the 90,000 acre-feet of pumpback capacity allocated to the Original Banking Partners through the Original Banking Program.

1.23 **"SWRU Storage Capacity"** means the storage capability of the Program which have been allocated to the SWRU as first priority rights, totaling 450,000 acre-feet for the SWRU Banking Partners participating in the 150,000 AF SWRU Pumpback Capacity.

1.24 **"Technical Advisory Committee"** means the Committee established pursuant to Section 7.4 hereof.



1.25 **“Unused Program Entitlement Exchange Rights”** means those exchange rights referenced at Section 1.10 of this Agreement that are not used by the Original Banking Partners.

1.26 **“Unused Original Program Pumpback Capacity”** refers to that minimum pumpback capacity referenced at Section 1.12 that is not used by Semitropic or by the Original Banking Partners.

1.27 **“Unused Semitropic Delivery Capacity ”** means in any year, Semitropic total in District delivery capability, currently about 400,000 acre-feet per year (which ultimately could be equal to its total irrigation demand of about 475,000 acre-feet per year) plus direct recharge capability, which is not used for (i) delivery of Semitropic's SWP Entitlement Water, Agency Pool Water, Shafter-Wasco Irrigation District deliveries pursuant to Section 5.8 or other water available to be used by Semitropic for non-banking purposes or (ii) delivery to the Original Banking Partners and other SWRU Banking Partners under their respective first priority delivery capabilities

## **ARTICLE 2.**

### **ALLOCATION AMONG BANKING PARTNERS**

2.1 Under terms and conditions of this Agreement, Participant shall have the first priority to 3,500 acre-feet of SWRU Delivery Capacity, 3,500 acre-feet of Pumpback Capacity per Section 1.14, 10,500 acre-feet of SWRU Storage Capacity and any available unused capacities as herein provided (herein collectively called “Participant’s Rights”). SWRU Banking Partners, including Participant, in all cases shall also have the first priority to use any SWRU Delivery Capacity and SWRU Pumpback Capacity not used by other SWRU Banking Partners as provided in Sections 3.4 and 5.2.2.1. Semitropic shall notify each SWRU Banking Partner not using its respective share of said SWRU capability, capacity or right, when other entities including Banking Partners desire to utilize it and of any use made of it.

2.2 Semitropic shall not enter into any other water banking programs or other agreements which would interfere with the rights of Participant or the other SWRU Banking Partners.

2.3 Then existing SWRU Banking Partners will be given an opportunity to review the terms and conditions of proposed agreements with potential Banking Partners and Lower Priority Banking Partners and to review Semitropic's records regarding administration of the Program. Such Lower Priority Banking Partners' agreements and activities shall not adversely impact any Banking Partners' ability to utilize any benefits under their respective banking and exchange agreements with Semitropic. If Semitropic or one or more then existing SWRU Banking Partners believe that other potential Banking Partners' proposed agreements or potential Lower Priority Banking Partners' proposed agreements violate any of the provisions of this Agreement or other such Agreement, any Party may seek dispute resolution pursuant to Article 10 concerning such matter. In this event, Semitropic shall only enter into agreements in conformity with the result of the dispute resolution.

The foregoing Section 2.3 process has been fully and finally completed with respect to this Agreement, and no objections were raised.

**ARTICLE 3.**  
**DELIVERY OF WATER BY BANKING PARTNERS**  
**TO SEMITROPIC**

3.1 Under the terms of the Delivery Agreement(s) referred to in Article 9, Participant, at its sole cost and expense, may deliver water to Semitropic at the location in the California Aqueduct or to other agreed upon locations specified in the applicable Delivery Agreement(s). Participant shall notify Semitropic of its intent as early in the year as possible, preferably no later than April 15. Such water will be scheduled and delivered to Semitropic at times and rates of delivery reasonably acceptable to Semitropic, the Agency and Participant, and shall not exceed the sum of (i) 2.33% of the SWRU Delivery Capacity and (ii) any Unused Semitropic Delivery Capacity available to Participant (to the extent available consistent with Article 7), nor shall it exceed the available capacity of Semitropic's distribution system. To the extent practical

Participant shall schedule such water at a time to coincide with Semitropic's in-lieu delivery demands.

3.2 Semitropic will take control and possession of water delivered to Semitropic by any Banking Partner for storage, at the locations specified in their respective Delivery Agreements and will credit the Storage Account Balance of that Banking Partner with Stored Water in an amount equal to the water so delivered less the deduction for losses provided for in Article 4 with respect to such water. At the time Semitropic takes control and possession of water delivered by Participant, legal title to Participant's water, together with the right to withdraw from the Semitropic Basin an amount sufficient to return to Participant the Stored Water, shall vest in Semitropic, for Participant. Upon taking control and possession of water delivered hereunder for storage by Participant, Semitropic, at its sole cost and expense, will do either of the following: (i) transport and store such water by direct percolation; or (ii) exchange that water for an interest in and right to withdraw from the Semitropic Basin an amount of water sufficient to return to Participant the Stored Water. In either case, Semitropic shall thereafter hold and return or otherwise dispose of the stored water as provided for in this Agreement. Upon crediting Participant's Storage Account Balance for the amount of any water exchanged as described in clause (ii) above, Semitropic may deliver the exchanged water to water users for surface water service in lieu of pumping groundwater. Semitropic shall retain the right to use its facilities to deliver water supplies made available to it by Banking Partners and acquired by Semitropic by exchange pursuant to clause (ii) above as it deems appropriate.

3.3 Participant acknowledges that Participant's Stored Water may be commingled with other water. At all times during the term of this Agreement, an amount of water available to Semitropic in the Semitropic Basin equal to the amount of the Participant's Storage Account Balance shall be deemed to be Participant's Stored Water. So long as water in the amount of Participant's Storage Account Balance remains in the Semitropic Basin, Semitropic shall be deemed to remove Participant's Stored Water from storage only as and when requested by Participant pursuant to the terms of this Agreement and any other removal of water by Semitropic from the Semitropic Basin shall be deemed to be the removal of water that is not Participant's Stored Water. If at any time the amount of water in the Semitropic Basin is less than the sum of the Storage Account Balances of the

Banking Partners (an event which the parties believe is extremely unlikely), any additional water subsequently available to Semitropic from the Semitropic Basin without interfering with the rights of landowners or other public agencies, shall be shared by the Banking Partners in proportion to their respective Storage Account Balances, until such time as the amount of water so available to Semitropic from the Semitropic Basin equals or exceeds the total of the Storage Account Balances of the Banking Partners.

3.4 Each SWRU Banking Partner shall have a right to any then existing SWRU Delivery Capacity not used by other SWRU Banking Partners. If requests by SWRU Banking Partners for unused SWRU Delivery Capacity exceed such Capacity, then the unused SWRU Delivery Capacity shall be allocated to each SWRU Banking Partner participating in the 150,000 AF SWRU Pumpback Capacity according to the ratio of its Share of SWRU, divided by the sum of the Share of SWRU of all SWRU Banking Partners wishing to use unused Capacity, times the amount of unused SWRU Delivery Capacity.

3.5 If, due to hydrologic conditions, changes in cropping patterns, or other reasons beyond Semitropic's control, Participant's share of the SWRU Delivery Capacity is reduced, Participant may request, and Semitropic shall provide, information accounting for such reduction. If such reduction is not due to temporary conditions, Semitropic shall take all actions necessary to comply with Exhibit B.

3.6 Unused Semitropic Delivery Capacity which may be available to SWRU Banking Partners consistent with Article 7 (including Section 7.1.4) shall be allocated among the SWRU Banking Partners requesting the use of such Unused Semitropic Delivery Capacity according to their Share of SWRU.

3.7 If, after reasonable efforts by Semitropic to accommodate the SWRU Banking Partners' storage scheduling requests, such requests nevertheless exceed the instantaneously available SWRU Delivery Capacity and Unused Semitropic Delivery Capacity available to the SWRU, Semitropic shall allocate available capacities in proportion to the total of each SWRU Banking Partner's Share of SWRU.

3.8. Participant shall have the responsibility to obtain water supplies that it elects to store pursuant to this Agreement and to deliver same to the Point(s) of Delivery identified pursuant to Delivery Agreements; provided, however, Semitropic shall use all reasonable good faith efforts to assist in securing such arrangements, and to accept delivery and return of such supplies in the manner(s) proposed by Participant. It is the Parties' intent that such arrangements be fully accommodated, including in light of differences required due to Participant's use of CVP water as an important source of water for banking and the location of Participant's service area upstream of Semitropic. The Parties understand that the primary current mechanisms for delivery and return of Participant's CVP sources of supply are summarized in Exhibit E hereto, and that those mechanisms may change or be replaced from time to time.

#### **ARTICLE 4.**

#### **LOSSES AND STORED WATER**

Semitropic's distribution system, evaporative and aquifer losses, for purposes of this Agreement and similar agreements between Semitropic and other Banking Partners, are collectively assumed to be ten percent (10%) of the amount of water furnished by Banking Partners for storage as measured at Semitropic's turnouts in Reach 10 A of the California Aqueduct and at other Points of Delivery as provided in the Delivery Agreement(s) referred to in Article 9. However, this amount and the Storage Account Balance shall be modified in the future, if the results of studies to be conducted jointly by Participant, other Banking Partners and Semitropic under a mutually agreeable procedure establish the actual loss to be different than the assumed ten percent (10%) losses. The Storage Account Balance shall be adjusted accordingly and resulting adjustments in compensation payments shall be in accordance with Section 6.8.

#### **ARTICLE 5.**

#### **RETURN OF WATER BY SEMITROPIC TO PARTICIPANT**

5.1 In any year, upon request by Participant, Semitropic shall return Stored Water to Participant by the method set forth in Section 5.1.1 or the method set forth in Section 5.1.2 or both. If both methods are available to Semitropic without adversely affecting Semitropic or its water users, it shall utilize the method that results in the lowest cost to Participant.

5.1.1 To the extent there are Unused Program Entitlement Exchange Rights available, Semitropic may exchange an amount of Participant's Stored Water for an equal amount of Semitropic's SWP Entitlement Water. Participant hereby consents to such an exchange and Semitropic will be deemed to have effected such an exchange by delivering a portion of its SWP Entitlement Water to Participant in compliance with the Delivery Agreement(s). Upon completion of such an exchange, Participant's beneficial interest in the Stored Water that was the subject of the exchange and the right to withdraw such water shall be vested in Semitropic in its individual capacity, and Semitropic may thereafter deliver such water to its water users who would otherwise have received the portion of Semitropic's SWP Entitlement Water that was delivered to Participant as a result of the exchange.

5.1.2 Semitropic may return Participant's Stored Water to Participant by pumping water from the groundwater basin for delivery to Participant as specified in the Delivery Agreement(s) referenced in Article 9. Semitropic may in its discretion, in addition to utilizing pumpback pipelines within Semitropic, utilize capacity available to it in the Kern Water Bank and operational exchanges with third parties to return Participant's Stored Water. This Article should be read in a manner consistent with Section 3.8 of this Agreement.

5.2 The return of Stored Water by Semitropic to Participant shall be subject to the following terms and conditions:

5.2.1 Subject to the provisions of this Agreement, for each acre-foot of Stored Water held by Semitropic for Participant, Semitropic shall ultimately return one acre-foot of water to Participant.

5.2.2 Subject to the provisions of this Agreement, when Participant requests the return of Stored Water, Semitropic shall return at a minimum the quantities of water calculated in accordance with the following, using its reasonable efforts to accommodate Participant's delivery schedule:

5.2.2.1 3,500 acre-feet of the 150,000 AF SWRU Pumpback Capacity within Area B. In the unlikely event, for any reason, Semitropic is not able to provide the full 3,500 acre-feet to

Participant from the 150,000 AF SWRU Pumpback Capacity in any given year, it shall ensure that Participant is provided the full 3,500 acre feet at no additional cost using other resources, which Semitropic represents and warrants are and will be cumulatively sufficient to fulfill this commitment. Those resources include, but are not limited to wells in the in-lieu area of the SWRU, capacity in the 50,000 AF SWRU Pumpback Capacity, and Kern Water Bank. Participant shall also have a right to any other then existing SWRU Pumpback Capacity (the 150,000 AF and 50,000 AF SWRU Pumpback Capacities) not used by other SWRU Banking Partners if Participant elects to utilize same, subject to mitigation of impacts to other Banking Partners pursuant to Section 5.6 and if originating from the Well Field payment of additional water treatment costs paid by other SWRU Banking Partners for use of same. If requests by SWRU Banking Partners for unused SWRU Pumpback Capacity exceed such capacity, then the unused SWRU Pumpback Capacity shall be allocated to each SWRU Banking Partner according to the ratio of its Share of SWRU, divided by the sum of the Share of SWRU of all SWRU Banking Partners wishing to use the unused capacity times the amount of unused SWRU Pumpback Capacity.

5.2.2.2 Semitropic may also elect to return Stored Water which Participant requests return of through available Unused Original Program Pumpback Capacity, which shall be subject to first being available for use by the Original Banking Partners, as provided by Article 7.

5.2.2.3 Any available Unused Program Entitlement Exchange Rights shall be allocated to each SWRU Banking Partner according to its Share of SWRU. Each SWRU Banking Partner shall have a right to any Unused Program Entitlement Exchange Rights not required for use by other SWRU Banking Partners, subject to mitigation of impacts to other Banking Partners pursuant to Section 5.6. If requests by SWRU Banking Partners for Unused Program Entitlement Exchange Rights exceed such rights, then the Unused Program Entitlement Exchange Rights shall be allocated to each SWRU Banking Partner according to the ratio of its Share of SWRU divided by the sum of the combined Share of SWRU of all SWRU Banking Partners wishing to use the Unused Program Entitlement Exchange Rights times available Unused Program Entitlement Exchange Rights.

5.3 Participant shall notify Semitropic of its intent to take delivery of Stored Water as early in the year as possible, but no later than May 1 of the same year. If such notification is provided after May 1, Semitropic, at its sole discretion, may make reasonable efforts to comply with Participant's request. In the event of an emergency need for water by Participant, Semitropic shall endeavor to return Stored Water to Participant to the maximum extent feasible considering the capacity rights of other Banking Partners.

5.4 Semitropic will obtain approval from DWR to deliver Stored Water by pumpback to the California Aqueduct. In addition it shall be Semitropic's responsibility to notify the Agency, each Banking Partner, and DWR, as to the amount of Original Program Entitlement Exchange Rights and SWRU and Original Pumpback Capacities for that year. When Stored Water is returned by pumpback, it shall be returned to the best of Semitropic's ability, on a schedule acceptable to the respective SWRU Banking Partner, Agency and DWR and at varying rates of delivery. If Stored Water is returned by use of the 150,000 AF SWRU Pumpback Capacity, it will generally be returned over a 10 month period, and if returned by use of 50,000 AF SWRU Pumpback Capacity, it will generally be returned over a 5 month period during the off-peak irrigation season. SWRU Banking Partner shall be responsible for all necessary approvals and costs to transport such water once the Stored Water is returned to the Point of Delivery for Participant by either pumpback or entitlement exchange.

5.5 Notwithstanding any other provision of this Agreement, Semitropic will temporarily reduce or terminate groundwater pumping from Storage for the purpose of returning Stored Water to Banking Partners to the extent required pursuant to the MOU referenced above in Recital E. However, to the extent possible, Semitropic shall change the timing and location of pumping to avoid reduction or termination in the return of Stored Water pursuant to the MOU. Semitropic shall construct adequate facilities and/or secure agreements and/or operational arrangements to obtain the long term levels of service provided for in this Agreement. Such long term levels of service may only be reduced to the extent required by the MOU referenced above in Recital E.



5.6 Subject to Article 7, if the use by other Banking Partners, Lower Priority Banking Partners or Semitropic of Participant's Rights to 3,500 acre-feet annually of the Pumpback Capacity per Section 1.14 (when not being used by Participant), interferes with the recovery of Participant's Stored Water by causing a reduction or termination of pumping pursuant to the MOU, the Party or Parties responsible for the action(s) which impacts Participant shall reduce its withdrawal of Stored Water to make up Participant's loss and, to the extent reductions in the withdrawal of Stored Water are insufficient, shall provide, at the election of the Participant, an equivalent water supply in that year or cash in the amount of the replacement cost of such water, such water or cash to be for the benefit of and to be immediately distributed to the Participant. Semitropic shall adjust the Banking Partners', Lower Priority Banking Partners', or Semitropic's accounts to reflect any such water exchange.

Participant recognizes that it may also be required to reduce its withdrawal of Stored Water or furnish equivalent water or cash to another Banking Partner under circumstances similar to those described above, if its own use of another SWRU Banking Partner's share of SWRU Pumpback Capacity, Unused Program Pumpback Capacity or Unused Original Program Entitlement Exchange rights, interferes with other Banking Partner's recovery of Stored Water, all as described in Article 7. Semitropic shall ensure that each Banking Partner is subject to the restrictions similar to those set forth in this Section 5.6.

5.7 Wells within Semitropic can produce water that will meet DWR's water quality standards to return water to the California Aqueduct in effect December, 2005. DWR is currently establishing long-term criteria for introducing non-Project Water into the California Aqueduct and Semitropic will operate the pumpback facilities in accordance with such long term criteria. Semitropic shall take no direct action which would knowingly cause the quality of recovered Stored Water to not meet such water quality standards in effect. The preceding sentence shall not apply to delivery of water under non-banking programs or otherwise operating under this Program. In the event that future water quality standards change, or the quality of groundwater from Semitropic wells is such that Semitropic cannot meet acceptable DWR water quality requirements for pumping into the California Aqueduct, Stored Water shall be returned to SWRU Banking Partners by Program Entitlement Exchange or alternative methods satisfactory to the

affected SWRU Banking Partners. Such alternative methods may include, but are not necessarily limited to: purchases, exchanges with others, and/or by improving Stored Water quality to acceptable standards for direct pumpback, with the additional costs of any such methods being paid by SWRU Banking Partners accepting such alternative methods. Semitropic's operations and financial situation shall not be adversely impacted as a result of these alternative methods. Notwithstanding the foregoing, it is recognized that if Participant's Stored Water is returned to the California Aqueduct from the Well Field, treatment may be required and additional costs shall be applicable as provided at Section 6.5.3 for operation of same.

5.8 Participant also recognizes that Semitropic has entered into an "Agreement Between Shafter-Wasco Irrigation District and Semitropic Improvement District of Semitropic Water Storage District Providing for Construction and Operation of an Intertie Pipeline," dated December 6, 1993, which implements a water banking and exchange program. Semitropic has committed to return water to Shafter-Wasco by delivery of either surface water in excess of its needs from any available source or by pumping groundwater. The agreement with Shafter-Wasco is based on the use of Semitropic pre-Original Banking Program facilities for the delivery of water to storage and for the withdrawal or return of water. Shafter-Wasco, therefore, has priority over all Banking Partners in the use of existing facilities. Semitropic's obligation under said agreement does not require commitment of SWP entitlement nor the use of pumpback facilities required for the return of Banking Partners' Stored Water.

5.9 Semitropic shall have the responsibility to return water which has been stored pursuant to this Agreement to Participant at the Point(s) of Delivery in a manner consistent with the Delivery Agreement(s), and Participant shall have the responsibility to provide for the return of Stored Water from the Point(s) of Delivery to Participant; provided, however, Semitropic shall use reasonable good faith efforts to assist in securing such arrangements and cooperating with scheduling, Points of Delivery, and other considerations necessary or convenient to return water to Participant.

**ARTICLE 6.**  
**COMPENSATION**

Participant shall make the payments set forth below to compensate Semitropic for (i) its services under this Agreement, (ii) costs and expenses incurred by Semitropic in connection with its obligations under this Agreement.

6.1 General. Semitropic commits to utilize Participant's payments and other Semitropic funds, and to maintain such adequate financial flexibility, as it reasonably determines to be necessary to construct facilities needed to provide Participant with capacities herein provided.

Participant shall pay the following for services provided by Semitropic for storage and withdrawal of water. Semitropic shall pay all other costs not specified herein, and Semitropic shall not create and impose any other charges or fees upon Participant.

6.2 Capital Payments.

6.2.1 Participant shall pay to Semitropic \$5,038,163 for Participant's Rights for recharge, storage and recovery rights being acquired under this Agreement if paid prior to January 1, 2011, and if paid thereafter such amount shall be adjusted in accordance with Section 6.4.1. Participant shall deliver to Semitropic such capital payment upon or before the Effective Date of this Agreement.

6.2.3 All Capital Payments of SWRU Facilities will be adjusted (increased or decreased) based on the actual cost of construction plus 5%, less any grants secured. Semitropic will use reasonable efforts to obtain grants to cover a portion of the construction costs.

6.3 Annual Payments. Participants shall pay annually to Semitropic the following sums:

6.3.1 A Management Fee of \$20,503 per year.

6.3.2 A Maintenance Fee of \$33,131 per year.

6.4 Usage Fees. Participant shall pay (i) a one-time fee of \$46.88 per acre-foot for each acre-foot of Stored Water credited to its Storage Account and (ii) a one-time fee of \$46.88 per acre-foot for each acre-foot withdrawn from its Storage Account.

6.4.1 The amounts provided for in Sections 6.3.1 and 6.4 shall be adjusted at the beginning of each year, and the adjusted amount under Section 6.4 shall apply to all Stored Water credited to or withdrawn from Participant's Storage Account Balance for that year. The adjusted amount under Section 6.3.1 shall be paid each year. The adjusted amount for any particular calendar year shall be the amount equal to the amount provided in Section 6.3.1 or 6.4 (\$20,503 per year or \$46.88 per acre-foot) multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations between 50,000 and 1,500,000 (the "CPI-U") for November of the calendar year immediately preceding the calendar year with respect to which the adjusted amount is being determined (that is, for November 2009 with respect to the adjusted amount for 2010; November 2010 for 2011; and so on), the numerator of which for November 2007, the parties agree, is 130.58 and the denominator of which shall be the CPI-U for November 2003, which, the Parties agree, is 114.9. If publication of this index herein referred ceases or if the basis for such index is substantially modified, the Parties shall negotiate and mutually agree on an alternative but equivalent index or, in the absence of agreement, the matter shall be resolved pursuant to Article 10.

6.4.2 The amount provided for in Section 6.3.2 shall be adjusted annually based upon a maintenance plan and budget developed by Semitropic in consultation with the SWRU Banking Partners, which plan and budget shall include a reasonable reserve for maintenance, repair and replacement of SWRU facilities. SWRU Facilities shall be maintained consistent with SWRU "Project Facilities Maintenance Guidelines" attached as Exhibit C.

6.5 Pumping and Treatment Costs

6.5.1 In addition to payment under Section 6.4, when water is returned, Participant shall pay the average unit power costs then actually incurred by Semitropic to pump such Stored Water from the groundwater basin for either direct delivery to the Point(s) of Delivery, or for entitlement exchange. In the case of direct delivery, Participant also shall pay the average unit power cost then actually incurred by Semitropic to convey the returned water through the distribution system and to pump such water to the Point(s) of Delivery. (In the event Stored Water is returned from the Kern Water Bank, the power costs shall be deemed to be same as pumping to Semitropic turnouts in Reach 10A.) Said power costs shall be computed based on the amount of energy consumed to withdraw and when applicable to convey to the Point(s) of Delivery Participant's Stored Water in a given month times Semitropic's average actual unit power cost for the same pumping period. For ease in billing, Semitropic shall establish an estimated power rate for each calendar year with respect to which Participant requests such information and shall provide Participant with such estimate, including back-up documentation to justify the rate, within fourteen (14) days of the request. Such estimated rate shall be used for billing purposes for the following year and then the billing will be adjusted to actual by March 1 of the year following the estimated rate year, or as soon as possible thereafter. Once the variance amount has been agreed to by the Parties, any amount due by either Party shall be billed immediately and paid in accordance with Section 6.7. Semitropic has its own power production and distribution facilities and the unit cost of power shall be based upon the cost of Semitropic's energy project including, but not limited to, debt service for the energy project, fuel, operation and maintenance for the energy project, replacements, reserve deposit for the energy project, utility billings, and the cost of production and distribution of such power. The Parties agree that the initial calculation shall be consistent with the calculation in Exhibit D.

6.5.2 Exhibit D may be revised from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. The intent of Exhibit D is to provide Semitropic with sufficient revenue to recover the power costs incurred by Semitropic for Participant's withdrawal of Stored Water and to allow Semitropic flexibility to change the calculation based on experience and the changing electric utility industry.

6.5.3 When Stored Water from the Well Field must be treated to meet applicable DWR water quality requirements for pumping into the California Aqueduct there shall be an additional cost for operation and maintenance of such facility. Semitropic shall annually estimate such cost and bill the applicable SWRU Banking Partners such amount to the extent the withdrawal Stored Water and such treatment facility is utilized. The actual costs shall be computed after the end of each Year and the billings for treatment costs adjusted accordingly. Additionally, when Stored Water is pumped from the Well Field and "15-Foot-3 Year Rule" provided in the MOU referenced in Recital E and Section 5.5 is exceeded, Semitropic shall promptly notify Participant (including notice of the cost of mitigation), and at Participant's election, pumping shall continue provided that Participant reimburses Semitropic for mitigation costs associated with continuing pumping.

6.6 If Semitropic or other Banking Partners use SWRU Facilities, Participant may be entitled to payment based on Participant's Share of SWRU as more particularly described in Article 7.

If Participant uses an Original Banking Partner's Unused Program Delivery Capacity, Unused Original Program Pumpback Capacity or Unused Program Entitlement Exchange Rights, Participant shall pay the share of the other Banking Partner's O&M Fee as further provided at Section 7.1.5.

6.7 In addition to payments under Section 6.2, Semitropic may bill Participant no more than monthly for payments under Sections 6.4 and 6.5 hereof and annually for payments under Section 6.3, which payments shall be due Semitropic and shall become delinquent forty-five (45) days after Participant receives the invoice under the terms of this Agreement under Section 14.9. In addition to other remedies available, delinquent payments shall bear interest at the rate of one percent (1%) per month. Data supporting the amounts invoiced shall be provided upon the reasonable request of Participant. Semitropic shall correct any erroneous billing promptly upon discovery of the error. If Participant has been underbilled, payment of the underbilled amount shall be due and become delinquent forty-five (45) days after Participant

receives the corrective invoice and data justifying the change. Overpayments by Participant shall be refunded to Participant within forty-five days of discovery, together with interest thereon at the prime interest rate published by the Wall Street Journal as of the date of discovery.

6.8 In the event there is an adjustment in Participant's Storage Account Balance as provided at Article 4, applying the first-in-first-out method of accounting for water in the Storage Account Balance, previous payments shall be adjusted based on the payment charged in the year the quantity of water to be adjusted was delivered with no further adjustments using the applicable indexes cited in Section 6.4.1. In addition no interest shall be payable on the amount of money required for said adjustment. Financial obligations shall occur as follows:

6.8.1 To the extent the Storage Account Balance is reduced (i.e., losses are determined to exceed ten percent (10%)), Semitropic shall reimburse Participant for the charges paid under 6.4 within one year of such determination.

6.8.2 To the extent the Storage Account Balance is increased (i.e., losses are determined to be less than ten percent (10%)), Participant shall pay Semitropic for charges that would have been paid under 6.4 for such additional water determined to be in the Participant Storage Account Balance within one year of such determination.

6.9 It is recognized that changes in Semitropic's actual costs of operating the SWRU may occur on or after the date this Agreement is executed as a result of enactments, amendments, changes in implementation or interpretation, or repeal of any federal, state or local law, rule, regulation or ordinance (each, a "**Regulatory Change**"). If either Party determines that a Regulatory Change has occurred that would result in a material change (upward or downward) in Semitropic's costs for storing, recovering or transporting water pursuant to the terms of this Agreement, which change in Semitropic's costs is not reflected in the adjustments in the payments due from Participant to Semitropic pursuant to Article 6 or other provision of this Agreement (including, but not limited to, this Section 6.9), such Party shall promptly inform the other Party of the nature and extent of such alleged Regulatory Change and of the reason why

that party believes an adjustment pursuant to this Section 6.9 is warranted in the payments due from Participant to Semitropic. Promptly thereafter, Semitropic shall provide Participant with its calculation of the costs or cost savings associated with such Regulatory Change and the facts and assumptions underlying that calculation. Upon agreement by the parties hereto (i) that a charge or credit affecting any payment due from Participant to Semitropic should be made as a result of a Regulatory Change, (ii) of the amount of such charge or credit, (iii) as to whether such charge or credit is to affect the basic payment amount or is to be separately accounted for (and, if so, in what manner), and (iv) as to the period during which such charge or credit is to apply, such charge or credit shall be incorporated into an amendment to this Agreement setting forth the foregoing and other particulars necessary to implement that adjustment. If such agreement cannot be reached within forty-five (45) days after Semitropic has provided the required notice and information to Participant, the matter shall be resolved pursuant to Article 10, the qualified third party or arbitration panel being charged with determining (x) whether a Regulatory Change has occurred (if that is in dispute), (y) the amount of change, if any, in Semitropic's costs resulting from the Regulatory Change, and (z) the manner in which the payments due from Participant to Semitropic are to be adjusted to fairly and equitably reflect that change in Semitropic's costs (it being the intent of the parties that no windfall or unwarranted compensation or benefit should result to any party as a result of any adjustment made pursuant to this Section 6.9). Any adjustment to the payments due from Participant to Semitropic made pursuant to this Section 6.9 shall be effective as of the first day such Regulatory Change affects Semitropic's operations hereunder unless the parties otherwise agree and may be reconsidered thereafter at any time, at the request of any party, if the adjustment is unjustly undercompensating or overcompensating any party.

## **ARTICLE 7.**

### **INTERRELATIONSHIP OF ORIGINAL BANKING PROGRAM AND STORED WATER RECOVERY UNIT (SWRU)**

#### **7.1 General Provisions**



7.1.1 Semitropic shall use, on a first priority basis, Original Banking Program Facilities and any additional capacity available in those facilities annually, to meet its obligations under the Original Banking Program Agreements to convey water to storage and to recover stored water on behalf of the Original Banking Partners. Any unused capacity in Original Banking Program Facilities shall be available to Participant and other SWRU Banking Partners as herein provided.

In addition, Semitropic shall make Program Entitlement Exchange Rights available first to the Original Banking Partners. The Original Banking Partners also have priority to SWP Entitlement Water or non-project water needed for exchange to accomplish the delivery of up to 90,000 acre-feet annually using the Original Program Pumpback Capacity. Semitropic shall not operate the SWRU pumpback facility in a manner that adversely impacts the return of Original Banking Partner's Stored Water using the Original Program Pumpback Capacity.

7.1.2 The SWRU Facilities are planned to recover, and convey to the California Aqueduct; up to 150,000 acre-feet per year of Stored Water from Area B as shown in Exhibit A. In addition, the SWRU may recover up to 50,000 acre-feet per year of Stored Water from Area A as shown in Exhibit A, which capability is being enhanced through the SWRU with additional well connections and conveyance facility improvements not part of the Original Banking Program Facility, and convey it to the California Aqueduct for the benefit of the SWRU. The Original Banking Partners will have access to such recovery Capacity in Area A on a first priority basis, to the extent required to satisfy the Program Pumpback Capacity and Program Entitlement Exchange Rights of the respective Original Banking Program Agreements. Whenever Original Program Pumpback Capacity is available from the Original Banking Program Facilities during Semitropic's off-peak irrigation season and other times Semitropic determines to be operationally feasible (as provided at Section 5.4), it shall be offered to the Original Banking Partners (on a first priority basis) and the SWRU (on a second priority basis). Semitropic shall be entitled in its discretion to allow Lower Priority Banking Partners use any Program capacity as long as such use (i) is at all times subordinate to the use thereof by Banking Partners and (ii) does not result in any expense to Original Banking Partners or SWRU Banking Partners.

7.1.3 Subject to Section 7.1.5, the Original Banking Partners shall have second priority use of SWRU facilities, provided that (i) the rights of Participant and other SWRU Banking Partners to use unused capacities within the SWRU have been met and (ii) such Original Banking Partner's use shall not reduce the SWRU's expected returns or cause water quality to be unacceptable for return to the California Aqueduct.

7.1.4 Subject to Sections 5.6 and 7.1.5, the SWRU will have second priority use of Original Banking Program Facilities provided that: (i) all rights of the Original Banking Partners to use unused capacity have been met, and (ii) such SWRU use shall not reduce the Original Banking Partners' expected returns or cause water quality to be unacceptable for return to the California Aqueduct.

7.1.5 If Semitropic utilizes the SWRU facilities in accordance with Section 7.1.3, on behalf of and with the consent of, an Original Banking Partner, then the Original Banking Partner shall pay a share of the fee determined pursuant to Section 14.1.5 of the Original Banking Partner's Agreement. If a SWRU Banking Partner utilizes Original Banking Program Facilities, the Operations and Maintenance fee shall be paid in accordance with Section 6.7.2 or 6.5.2 as applicable, of the Original Banking Program Agreements. The Original Banking Partners shall not be obligated to pay any additional fees for usage of the SWRU, nor shall SWRU Banking Partners be obligated to pay any additional fees for usage of Original Program Banking Facilities, other than as detailed in this section.

7.1.6 The Original Banking Partners' second priority rights specified in Sections 7.1.2 through 7.1.5 and Participant's right to use unused SWRU Pumpback Capacity to recovered Stored Water originating from the Well Field as specified in Section 5.2.2.1, shall not apply to water treatment facilities which may be constructed.

7.1.7 There shall be no increase in costs to the Original Banking Partners for modeling, monitoring, and any other activities resulting from the SWRU or any future expansion of the Semitropic Bank.

7.1.8 Nothing in this Agreement affects, acknowledges or establishes (i) rights as to use of any facilities other than the Original Banking Program Facilities and the Stored Water Recovery Unit Facilities, or (ii) rights as to the manner in which Stored Water, once recovered, is to be utilized.

## 7.2 Water Quality

7.2.1 Semitropic shall not operate the SWRU to cause Stored Water recovered for the benefit of the Original Banking Partners, which would otherwise meet applicable water quality standards for delivery into the California Aqueduct, to exceed such standards. Semitropic shall design and construct all Stored Water recovery components of the SWRU to allow the SWRU Well Field and operations of the Original Banking Program (including the facilities for recovery of 50,000 acre-feet annually from Area A as described in attached Exhibit A) to be operated in complete physical isolation from each other.

7.2.2 Inasmuch as the SWRU will also rely on Unused Program Entitlement Exchange Rights, the Original Banking Partners shall have a first priority to (i) exchange up to 133,000 acre-feet per year of Semitropic's Table A entitlement allocations from DWR (i.e., to exercise the Program Entitlement Exchange Rights), and (ii) to exercise other options that may be available as provided in Section 5.7 of their respective Original Banking Program Agreements. Such options may include, but are not necessarily limited to, blending or substituting water that Semitropic purchases, exchanges with others, and/or by treating and improving Stored Water quality to acceptable standards for direct pumpback.

7.2.3 Semitropic shall provide DWR and downstream users of the California Aqueduct which are Original Banking Partners and SWRU Banking Partners water quality information applicable to each Semitropic SWP turn-in facility, including but not limited to turn-in facilities utilized by the SWRU and Original Banking Program. Additionally, Semitropic shall provide the

Technical Advisory Committee (“TAC”) information regarding the quantity and quality of water measured at locations sufficient to determine the water quality within each major Semitropic system.

7.2.4 The Original Banking Partners shall have no responsibility and/or obligation to compensate or otherwise provide mitigation to Semitropic or SWRU Banking Partners as a result of any adverse impacts of the Original Banking Program on water quality that affects the SWRU.

### 7.3 15-Foot/3 Year Rule

7.3.1 The Original Banking Partners shall have no responsibility and/or obligation to compensate or otherwise provide mitigation to Semitropic or SWRU Banking Partners as a result of any adverse impacts of the Original Banking Program on the SWRU, including but not limited to the “15 Foot/3 Year Rule” contained in the September 14, 1994 Memorandum of Understanding referred to in Section 5.5 (“MOU”).

7.3.2 Semitropic shall endeavor to operate the SWRU to ensure that it has no adverse impacts to the Original Banking Program including, but not limited to, capability of the Original Banking Program to avoid reduction in or termination of Stored Water pumping, in current and future years.

In this regard, the Original Banking Program Agreements provide that if SWRU pumping directly or indirectly causes such an adverse impact, Semitropic shall assume all obligations to provide mitigation to the impacted Original Banking Partner(s), consisting of a like amount of water to be provided by Semitropic, which is of quality acceptable for delivery into the California Aqueduct, on a schedule acceptable to the affected Original Banking Partner(s) and in Reach 10 of the California Aqueduct, all as would have been available to the Original Banking Partner(s) absent the SWRU operations. In the event the SWRU causes a violation of the 15-foot/3-year rule, such that Stored Water cannot be returned to the California Aqueduct or other points of delivery used or useable by Participant, and, if resolution of impacts is delayed,

Semitropic shall provide mitigation. If resolution of impacts caused by SWRU operations is untimely, then mitigation shall be as selected by each affected Original Banking Partner, from the following:

(a) Semitropic shall, if directed by an Original Banking Partner, and at such Original Banking Partner's sole discretion, by whatever means and facilities are available at that time, credit an equivalent amount of water to the Original Banking Partner's Storage Account and shall not charge the Original Banking Partner the storage payment provided for by Section 6.2 (Storage Payments), with the result that the Original Banking Partner's Storage Account is credited with the amount of the "put"; without being debited the ten percent (10%) loss in Article 4; or

(b) Semitropic shall reimburse the affected Original Banking Partner(s) for all costs associated with acquiring an equivalent amount of water; or

(c) Other remedy mutually agreeable to the affected Banking Partner and Semitropic.

If Semitropic notifies Participant that this second paragraph of Section 7.3.2 may become operative, and the Participant notifies Semitropic that it nonetheless requests that Semitropic continue the return of Stored Water, Participant shall provide the mitigation on behalf of Semitropic which is herein required.

7.3.3 For purposes of determining whether reduction or termination of Stored Water pumping is required, Original Banking Program and SWRU groundwater level impacts, both for current conditions and forecasted conditions, shall be determined by Semitropic through groundwater modeling using the following methodology:

(a) Groundwater levels shall be estimated based on no Semitropic banking operations occurring (i.e. without Original Banking Program or SWRU);

(b) Groundwater levels shall be estimated based on only the Original Banking Program operations and without the SWRU operations; and

(c) Groundwater levels shall be estimated based on combined operations of the Original Banking Program and SWRU operations (i.e., actual conditions).

The groundwater level impacts due to the Original Banking Program at any given location as prescribed by the September 14, 1994 MOU shall be the difference between groundwater levels in Paragraphs (a) and (b) above. The groundwater level impacts due to the SWRU at any given location as prescribed by the MOU shall be the difference between groundwater levels in Paragraphs (b) and (c) above. Groundwater level impacts due to the difference between groundwater levels in Paragraphs (a) and (c) shall be determined consistent with the process prescribed by the MOU.

Semitropic shall periodically provide the Technical Advisory Committee information regarding the change in groundwater elevation measured at locations needed to identify any impacts of the SWRU on the 15-foot/3 year rule.

#### 7.4 Technical Advisory Committee

A Technical Advisory Committee ("TAC") shall monitor implementation of Original Banking Program Agreements, as amended and the agreements governing the rights of SWRU Banking Partners. The Committee shall consist of one representative from each of the Original Banking Partners so long as each is a participant in the Program, one representative from the SWRU and one representative from Semitropic. The SWRU representative shall be annually selected by the SWRU Banking Partners based on their respective Shares. Semitropic shall chair such Committee and provide for periodic communication with Committee members. The TAC shall meet at least annually to discuss implementation and operation of the SWRU and any future programs. Any two members of the TAC may call a meeting of the TAC. Meetings of the TAC

shall be held at the District's headquarters, unless its members agree otherwise.

**ARTICLE 8.**  
**DIVISION OF RISK RESPONSIBILITIES**

Semitropic and Participant agree to cooperate, and Semitropic shall require other Banking Partners to cooperate, in reducing, to the greatest extent practicable, the risk from claims arising against any of the Parties from implementation of this Agreement. In the event of claims by third parties relating to this Agreement, the responsibilities of Semitropic, acting in its individual capacity, Participant and the other Banking Partners shall be divided as follows:

8.1 Semitropic shall defend, indemnify and hold harmless Participant and the other Banking Partners, and their respective directors, officers, agents and employees against any and all losses, claims, demands, fines, penalties and causes of action (herein collectively referred to as "**claims**") and shall assume responsibility for payment of any settlements, judgments, costs and attorneys' fees arising from claims concerning the following:

(a) Control, carriage, handling, use, disposal, or distribution of water in Semitropic's facilities;

(b) Any claim, contest or dispute by any landowner, resident, water user or other person or entity within the service area of, or otherwise served by, Semitropic, which claim contest or dispute concerns the Program;

(c) Construction, repair, modification, or replacement of any Semitropic facilities;

(d) Semitropic's Program and facilities. and the actions of Semitropic, its officers, employees or agents; and

(e) Any other activities under Semitropic's exclusive control.

If Participant is named in any such action, it may submit its defense to Semitropic, which shall bear the full cost of defense, except to the extent that Participant utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 8.3.

8.2 Each Banking Partner (including Participant) shall defend, indemnify and hold harmless Semitropic and the other Banking Partners, and their respective directors, officers, agents and employees, against any and all claims and shall assume responsibility for payment of any settlements, judgments, costs or attorneys' fees arising from claims concerning the following:

(a) Control, carriage, handling, use, disposal or distribution of Stored Water in facilities of that Banking Partner or in SWP facilities, to the extent that the claim relates to use of SWP facilities to implement this Agreement with respect to that Banking Partner;

(b) Any claim by a landowner, resident, public agency or other entity within the service area of, or otherwise served by, that Banking Partner challenging the appropriateness of that Banking Partner entering into this Agreement;

(c) Construction, repair, modification or replacement of any of the facilities of that Banking Partner;

(d) Operation of the facilities owned by, or the actions of the officers, employees or agents (other than Semitropic) of, that Banking Partner; and

(e) Any other activities under the exclusive control of that Banking Partner.

If Semitropic is named in any such action, it may submit its defense to the Banking Partner involved, which Banking Partner shall bear the full cost of defense, except to the extent



Semitropic utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 8.3. Semitropic shall not be entitled to any indemnification from Participant except as set forth in this Section 8.

8.3 As for any claims by a third party with respect to the SWRU which are not otherwise provided for at Sections 8.1 or 8.2, including any claims challenging the underlying authority for or the validity or enforceability of the SWRU under this Agreement, each SWRU Banking Partner shall be responsible for payment of its allocable share of any settlements or judgments to which it is a party with respect to such claims. If Semitropic is named in any action with respect to such a claim, it may submit its defense to the SWRU Banking Partners which are parties to that action with respect to that claim and those SWRU Banking Partners shall bear the full cost of defense, except to the extent Semitropic utilizes its own counsel for such defense.

8.4 At the request of Participant and/or other SWRU Banking Partners, Semitropic shall join in the defense of any claim which is not adverse to Semitropic's water supply or financial interests in which case the requesting Party shall reimburse Semitropic for all of its costs of defense. However, and notwithstanding Section 8.3 with respect to claims in which one or more of the plaintiffs resides or does business in Kern County challenging the recovery of groundwater under this Agreement, and with respect to any third party claim challenging this Agreement or the right of Participant to the return of its Stored Water in accordance with the terms of this Agreement, Participant may demand that Semitropic join in the defense of claims. In such case, Semitropic must comply with any such demand, the Parties shall jointly manage the litigation, and Participant and other SWRU Banking Partners who are parties to such litigation shall pay one-half of Semitropic's defense costs, if one or more of the plaintiff resides or does business in Kern County; and in other such cases, shall reimburse Semitropic for all of its costs of defense.

8.5 In the event that payments are made in settlement of a claim, in satisfaction of a judgment or for defense costs where the claim arises from issues applying to both Semitropic and one or more SWRU Banking Partners, payments shall be divided in proportion to the relative liability of each arising from the common claim. If the Parties cannot agree on the proportion, then the share to be paid by each of Semitropic and the SWRU Banking Partners shall be submitted to binding arbitration as provided at Article 10 hereof.

8.6 This Agreement shall be interpreted in a manner consistent with (i) Participant's CVP Water Contracts, and (ii) the principle that Participant is responsible for the conveyance of its water into and out of Semitropic, as determined at the relevant Point of Delivery, and Semitropic is responsible for conveyance, storage, return, facilities, operations and other matters on the Semitropic side of the Point of Delivery. "Responsibility" shall include, without limitation, regulatory compliance.

8.7 Notwithstanding any other provision herein to the contrary, nothing in this Agreement shall be construed to impose any liability on Participant caused by or arising from the conduct of any of the Original Banking Partners, other SWRU Participants, or Semitropic.

## **ARTICLE 9.**

### **CONDITIONS REQUIRED FOR IMPLEMENTATION**

9.1 Full implementation of this Agreement is contingent upon execution of appropriate Delivery Agreement(s) or other documentation allowing for water to be delivered to Semitropic for storage and return by Semitropic from storage to the California Aqueduct or other Point(s) of Delivery, all as provided in this Agreement between Participant and all affected parties, which agreements shall be acceptable to Semitropic, whose determination of acceptability shall not be unreasonably withheld.

9.2 This Agreement shall not go into effect until the following conditions have been satisfied:

(a) Participant's completion of compliance as lead agency with any applicable environmental review under the California Environmental Quality Act (CEQA) for Participant's participation in the banking program in accordance herewith, and Semitropic's completion of compliance with CEQA as a responsible agency. Semitropic shall remain fully responsible for regulatory compliance otherwise, including environmental review (see, e.g., Recitals D and H hereof); and

(b) The written consent or approval of Reclamation to the storage of CVP project water in Semitropic pursuant to this Agreement, in a form and content acceptable to Participant, has been finalized and provided to Participant, and Reclamation has completed compliance with any applicable environmental laws for such consent or approval;

(c) The expiration of the limitations periods for CEQA compliance for this Agreement and the associated activities without challenge, or, if a challenge is asserted, upon the date of Participant's written waiver of this condition precedent, signed by Participant and delivered to Semitropic;

Notwithstanding the foregoing, if at any time before the Effective Date hereof, either Party finds that any terms or conditions, or other regulatory requirement imposed on participation of Participant in the Semitropic Banking program as set forth in this Agreement, significantly diminishes the benefit of this Agreement on that Party, that Party may provide written notice to the other Party that the first party is exercising its right to prevent this Agreement from going into effect. The notice must be received by the second party before the Effective Date.

9.3 Notwithstanding Section 9.2 above, the Effective Date shall be no later than December 31, 2010, except as extended as follows. In the event of factors outside of the Parties' control, such as other agencies' approval or regulatory processes, extensions shall be

granted upon written request by either Party. Extensions beyond December 31, 2011 shall not be allowed absent the written agreement of both Parties.

- 9.4 The Parties will keep each other informed concerning the satisfaction of Article 9 Conditions.

**ARTICLE 10.**  
**DISPUTE RESOLUTION**

10.1 In the event of a dispute regarding interpretation or implementation of this Agreement, or if the parties are unable to agree upon a matter as to which their agreement is provided for hereunder, the Parties will endeavor to resolve the dispute by using the service of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties.

10.2 If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter shall be resolved by arbitration as provided in this Article 10 and in the California Arbitration Act (Part 3 [commencing with § 1280], Tit. 9, Calif. Code Civ. Proc.), including Section 1283.05. The Parties agree to be bound by the majority decision of a three-member panel to be selected as follows:

(a) One member shall be selected by Participant (or if the dispute is between various Banking Partners and Semitropic, the Banking Partners involved shall collectively agree on the member).

(b) One member shall be selected by Semitropic; and

(c) The third member shall be selected by the other two (2) members.

If the two (2) members selected by the Banking Partner(s) and Semitropic are unable to agree on the selection of a third member or if Banking Partners are unable to agree on a member among themselves, either Party may petition a court to appoint such member pursuant to Code of Civil Procedure Section 1281.6. The fees and expenses of the panel members shall be paid as follows: Semitropic pays for its member, Participant pays for its member (or if the dispute involves more than one Banking Partner, the participating Banking Partners share the fees and expenses of the member according to the ratio of each participating Original Banking Partner's Permanent Storage Allocation and each participating SWRU Banking Partner's SWRU Storage Capacity divided by the sum of all participating Original Banking Partner's Permanent Storage Allocation and the sum of all participating SWRU Banking Partner's SWRU Storage Capacity), and the fees and expenses of the third member of the panel shall be shared fifty percent (50%) by Semitropic with the remainder to be shared among the other Banking Partners participating in the dispute resolution process according to the same formula immediately referenced above. Alternatively, if the dispute is between Banking Partners and Semitropic has no direct interest in the outcome, the total costs of arbitration shall be paid by the Banking Partners according to the ratio of each participating Original Banking Partner's Permanent Storage Allocation and each participating SWRU Banking Partner's SWRU Storage Capacity divided by the sum of all participating Original Banking Partner's Permanent Storage Allocation and the sum of all participating Original Banking Partner's SWRU Storage Capacity. (As an example if (i) all Banking Partners are involved in a dispute, (ii) a Participant has 20,000 Shares (thus having SWRU Storage Capacity of 60,000 AF), (iii) all Original Banking Partners have fully vested Permanent Storage Allocations and (iv) 100,000 SWRU Shares have been acquired (represents SWRU Storage Capacity of 300,000 AF) then the Participant's share of such costs allocated among the Banking Partners would be  $60,000 / (1,000,000 + 300,000) = 4.62\%$ .)

If a Party asserts that another Party has breached obligations under this Agreement, it may request that the arbitration panel order the other Party to comply with this Agreement. Upon the panel finding that a Party has in fact breached this Agreement, the panel shall order compliance. The panel may order any other equitable relief permitted by California law, including declaratory or injunctive relief, applicable to the matter before the panel for resolution.

If termination is sought by a party pursuant to the terms hereof, the panel may determine the issues of whether a default has occurred or other condition precedent to the termination alleged has been satisfied and, if so, may issue orders implementing that termination. The orders of the panel shall be judicially enforceable. The panel may order that the effective date of its order be the date of the breach, if appropriate.

**ARTICLE 11.**  
**TERM OF AGREEMENT**

11.1 The initial term of this Agreement shall terminate on December 31, 2035, the date of termination of the Agency's Long-Term Water Supply Contract.

11.2 At the election of Participant, this Agreement may be renewed by Participant for an additional term of 10 years on the terms and conditions set forth herein by providing notice of renewal to Semitropic not later than six months prior to the expiration of the initial term of this Agreement; provided, that Semitropic may reject such notice of renewal and terminate this Agreement at the end of the initial term if, at the end of the initial term, Semitropic will no longer be engaged in water banking for any party other than water banking for the direct benefit of its landowners. Further, if Semitropic's water supply contract with the Agency governing Semitropic's State Water Project water supply is not renewed, or if it is renewed with terms materially different from Semitropic's water supply contract in effect as of the effective date of this Agreement and such different terms materially and adversely affect (i) the economic consequences of this Agreement to Semitropic or (ii) Semitropic's ability to perform under this Agreement, then after Participant delivers its notice of renewal the parties shall negotiate equitable amendments to this Agreement to mitigate those adverse effects

11.3 After that first renewal term, Participant shall have the right to renew this Agreement for sequential terms of 10 years each on the terms and conditions applicable during the first renewal period (provided Semitropic is continuing banking programs with third parties as provided in Section 11.2) by providing notice of renewal to Semitropic not later than six

months prior to the expiration of then current term of this Agreement; provided, that Semitropic may reject any such notice of renewal and terminate this Agreement at the end of the then current term. However, if Semitropic rejects such a notice and then offers water banking services to any other party utilizing the same capacities as provided under this Agreement, such services shall be offered first to Participant at the same level and on the same terms offered to such other party.

## **ARTICLE 12.**

### **MISCELLANEOUS PROVISIONS**

**12.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Provided, further, that Participant may subcontract with other entities to receive benefits under this Agreement (i.e. Participant's Customers), provided that Participant shall remain responsible for performing all duties under this Agreement, notwithstanding such subcontracts. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

**12.2 Allocation Among Semitropic Improvement Districts.** Semitropic shall allocate the rights and obligations under this Agreement between the water users and landowners of Semitropic Water Storage District, Semitropic Improvement District, Buttonwillow Improvement District and Pond-Poso Improvement District as it deems appropriate, so long as Participant's and the other Banking Partners right to obtain the return of Stored Water is not adversely impacted.

**12.3 No Modification of Existing Contracts.** This Agreement shall not be interpreted to modify the terms or conditions of any of (a) the water supply contracts between the DWR and the Agency or Participant (b) the water supply agreements between the Agency and Semitropic

(c) any agreements (and amendments thereto) with any of the Original Banking Partners as they exist as of the date of this Agreement and (d) Participant's CVP Water Contracts

12.4 **Waiver/Cure of Defaults.** The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

12.5 **Construction of Agreement.** The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and shall not be used in construing it. The preamble, recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "**herein**," "**hereof**" and "**hereunder**" and similar words shall refer to the Agreement generally and not merely to the provision in which such term is used; the word "**person**" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "**Participant**" and "**Semitropic**" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "**including**," "**include**" or "**includes**" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "**month**" shall mean calendar month; and the term "**business day**" shall mean any day other than



a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement. Unless otherwise required by Contract (or otherwise provided herein), references to capacity in acre-feet shall refer to annual capacities (except as to a Storage Account Balance or stored water, which shall be a cumulative value).

12.6 **Entire Agreement.** This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous agreements and understanding, whether written or oral pertaining between the Parties relating to the matters provided for herein.

12.7 **Severability.** In the event that a court-of competent jurisdiction or a arbitration panel as provided at Article 9 determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement which were not found to be legally invalid or unenforceable in the final decision shall continue in effect.

12.8 **Force Majeure.** All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental

agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 12.8.

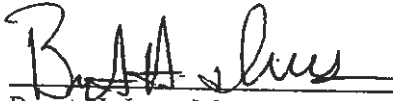
12.9 **Notices.** All notices, requests and demands hereunder ("**Notices**") shall be in writing and shall be deemed to have been duly given when delivered (or, if mailed, postage prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Semitropic shall be sent to the General Manager of Semitropic at Post Office Box Z, Wasco, California 93280, if mailed, and otherwise to the General Manager at 1101 Central Avenue, Wasco, California 93280. Notices for Participant shall be sent to Director of Public Works, The City of Tracy, 520 Tracy Blvd., Tracy, CA 95376. Each Party hereto (a "**Recipient**") who receives from another Party hereto (a "**Sender**") by electronic facsimile transmission (telecopy) any writing which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile transmission agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

12.10 **Further Assurances.** Each party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

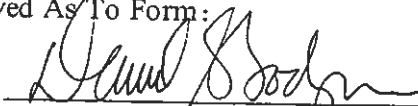
12.11 **Counterparts.** This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement thereto may be executed in two or more counterparts, and by each party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document, upon counterparts being executed by all of the parties. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the party against whom enforcement is sought.

Executed the day and year first hereinabove written.


**CITY OF TRACY**


By:   
Brent H. Ives, Mayor

By:  (for)  
Sandra Edwards, City Clerk


Approved As To Form:  
By:   
Daniel Sodergren, City Attorney


**SEMITROPIC WATER STORAGE DISTRICT**

By:   
Fredrick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary


**SEMITROPIC IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:   
Fredrick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary

**BUTTONWILLOW IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:   
Fredrick A. Wegis, President


By:   
Wilmar L. Boschman, Assistant Secretary

**POND-POSO IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:

  
Fredrick A. Wegis, President

By:

  
Wilmar L. Boschman, Assistant Secretary





# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

IN REPLY REFER TO:

**MAY 18 2012**

MP-440  
WTR-4.00

Mr. Leon Churchill  
City Manager  
City of Tracy  
333 Civic Center Plaza  
Tracy, CA 95376

Subject: Approval Agreement No. 7858A-WB-2011-1 (Approval Agreement) of Long-Term Central Valley Project Water Banking by the City of Tracy at the Semitropic Water Storage District Bank – Central Valley Project, California

Dear Mr. Churchill:

This letter (hereinafter referred to as the “Approval Agreement”) provides the Bureau of Reclamation’s approval to the City of Tracy (City), under certain terms and conditions, to bank up to 10,500 acre-feet (AF) of its Central Valley Project (Project) water in the Semitropic Water Storage District Bank (Semitropic Bank). The City’s Project water would be made available for banking from one or a combination of three water service and/or assignment contracts (Contracts). This Approval Agreement covers depositing and withdrawing for return of Project water, and runs concurrent with the duration of the City’s water service contracts (Contracts), as amended or renewed, but may not exceed the period analyzed in the environmental assessment (EA) prepared for this Approval Agreement.<sup>1</sup> Cost authority number (CAN) A1R-1752-9652-220-02-5-0, established by Reclamation’s South-Central California Area Office in Tracy (SCCAO-TO), will remain in effect for the duration of this Approval Agreement to cover Reclamation’s time in monitoring and administering activities associated with this Approval Agreement.

For purposes of this Agreement, the words “Banking” represents depositing, withdrawing, and returning Project water, while the term “bank” is used to identify each separate action.

## Authority

Central Valley Project Improvement Act, Title 34 of Public Law 102-575 (CVPIA), Section 3408 (c), *Contracts for Additional Storage and Delivery of Water*, is the primary authority expressly authorizing the Secretary of the Interior through Reclamation to enter into contracts to, among other things, impound or store Project water in non-Project facilities for domestic,

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<sup>1</sup> The period analyzed in the environmental document extends through Contract Year (CY) 2035 (March 2035 through February 2036); however, the City’s Banking Agreement with the Semitropic Bank extends through calendar year December 31, 2035.

municipal, and industrial purposes. Reclamation is supportive of conjunctive-use programs, and the benefits that such programs provide for managing water supply reliability. Any program involving the banking of Project water outside a contractor's contract service area requires Reclamation's approval and a detailed accounting, monitoring, and reporting program. Reclamation is in the process of finalizing guidelines for Banking of Project water.

### Background

The City has one water service Contract No. 14-06-200-7858A providing for up to 10,000 AF, and two assignment contracts. One assignment Contract, No. 14-06-200-4305A-IR12-B with Banta-Carbona Irrigation District, is for up to 5,000 AF. The other assignment Contract, No. 7-07-20-W0045-IR12-B with the Westside Irrigation District, is for up to 2,500 AF.

By letter dated March 5, 2007, Reclamation approved the City's request to bank up to 1,000 AF of Project water with a return of 900 AF (accounts for 10 percent loss factor) of water under a pilot project through calendar year 2016 (2007 Approval). Between 2008 and 2009, the Semitropic Bank returned 200 AF of Project water to the City. At the time of this Approval Agreement, the City has 700 AF of Project water remaining in storage at the Semitropic Bank. Reclamation's 2007 Approval is a stand-alone transaction, and provides that: "*If for some reason the City does not receive . . . [the] remaining water prior to [December] 2016, the parties have agreed that the City will have the option to roll the [remaining balance] into a long-term account. If no long-term account has been established with Semitropic, then the original agreement would be extended for another 10 years.*" Effective November 16, 2010, the City and Semitropic Bank entered into a long-term Banking arrangement, titled "*Agreement between City of Tracy and Semitropic Water Storage District and its Improvement Districts for Participation in the Stored Water Recovery Unit of the Semitropic Water Banking and Exchange Program.*" Said agreement is hereinafter referred to as the "Banking Agreement." The duration of the Banking Agreement continues through December 31, 2035, with an option to renew for 10 years. Therefore, unless the remaining 700 AF of previously banked Project water under the 2007 Approval is returned to the City by December 31, 2016, that quantity of Project water still remaining shall become subject to this Approval Agreement.

Reclamation acknowledges the Department of Water Resources' (DWR) December 14, 2011, agreement, titled "*Multi-year Conveyance Agreement Among the Department of Water Resources of the State of California, Kern County Water Agency, and the City of Tracy for the Semitropic Water Banking Program (2011-2030) SWPAO #10031,*" containing the banking deposit period through December 31, 2029, and December 31, 2030, for extraction, and returning Project water. DWR's agreement allows that "*DWR may agree to extend this Agreement [DWR's approval] for an additional five years to December 31, 2035.*" (Para. 1, Term.) As such, any Banking of Project water after December 31, 2030, is contingent upon the City having necessary approval(s) in place to facilitate the Banking actions. The City shall extract and return all previously banked Project water from Semitropic Bank prior to expiration (December 31, 2030) or earlier termination of the agreement(s) needed in returning said water.



### The City's Proposal

Reclamation has reviewed the City's proposal and other documentation submitted in support of two Federal discretionary actions (Proposal). The City is requesting Reclamation's approval to bank up to 1,750 AF (minus 10 percent for losses) of Project water in CY 2011, and to bank up to 10,500 AF (minus 10 percent for losses) each CY thereafter for municipal and industrial (M&I) use. Banking of the Project water will be by one or a combination of methods as provided in this Approval Agreement, and analyzed in the enclosed EA.

Semitropic Bank has taken direct delivery of the City's 1,750 AF CY 2011 Project water, and pursuant to the Banking Agreement agrees to take up to 10,500 AF annually (consistent with Reclamation's CY) thereafter no later than December 31, 2035. Under this Approval Agreement, the City will deposit more water than would be returned from Semitropic Bank due to the 10 percent adjustment for operational losses. Therefore, of the 1,750 AF of Project water banked in CY 2011, the City will have 1,575 AF of the previously banked Project water for future return. For return periods after CY 2011, the City will withdraw and exchange, for return in any year, 3,500 AF. For example, the City deposits up to 10,500 AF of Project water in Semitropic Bank. The 9,450 AF return quantity accounts for operational losses, and recognize that 3,500 AF is the maximum annual return quantity. Reclamation concurs for purposes of water accounting that the 10 percent operational losses under an exchange return mechanism will be treated as balanced exchanges. Costs, however, will be assessed on the gross quantity without adjustment for losses.

### Environmental Documentation

In compliance with the National Environmental Policy Act and the Endangered Species Act, the environmental effects were analyzed for the City's Proposal, and a Final EA No. EA-09-164 and Finding of No Significant Impact (FONSI), dated May 26, 2011, titled, "*City of Tracy Long-term Central Valley Project Groundwater Banking with Semitropic Water Storage District*" was completed. The Final EA-09-164 incorporated, by reference, the February 23, 2007, EA-05-111 and Finding of No Significant Impact (FONSI) titled, "*Groundwater Banking Pilot Project of Central Valley Project from City of Tracy to Semitropic Water Storage District.*"

The Final EA No. 09-164 analyzed long-term Banking through CY 2035 (through February 2036) meaning Reclamation did not analyze either the City's option to renew the Banking Agreement for 10 years or Semitropic Bank's Stored Water Recovery Unit. Specifically, EA No. 09-164 provides that, "*This EA does not analyze the build out or use of the In-Lieu Recharge and Recovery Area of the Stored Water Recovery Unit (SWRU) within Semitropic as it is not a part of the Proposed Action. Any future use of this area [SWRU] would require additional environmental documentation as part of this banking project [Approval Agreement]*" (p. 2).

### Conveying the City's Project water to the Semitropic Bank

Conveyance of Project water to Semitropic Bank from the City would probably occur as an operational exchange at O'Neill Forebay (Reach 3 of the California Aqueduct) and then direct delivery to Semitropic Bank turnouts in Kern County Water Agency (KCWA) at Reaches 10A, 12E, and 13B of the California Aqueduct. The City's Project water will be released from the

Federal share of San Luis Reservoir by Reclamation and made available to DWR's State Water Project (SWP) at O'Neill Forebay. DWR would deliver the City's Project water from O'Neill Forebay to KCWA water service area under KCWA Article 55 (Amendment No. 23 of the 1963 agreement between DWR and KCWA for transportation of non-Project water) for Banking within Semitropic Bank or within Semitropic Bank's share of the Kern Water Bank facilities (KWB). Other methods of conveying the City's Project Water to Semitropic Bank may be considered by Reclamation upon request of the City.

Consistent with the terms and conditions of this Approval Agreement, and other approval(s) as may be required, the City will make available to Semitropic Bank up to 10,500 AF of its allocated Project water supply for deposit each CY. The City must adhere to a written schedule approved by Reclamation, each CY in coordination with DWR and the City, and/or Semitropic Bank, KCWA, and the KWB, if and when applicable. Deliveries to Semitropic Bank and/or KCWA and KWB shall be measured by DWR at Reach 10A, 12E and 13B of the California Aqueduct.

#### Returning Water to the City

Consistent with terms and conditions of DWR's approval and other approval(s) as may be required, Semitropic Bank will make available, at the request of the City, up to 3,500 AF of water each CY for return. Return of previously banked water, from Semitropic Bank to the City, will occur using any one or a combination of methods described below and as analyzed in EA No. 09-164. Other methods returning the City's Project Water at Semitropic Bank may be considered by Reclamation upon request of the city.

1. The previously banked Project water will be withdrawn from Semitropic Bank and delivered into the California Aqueduct to meet downstream SWP demands. In exchange, a like amount of KCWA SWP water will be exchanged between DWR and Reclamation at O'Neill Forebay and return a like amount of water to the City.
2. The previously banked Project water will be withdrawn from Semitropic Bank and delivered into the California Aqueduct to meet downstream SWP demands. In exchange, a like amount of KCWA SWP water will be delivered to the City's turnout along the Delta-Mendota Canal (DMC) via the Jones Pumping Plant, as authorized under the State Water Resources Control Board (SWRCB) Joint Point of Diversion (D-1641). The delivery of the SWP water will not require a change in place of use (POU).
3. The previously banked Project water will be withdrawn from Semitropic Bank and delivered into the California Aqueduct to meet downstream SWP demands. In exchange, a like amount of KCWA SWP water will be delivered via SWP's Banks Pumping Plant, and diverted through the California Aqueduct-DMC Intertie (Intertie) to the City's turnout along the DMC. Delivery of the SWP water will not require change to POU.

#### Terms and Conditions Applicable to Approval

In addition to the methods outlined above, this Approval Agreement is subject to the following terms and conditions and the City's Banking Agreement. However, the City agrees that if there are

any inconsistencies between the terms of this Approval Agreement and the Banking Agreement, this Approval Agreement controls.

1. The term of this Approval Agreement, for Banking up to 10,500 AF of the City's allocated Project water supply each CY, is effective October 2011 through December 31, 2035, contingent upon the City having necessary approval(s) and Contracts in place. All previously banked Project water, under this Approval Agreement,<sup>2</sup> minus up to 10 percent for losses must be returned to the City for M&I use before expiration or early termination of this Approval Agreement. This Approval Agreement may be terminated sooner than December 31, 2035, provided that, all previously banked water is returned from Semitropic Bank to the satisfaction of Reclamation, or the Parties mutually agree to other conditions of termination.
2. No deposit of Project Water may occur beyond termination of this Approval Agreement. If terminated early, however, this Approval Agreement remains in effect for limited purposes, such as returning all Project water to the City, Reclamation reconciling final water accounting records, and receipt of the City's final payment as determined by Reclamation.
3. The City shall submit a request to Reclamation for banking Project water each CY for review and approval on a case-by-case basis (Request). The period environmentally analyzed under this Approval Agreement allows Reclamation to conduct streamlined review and approval of the City's Banking Request.
4. If previously banked Project water is withdrawn by the City and not used by Semitropic Bank, but is transferred elsewhere by the City, and any water not returned to the City upon termination of this Approval Agreement, shall be treated as a transfer of Project water to a non-Project contractor subject to: (1) Section 3405 (a) of CVPIA; (2) Reclamation's February 25, 1993, *Interim Guidelines for Implementation of the Water Transfer Provisions of the CVPIA*; (3) Reclamation's May 15, 2008, *Business Practice Guidelines Accounting for Project Water Transfers* (both as may be amended or revised); and (4) other applicable state and Federal laws, or requirements as determined by Reclamation including additional water rates and full cost pricing water rates including interest if applicable. Such transfer will require additional environmental analysis and the contracting officer's prior written approval.
5. In the event the City wishes to deposit more than 10,500 AF each CY or return water not previously analyzed in FONSI/EA No. 09-164, additional environmental analysis is required at the City's expense. Subject to the environmental documentation, Reclamation may consider amending this Approval Agreement to accommodate such change.
6. The City is responsible for paying costs of conveyance and conveyance agreements, costs associated with returning the previously banked Project water by exchange, and costs of any additional environmental documentation if applicable. Conveyance of exchange water from Semitropic Bank, which requires the use of Federal facilities, is subject to further approval by Reclamation at the City's expense.

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<sup>2</sup> For purposes of accounting, the 700 AF of Project water, or any portion thereof, remaining in Semitropic Bank after December 31, 2016, shall be incorporated in the City's water Banking account under the terms of this Approval Agreement. Therefore, Reclamation's 2007 Approval will be superseded by terms and conditions of this Approval Agreement.

7. The City shall submit a written Request to SCCAO-TO along with written schedule(s) in advance of delivering any Project water to Semitropic Bank. Such Request must state the monthly quantity of Project water for Banking. Project water deliveries to Semitropic Bank must be included in the City's written schedule, and paid for by the City in advance of delivery in accordance with the City's Contracts. The applicable restoration fund payments and assessments, including applicable operation and maintenance conveyance fees, owed to Reclamation's Operating Non-Federal Entity, namely, the San Luis and Delta-Mendota Water Authority, are due before the end of the month following the month of delivery or input. Interest and/or penalties, if any, will accrue from the date of delinquency as determined by the applicable provision(s) of the City's Contracts.
8. The City shall provide SCCAO-TO with a monthly report of the amount of Project water banked in Semitropic Bank, adjusted for losses, during those months when water is banked. Negative reporting is not required. Project water delivered to Semitropic Bank, if used by Semitropic Bank for in-lieu banking<sup>3</sup>, must be used within the Project authorized water right POU. The City shall provide documentation satisfactory to Reclamation verifying that the Project water delivered to Semitropic Bank and used for in-lieu banking is used within the Project authorized water right POU. This report may be based on records maintained by Semitropic Bank, but will be the responsibility of the City to provide to Reclamation. Any adjustment(s) to the quantity of Project water for Banking with Semitropic Bank pursuant to this Approval Agreement, shall be made as soon as practicable, but no later than 60 days after Banking.
9. Project water for return to the City will be accomplished by one or a combination of measures identified above in the *Returning Water to the City* section of this Approval Agreement. The City is responsible for ensuring necessary agreements, approvals, and environmental documentation required for the return of the Project water be completed. The City's Request must be provided to SCCAO-TO in advance, when seeking to withdraw any previously banked Project water. The Request to SCCAO-TO shall include: A statement of the mechanism(s) by which the water will be returned and the source(s) of water being returned and copies of necessary agreements, approvals, and environmental documentation necessary to complete the return of the previously banked Project water. Reclamation will review the Request to ensure consistency with FONSI/EA-09-164, and the terms and conditions of this Approval Agreement.
10. DWR will account for the conveyance and conveyance pumping costs to move the Project water from the Federal share of the San Luis-Joint Use facilities to Semitropic Bank. Reclamation will account for the conveyance and conveyance pumping costs to move the SWP water from the Federal share of the San Luis -Joint Use facilities for return to the City. Any use of Federal facilities for conveyance of water provided in exchange for previously banked Project water, must be approved by the Contracting Officer in advance. The City shall pay Reclamation the appropriate rate for the use of Federal facilities, if applicable, for delivery of SWP or other non-Project water exchanged for previously banked Project water

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<sup>3</sup> The word in-lieu banking is used as an operational action referring to Semitropic Bank using the City's Project water supply, which is intended to be Banked, and foregoing groundwater pumping to meet Semitropic Bank in-district water needs. Semitropic Bank then credits the City's Banking account for a like amount of the Project water supply which Semitropic Banking used instead of depositing for the City.

11. Reclamation will track all Banking occurring during the period of this Approval Agreement, including where the Project water is beneficially used, and the source(s) and mechanism(s) of any related exchanges. During the period of this Approval Agreement, the City shall provide Reclamation with a report, each CY, summarizing the quantities of Project water deposited in and withdrawn from Semitropic Bank (Report). The Report must identify the City's account balance with Semitropic Bank along with the source(s) and quantities of Project water returned to the City by exchange (i.e. groundwater, SWP water, Project water, etc.). The Report can be developed based on data from Semitropic Bank, but the City is responsible for providing the Report to SCCAO-TO.
12. This Approval Agreement shall be revised as necessary to comply with Reclamation's water Banking guidelines, criteria, regulations, or policies governing the Banking of CVP Water, or any lawful order of California's SWRCB regarding Banking or storage of CVP water, or any lawful order of a state or Federal court of competent jurisdiction. This Approval Agreement may be revised or amended upon mutual written agreement of the Parties.
13. By signing this Approval Agreement, the City agrees to the stated terms and conditions, including retaining CAN A1R-1752-9652-220-02-05-0 open for staff time in the continued administration and monitoring of this Approval Agreement. For Reclamation's tracking purposes, any future proposals and correspondence relating to this Approval Agreement, including monthly and annual reporting, must reference this assigned Approval Agreement No. 7858A-WB-2011-1.

Subject to the terms and conditions of this Approval Agreement, Reclamation hereby approves your Banking Proposal. If you need additional information, you may contact Ms. Barbara Hidleburg at 916-978-5193, or e-mail [bhidleburg@usbr.gov](mailto:bhidleburg@usbr.gov). If you have questions relating to the administration of this Approval Agreement, you may contact SCCAO-TO as provided below.

Please sign, date, and return one original of this Approval Agreement to Reclamation at the heading address, Attention: MP-440 (Ms. Karen Hall), along with a certified original resolution authorizing your concurrence. In addition, return one original of this Agreement to SCCAO-TO, Attention: Ms. Cathy James, 16650 Kelso Road, Byron, CA 94514-9614.

Sincerely,



**ACTING FOR**

Donald R. Glaser  
Regional Director

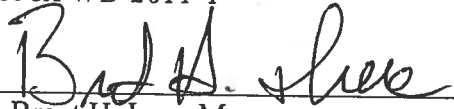
Enclosures - 2

In Triplicate

Subject: Approval Agreement No. 7858A-WB-2011-1


8

*City of Tracy, through the undersigned, concurs with the foregoing Approval Agreement No. 7858A-WB-2011-1*

By:   
Brent H. Ives, Mayor

6/8/12  
Date

Attest:

By:   
Sandra Edwards, City Clerk

Approved As To Form:

By:   
Daniel G. Sodergren, City Attorney

cc: Mr. Ronald D. Jacobsma  
General Manager  
Friant Water Authority  
854 North Harvard Avenue  
Lindsay, CA 93247-1715

Mr. James Beck  
General Manager  
Kern County Water Agency  
P.O. Box 58  
Bakersfield, CA 93302-0058

Mr. Dan Nelson  
Executive Director  
San Luis Delta Mendota Water Authority  
P.O. Box 2157  
Los Banos, CA 93635

Mr. Jonathan Parker  
General Manager  
Kern Water Bank Authority  
1620 Mill Rock Way, Suite 500  
Bakersfield, CA 93311

Mr. William Boschman  
General Manager  
Semitropic Water Storage District  
P.O. Box 8043  
Wasco, CA 93280-0877

(w/o enclosures to each)

Ms. Gwen Knittweis  
Supervising Engineer  
Department of Water Resources  
State Water Project Analysis Office  
P.O. Box 942836  
Sacramento, CA 94236

Wholesale Water Agreement between Byron Bethany Irrigation District and  
the City of Tracy for Water Supply for Tracy Hills (August 2013)

(includes Long-term Contract between the United States and the Byron  
Bethany Irrigation District Providing for the Exchange of Non-Project Water  
for Project Water (April 2014))





RESOLUTION 2013-118

APPROVING A WHOLESALE WATER AGREEMENT BETWEEN BYRON BETHANY IRRIGATION DISTRICT AND THE CITY OF TRACY FOR WATER SUPPLY FOR TRACY HILLS, FINDING THE CEQA NEGATIVE DECLARATION ADEQUATE FOR THE CITY'S USE, AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, Byron-Bethany Irrigation District ("BBID") is a local public agency formed pursuant to Division 11 of the California Water Code, and

WHEREAS, BBID proposes to enter into a Wholesale Water Agreement (the "Agreement") with the City of Tracy which, in conjunction with a long-term exchange contract with the United States Bureau of Reclamation, will provide for the delivery, treatment and distribution of up to 4,500 acre-feet of water per year to BBID's Raw Water Service Area 2 (collectively, the "Project"), and

WHEREAS, The City of Tracy is a "responsible agency" for the Project under the California Environmental Quality Act ("CEQA") because it has approval authority over the Agreement, and

WHEREAS, BBID, as "lead agency" for the Project and pursuant to CEQA, consulted with the City regarding the Project, and subsequently prepared and circulated a draft Negative Declaration and Initial Study for a 30-day public review, and

WHEREAS, On November 26, 2012, after the close of the public review period, BBID adopted and certified the Negative Declaration for the Project, and

WHEREAS, Title 14, Section 15096(f) of the California Code of Regulations requires a responsible agency to consider a lead agency's negative declaration and determine whether it is adequate for use by the responsible agency prior to reaching a decision on a project, and

WHEREAS, The City Council has reviewed and considered BBID's Negative Declaration, Initial Study, and other associated CEQA documents, and

WHEREAS, The Agreement provides water supply for the portion of the Tracy Hills Specific Plan area, and

WHEREAS, BBID will construct the necessary pump station and pipeline between their facilities and the Delta-Mendota Canal ("DMC"), and

WHEREAS, Delivery of the water is to be scheduled through the USBR and is subject to conveyance capacity being available in the DMC, and

WHEREAS, The agreement has a term through February 28, 2053.

NOW, THEREFORE, BE IT RESOLVED That the City Council:

- 1) Approves the Wholesale Water Agreement between Byron Bethany Irrigation District and the City of Tracy and authorizes the Mayor to execute the agreement; and

- 2) Finds that Byron-Bethany Irrigation District's Negative Declaration and associated documents are adequate for the City of Tracy's use in its consideration and approval of the Wholesale Water Agreement, and directs staff to file a Notice of Determination pursuant to Title 14, Section 15096, subdivision (i) of the California Code of Regulations.

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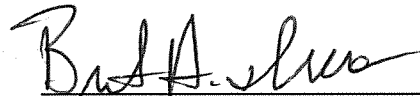
The foregoing Resolution 2013-118 was adopted by the Tracy City Council on the 6th day of August, 2013, by the following vote:

AYES: COUNCIL MEMBERS: MACIEL, MANNE, RICKMAN, YOUNG, IVES

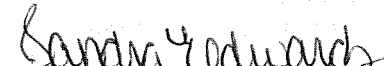
NOES: COUNCIL MEMBERS: NONE

ABSENT: COUNCIL MEMBERS: NONE

ABSTAIN: COUNCIL MEMBERS: NONE

  
MAYOR

ATTEST:

  
CITY CLERK

**WHOLESALE WATER AGREEMENT BETWEEN BYRON BETHANY  
IRRIGATION DISTRICT AND THE CITY OF TRACY**

This Agreement is entered into on August 6, 2013, by and between BYRON BETHANY IRRIGATION DISTRICT ("BBID"), a political subdivision of the State of California, and the CITY OF TRACY ("CITY"), a municipal corporation, collectively referred to as the "Parties" and each singularly as a "Party."

RECITALS

A. BBID is an irrigation district organized and operating under and by virtue of Division 11 of the California Water Code. BBID was formed in 1919 for the purpose of providing irrigation water service to lands within the district. It currently provides irrigation water service to approximately 20,000 acres of land within its district boundaries;

B. BBID has the authority to deliver water for domestic, municipal, and industrial purposes pursuant to Water Code sections 22075 and 22076;

C. The primary source of water supply for BBID's Byron Service Area is from a pre-1914 water right originating in Italian Slough as set forth in a Notice of Appropriation of Water dated May 18, 1914.

D. The 6,000-acre Tracy Hills Property was annexed by the CITY in 1998. The Tracy Hills Property is located within the southwestern portion of the CITY. Approximately 2,006 acres of the Tracy Hills Property, hereinafter referred to as the Raw Water Service Area 2 ("RWSA2"), was annexed into the Byron Service Area of BBID on December 10, 1999. A map of the Tracy Hills Property, specifically depicting RWSA2, is attached hereto as Exhibit A and incorporated herein.

E. The United States Bureau of Reclamation ("Reclamation") and BBID have negotiated a Long-Term Contract Providing for Exchange of Water Between the United States and Byron Bethany Irrigation District – Delta Division and San Luis Unit, Contract No. 11-WC-20-0149 ("Exchange Contract"), which is attached hereto as Exhibit B and incorporated herein. BBID's Board of Directors has authorized the execution of the Exchange Contract, which will be undertaken following the execution of this Agreement.

F. BBID and CITY desire to enter into this Agreement for the purpose of specifying the terms and conditions under which BBID will provide a wholesale water supply to CITY for municipal and industrial use within RWSA2.

NOW THEREFORE, the Parties understand and agree as follows:

AGREEMENT

1. RECITALS. The recitals contained herein are an integral part of this Agreement and are true and correct.

2. TERM.

2.1 Initial Term. This Agreement shall be effective upon execution and shall remain in effect through February 28, 2053.

2.2 Agreement to Extend. The term of this Agreement shall be extended at the request of the CITY and subject to terms mutually agreeable to the Parties. A request for an extension of this Agreement shall be made in writing to BBID no later than January 1, 2051.

2.3 To the extent BBID has a statutory obligation to provide water service under provisions of law governing Irrigation Districts to lands within its boundaries, termination of this Agreement shall not be interpreted as affecting any such obligation of BBID to provide water to RWSA2.

3. CONDITION PRECEDENT. It is the intent of the Parties that the obligations of CITY under this Agreement shall not become binding and enforceable against CITY unless and until (i) a development plan for the Tracy Hills Property has been finally approved by CITY, (ii) construction of the Tracy Hills development project has commenced, and (iii) Reclamation executes the Exchange Contract, which events shall constitute conditions precedent to the obligations of CITY to perform under this Agreement.

4. WATER SUPPLY.

4.1 BBID shall deliver to CITY, on a wholesale basis, untreated Non-Central Valley Project Water (hereinafter "Exchange Water") in the amount of up to 4,500 acre-feet per Year. For purposes of this Agreement "Year," "Annual" or "Annually" shall mean the period from and including March 1 of each calendar year through the last day of February of the following calendar year. The Parties acknowledge and agree that the Exchange Water will be provided pursuant to, and subject to the terms and conditions of, the Exchange Contract.

4.2 BBID shall also be responsible for providing no more than 225 acre-feet of Exchange Water annually for conveyance losses in the Delta Mendota Canal. CITY will bear a 5 percent conveyance loss for all deliveries under this Agreement.

4.3 Exchange Water will be delivered to the CITY by Reclamation at the turnout on the Delta Mendota Canal for the John Jones Water Treatment Plant at MP 15.88L. The CITY shall be responsible for treatment and for the control, carriage, handling, distribution and disposal of the Exchange Water beyond the point of delivery specified herein.

5. PLACE OF USE. Exchange Water delivered to the CITY pursuant to this Agreement shall be used only within RWSA2.

6. SCHEDULE OF DELIVERY OF EXCHANGE WATER.

6.1 The amount, timing, and rate of delivery of Exchange Water by BBID to the CITY during any Year shall be governed by this Section 6.

6.2 On or before December 1 of each Calendar Year, the CITY shall submit in writing to BBID a preliminary Delivery Schedule, indicating the monthly amount, timing and rate of delivery of Exchange Water during the following Year.

6.3 Upon receipt of the preliminary Delivery Schedule described in Section 4.2, BBID shall review the preliminary Delivery Schedule and seek approval from Reclamation pursuant to the Exchange Contract. BBID will consult with the CITY regarding any revisions to the preliminary Delivery Schedule that may be required by Reclamation. BBID and the CITY will meet in good faith to develop a mutually acceptable final Delivery Schedule that reasonably satisfies the CITY's water supply requirements within the limits of BBID's delivery capacity. A final Delivery schedule will be in place no later than March 1 of any Calendar Year.

6.4 Any revisions to the final Delivery Schedule by the CITY shall be submitted to BBID and approved by Reclamation in accordance with the Exchange Contract.

## 7. PAYMENT FOR EXCHANGE WATER.

7.1 CITY shall pay BBID for Exchange Water requested by and delivered to CITY in accordance with this Section 7.

7.2 On January 1<sup>st</sup> of each Calendar Year, BBID will provide to the CITY the estimated cost ("Exchange Water Charge") for the supply and delivery of Exchange Water to the CITY. The Exchange Water Charge will be based upon a rate study conducted by BBID or upon the previous Year's cost and the CITY's projected Annual water deliveries. The Exchange Water Charge will include, but is not limited to, management services, pumping costs (electric, labor, minor maintenance), conveyance, conveyance losses and storage costs. The management services cost portion of the Exchange Water Charge will be equal to the total BBID Administrative Budget divided by the quantity of water (i) delivered by BBID to all customers during the previous Year, and (ii) transferred by BBID to third parties during the previous Year. For purposes of this Agreement, "BBID Administrative Budget" means that portion of the BBID annual budget attributable to general administrative costs such as, but not limited to, salaries, wages, benefits, legal and accounting services and office expenses, but shall not include any operation or maintenance expenses.

7.3 On February 1<sup>st</sup> of each Calendar Year, the CITY will submit the Exchange Water Charge to BBID. BBID will establish a separate account ("Exchange Water Charge Account") from which BBID will deduct the actual costs for providing the Exchange Water to the CITY's turnout on the DMC at MP 15.88L. BBID will provide the CITY a monthly statement of actual costs and the remaining balance in the Exchange Water Charge Account. If actual costs exceed the estimated Exchange Water Charge, the CITY will make an additional payment to cover the estimated Exchange Water Charge for the remainder of the Year. If actual costs are less than the estimated Exchange Water Charge, the remaining balance in the Exchange Water Charge Account will be carried over into the following Year and credited to CITY.

8. PAYMENT OF MAJOR MAINTENANCE AND REPLACEMENT COSTS.

8.1 BBID will establish a separate interest-bearing Major Maintenance and Replacement Account, and all interest paid thereon will inure to the benefit of CITY. Funds in this account will be used to replace equipment such as pumps, SCADA and electrical controls as well as other major maintenance and replacement that may be required. BBID will provide the CITY with an annual statement of the Major Maintenance and Replacement Account.

8.2 BBID will determine an annual Major Maintenance and Replacement Charge based upon a rate study to be undertaken by BBID in accordance with generally accepted principles and procedures for similar rate studies. The rate study will take into account the projected major maintenance and replacement costs over the projected useful life of the equipment and facilities to be utilized by BBID to provide water to CITY under this Agreement. In December of each Calendar Year, BBID will meet and confer with CITY regarding (i) major maintenance and replacement activities which BBID anticipates will be performed in future years; and (ii) BBID's estimate of the projected cost of such major maintenance and replacement activities to be performed in future years. On February 1<sup>st</sup> of each Calendar Year, the CITY shall submit an annual payment for deposit by BBID into the Major Maintenance and Replacement Account. BBID will deduct actual costs for major repairs and equipment from the Major Maintenance and Replacement Account when such costs are incurred.

8.3 BBID will have no authority whatsoever to impose standby charges or other similar charges, fees or assessments on CITY or residential, commercial or industrial property owners within CITY, except as provided in the Second Amendment to the Petition and Agreement for Annexation of Territory to the Byron Bethany Irrigation District and Expansion of the District's Sphere of Influence, and as that agreement may be subsequently amended.

9. CHARGES TO REFLECT ACTUAL COST. It is the intent of the Parties that the Exchange Water Charge and the Major Maintenance and Replacement Charge will each reflect the actual cost to BBID of providing wholesale water service to CITY pursuant to this Agreement.

10. SHORTAGES.

10.1 CITY understands that BBID's ability to provide water may be diminished, should BBID become subject to: (1) administrative or regulatory orders from the State Water Resources Control Board or other state or federal regulatory agencies; (2) other adverse conditions beyond BBID's control including but not limited to drought; (3) judicial orders or decrees; or (4) state or federal legislation affecting the availability of water to BBID. BBID will use its best efforts to prevent any reduction or interruption of water service to CITY. Any shortage of water will be ratably apportioned among landowners within BBID, including RWSA2 in accordance with applicable law.

10.2 Pursuant to the Exchange Contract, BBID may only introduce Non-Project Water when there is excess capacity available in the Central Valley Project. BBID and the CITY agree to cooperate in revising the Delivery Schedule to avoid any reduction or

interruption of water service resulting from the lack of excess capacity in the Central Valley Project. In the event of a temporary reduction or interruption in water service, the CITY agrees to provide water service to RWSA2 from other existing sources of water within the CITY on a temporary basis until water service pursuant to the Exchange Contract resumes. At the request of the CITY, BBID and the CITY will work together to modify the Delivery Schedule to subsequently replace CITY water used during temporary reductions or interruptions in water service, provided there is sufficient available capacity.

10.3 If there is a reduction or interruption of water service as a result of causes beyond the control of BBID or because of action taken by BBID to meet the aforementioned legal obligations, no liability shall accrue against BBID or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom. Nothing in this Agreement shall relieve BBID from liability in the event of a reduction or interruption of wholesale water service to CITY resulting from the willful misconduct or gross negligence of BBID or its directors, officers, employees or agents.

## 11. MEASUREMENT OF EXCHANGE WATER.

11.1 CITY shall, at its sole expense, measure and record all Exchange Water delivered at the point of delivery described in Section 2.2. CITY shall maintain accurate records of the quantity of Exchange Water, expressed in acre-feet delivered, and shall provide such records to BBID upon request.

11.2 Following prior written notice to the CITY, BBID may investigate the accuracy of all measurements of Exchange Water. If the investigation discloses errors in the recorded measurements, such errors shall be promptly corrected. If the investigation discloses that the measurement devices are defective or inoperative, CITY shall make the appropriate repairs or replacements to the measurement devices at CITY's sole expense. In the event the CITY fails to make such repairs or replacements to the measurement devices within a reasonable time, BBID may cause such repairs or replacements to be made and CITY shall bear all costs associated with repair or replacement.

11.3 For any period of time during which accurate measurements of the Exchange Water have not been made, BBID and CITY, in consultation with Reclamation, shall jointly make a determination of the quantity of Exchange Water delivered for that period of time. Such determination shall be final and binding.

12. WATER QUALITY. The Parties acknowledge and agree that the Exchange Water to be supplied to pursuant to this Agreement is non-potable. CITY assumes all responsibility for producing a water supply of sufficient quality for municipal, industrial, and domestic use in compliance with all local, state, and federal requirements for the provision of potable water. BBID does not guarantee in any respect or assume responsibility for the chemical, bacterial, or other quality of the Exchange Water made available to the CITY or its compatibility for water treatment.

13. NO WATER RIGHT CONFERRED. Nothing in this Agreement shall confer upon CITY (i) any water right held by BBID including, without limitation, any pre-1914 appropriative right, post-1914 appropriative right or riparian right; (ii) any right in any water purchased by BBID from any other source. This Agreement shall be the sole source of the CITY's contractual right to receive wholesale water service from BBID.

14. RELATIONSHIP OF PARTIES. Nothing set forth in this Agreement shall be deemed or construed to create any relationship of principal and agent, a partnership, joint venture, or any other association between the Parties.

15. INDEMNIFICATION. Except for damage or loss resulting from willful misconduct or gross negligence, or breach of fiduciary obligation in connection with this Agreement, no Party to this Agreement, their members, directors, officers, agents, or employees shall be liable to any other Party for any loss or damage in connection with this Agreement. Each Party shall be responsible for the consequences of its own willful misconduct, gross negligence, and/or breach of fiduciary obligation in connection with this Agreement, and in connection with any work undertaken in accordance with this Agreement, and shall indemnify, defend, and hold harmless the other Parties, their members, directors, officers, agents, and employees from the consequences thereof to the extent allowed by law.

16. ASSIGNMENT. The Parties shall not assign, sell, or otherwise transfer interests under this Agreement without first receiving the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

17. SEVERABILITY. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

18. ENTIRE AGREEMENT. This Agreement is the full and entire understanding of the Parties, and may not be altered except by a writing executed by the Parties hereto. The Parties agree that there are no warranties, either expressed or implied, no covenants or promises or expectations other than those contained and set forth in writing in this Agreement.

19. AMENDMENT. This Agreement may be amended only by a written instrument duly executed by the Parties.

20. WAIVER. The waiver or failure to declare a breach of this Agreement as a result of violation of any term or provision set forth in this Agreement shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel.

21. NOTICES. All notices shall be in writing and shall be sent as follows:

BBID:  
General Manager  
Byron-Bethany Irrigation District  
P.O. Box 160  
Byron, CA 94514

CITY:  
Public Works Director  
City of Tracy Public Works  
520 Tracy Boulevard  
Tracy, CA 95376



IN WITNESS WHEREOF, the Parties to this Agreement have duly executed this Agreement on the date set forth opposite their signatures.


Authorized and approved for signature on:

10/18, 2013

BYRON-BETHANY IRRIGATION DISTRICT


By:   
Rick Gilmore, General Manager

ATTEST:

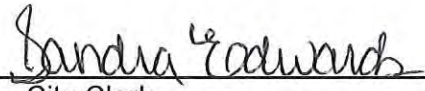
By:   
Title: General Manager of Secretary

Authorized and approved for signature on:

9/25, 2013

CITY OF TRACY  
By:   
Brent H. Ives, Mayor

ATTEST:

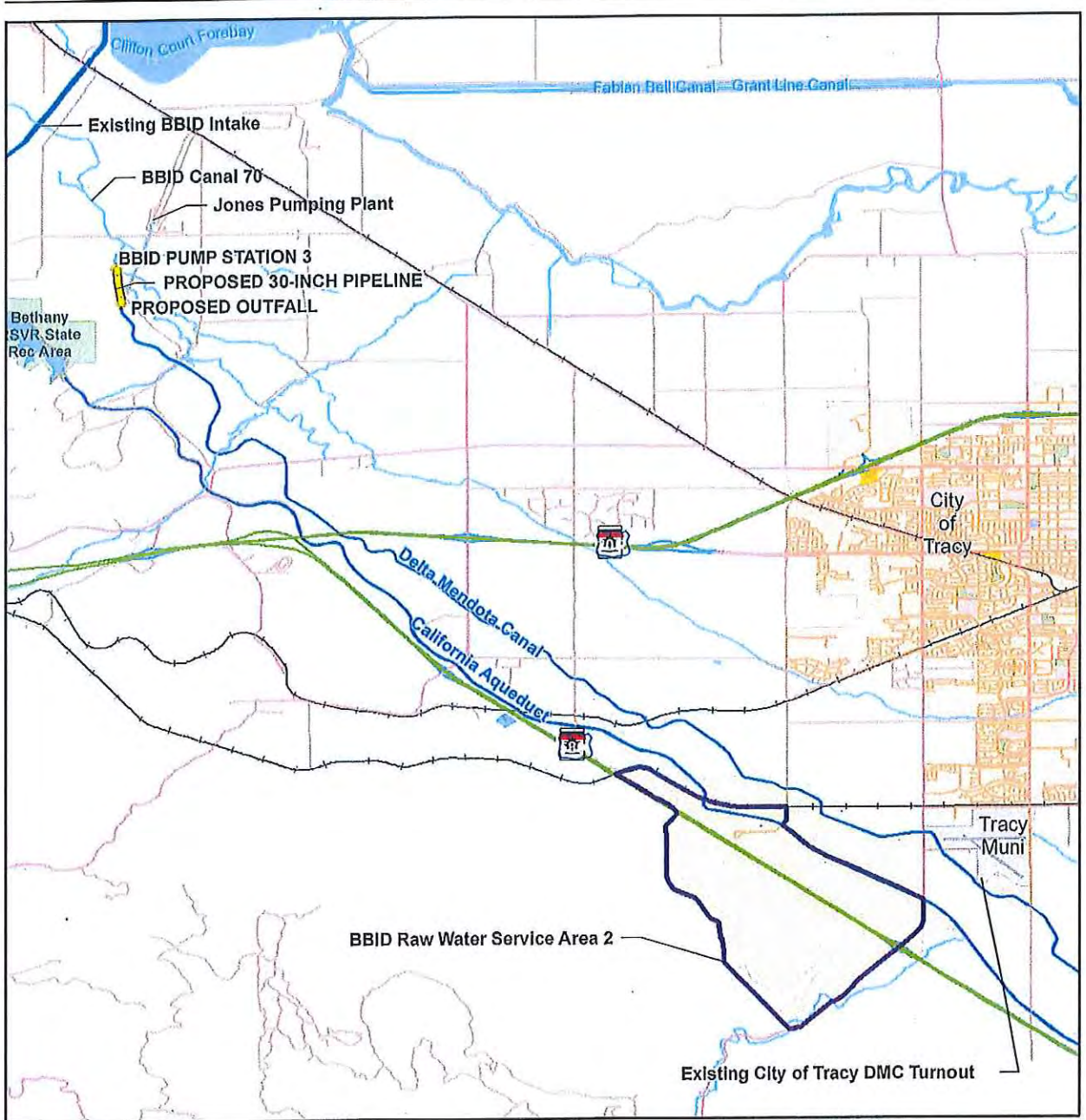
By:   
City Clerk

Authorized and approved for signature on:

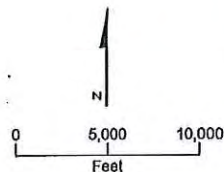
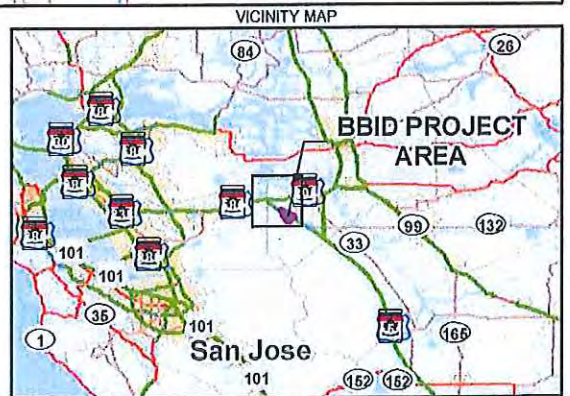
\_\_\_\_\_, 2013

Approved as to Form:  


EXHIBIT A



- LEGEND**
- INTERSTATE
  - PRIMARY US & STATE HIGHWAY
  - SECONDARY US & STATE HIGHWAY
  - ROAD
  - +— RAILROAD
  - BBID RAW WATER SERVICE AREA 2
  - CITY AREA



**FIGURE 1**  
**PROJECT AREA**  
 BBID TRACY HILLS WATER SUPPLY PROJECT  
 TRACY, CALIFORNIA



# United States Department of the Interior

BUREAU OF RECLAMATION  
Mid-Pacific Regional Office  
2800 Cottage Way  
Sacramento, CA 95825-1898

IN REPLY REFER TO:

**APR 25 2014**

MP-440  
WTR-4.00

Mr. Rick Gilmore  
General Manager  
Byron Bethany Irrigation District  
7995 Bruns Road  
Byron, CA 94514-1625

Subject: Long-Term Exchange Contract No. 11-WC-20-0149 Between the United States and Byron Bethany Irrigation District Providing for Exchange of Water - Central Valley Project, California

Dear Mr. Gilmore:

Enclosed is an executed original of the subject 40-year exchange contract for your records. The Bureau of Reclamation appreciates the effort expended by Byron Bethany Irrigation District and its representatives relative to this contract.

If you have any questions, please contact Ms. Barbara Hidleburg, Repayment Specialist, Water Contracts & Policy Branch, at 916-978-5193, or e-mail [bhidleburg@usbr.gov](mailto:bhidleburg@usbr.gov).

Sincerely,

**PABLO R. ARROYAVE**

FOR

David G. Murillo  
Regional Director

Enclosure

cc: Board of Directors  
San Luis & Delta-Mendota Water Authority  
P.O. Box 2157  
Los Banos, California 93635  
(w/copy of encl)

Mr. Chauncey Lee  
San Luis & Delta-Mendota Water Authority  
15990 Kelso Road  
Byron, California 94514-9614  
(w/copy of encl)

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

LONG-TERM CONTRACT PROVIDING FOR EXCHANGE OF WATER  
BETWEEN THE UNITED STATES  
AND  
BYRON BETHANY IRRIGATION DISTRICT –  
DELTA DIVISION AND SAN LUIS UNIT

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1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 LONG-TERM CONTRACT PROVIDING FOR EXCHANGE OF WATER  
6 BETWEEN THE UNITED STATES  
7 AND  
8 BYRON BETHANY IRRIGATION DISTRICT –  
9 DELTA DIVISION AND SAN LUIS UNIT

10 THIS CONTRACT, executed this 25<sup>th</sup> day of April, 2014,

11 pursuant to the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or  
12 supplementary thereto, including the Act of February 21, 1911 (36 Stat. 925), Section 14 of the  
13 Reclamation Project Act of August 4, 1939, (53 Stat. 1187), and Section 305 of the Reclamation  
14 States Emergency Drought Relief Act of 1991, enacted March 5, 1992 (106 Stat. 59) as  
15 amended, all collectively hereinafter referred to as the Federal Reclamation laws, between the  
16 UNITED STATES OF AMERICA, hereinafter referred to as the United States, represented by  
17 the officer executing this Contract, hereinafter referred to as the Contracting Officer, and  
18 BYRON BETHANY IRRIGATION DISTRICT, hereinafter referred to as the Contractor;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

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



50 Contracting Officer, which may be made available for the introduction of Non-Project Water and  
51 conveyance, storage, and/or delivery of Exchanged Water;

52 (d) "Exchange Water" or "Exchanged Water" shall mean that Project Water  
53 made available to the Contractor by the Contracting Officer from Project Facilities for a like  
54 amount of the Contractor's introduced Non-Project Water less losses;

55 (e) "Irrigation Water" shall mean Project Water that is used primarily in the  
56 commercial production of agricultural crops or livestock, including domestic use incidental  
57 thereto. Irrigation Water shall not include water used for purposes such as the watering of  
58 landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water  
59 delivered to landholdings operated in units of less than five acres, unless the Contractor  
60 establishes to the satisfaction of the Contracting Officer that the use of water delivered to such  
61 landholding is a use described in this subdivision of this Article;

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

69 (g) "Non-Project Water" shall mean water acquired by or available to the  
70 Contractor from the source(s) identified in Exhibit "C" that has not been appropriated by the  
71 United States;



72 (h) "Operating Non-Federal Entity(ies)" shall mean the non-Federal entity  
73 that has the obligation pursuant to a separate agreement with the United States to operate and  
74 maintain all or a portion of the Project Facilities, and which may have funding obligations with  
75 respect thereto;

76 (i) "Project" or "CVP" shall mean the Central Valley Project, owned by the  
77 United States and managed by the Department of the Interior, Bureau of Reclamation;

78 (j) "Project Facilities" shall mean the Delta-Mendota Canal, O'Neill Forebay,  
79 San Luis Reservoir, and associated facilities, constructed as features of the Delta Division and  
80 San Luis Unit, Central Valley Project;

81 (k) "Project-Use Power" is that electrical energy, and its associated ancillary  
82 service components, required to provide the full electrical service needed to operate and maintain  
83 Project Facilities, and to provide electric service for Project purposes and loads in conformance  
84 with the Reclamation Project authorization;

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

88 (m) "Rates" shall mean the amount to be paid to the United States by the  
89 Contractor, as set forth in Exhibit "B", for the use of Excess Capacity in the Project Facilities  
90 made available for Storage and Conveyance, pursuant to this Contract;

91 (n) "Raw Water Service Area 2" shall mean the geographic area located  
92 within the Contractor's boundary wherein the Contractor is authorized by this Contract to deliver  
93 Exchanged Water within the CVP permitted water rights place of use. The Contractor's Raw

94 Water Service Area 2 is described in Exhibit "A" and may be modified in accordance with  
95 Article 24 without amendment to this Contract;

96 (o) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
97 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
98 through any agency of the Department of the Interior; and

99 (p) "Year", "Annual", or "Annually" shall mean the period from and  
100 including March 1 of each Calendar Year through the last day of February of the following  
101 Calendar Year.

102 TERM OF CONTRACT

103 2. (a) This Contract shall become effective March 1, 2014 and shall remain in  
104 effect through February 28, 2054. The Contractor may request a new contract in writing to the  
105 Contracting Officer no later than February 29, 2052.

106 (b) The Contracting Officer shall not seek to terminate this Contract by reason  
107 of an asserted material breach by the Contractor unless it has first provided the Contractor with at  
108 least 60 days' written notice of the asserted breach and the Contractor fails to cure such breach or  
109 fails to diligently commence curative actions satisfactory to the Contracting Officer for a breach  
110 that cannot be fully cured within 60 days of the Contractor's receipt of written notice.

111 (c) This Contract may be terminated at any time by mutual consent of the  
112 parties hereto.

113 INTRODUCTION, CONVEYANCE, STORAGE, EXCHANGE  
114 AND/OR DELIVERY OF WATER

115 3. (a) During the term of this Contract, the Contractor, in accordance with an  
116 approved schedule submitted by the Contractor pursuant to subdivision (g) of this Article, may  
117 introduce Annually up to 4,725 acre-feet of Non-Project Water during the months of March

118 through October from the source identified in Exhibit "C" into the Delta-Mendota Canal at  
119 milepost 3.32R. Prior to introducing any Non-Project Water, the Contracting Officer will  
120 determine the availability of Excess Capacity consistent with Article 9 of this Contract. At the  
121 time the Contractor introduces Non-Project Water into the Delta-Mendota Canal, the  
122 Contracting Officer will designate a like amount of Project Water less 5 percent for losses, up  
123 to 4,500 acre-feet, as Exchanged Water. The United States or the designated Operating  
124 Non-Federal Entity(ies) shall convey Exchanged Water through Excess Capacity in the Project  
125 Facilities, from said point of introduction to the Contractor for delivery at milepost 15.88L, or to  
126 storage, or to such other location(s) mutually agreed to in writing by the Contracting Officer and  
127 the Contractor.

128 (b) The quantity of Exchanged Water delivered to the Contractor from Project  
129 Facilities shall not exceed the quantity of Non-Project Water previously introduced into the  
130 Project Facilities by the Contractor, less 5 percent for losses.

131 (c) This Contract does not preclude any action deemed necessary by the  
132 Contracting Officer to recover from the Contractor, Project Water delivered in an amount that  
133 exceeds the quantity of Exchanged Water authorized pursuant to subdivision (a) of this Article,  
134 or any other remedy available to the Contracting Officer under existing law.

135 (d) If at any time the Contracting Officer determines that Project Facilities are  
136 operationally constrained or have insufficient capacity to allow Non-Project Water to be  
137 exchanged in accordance with an approved schedule submitted by the Contractor, the  
138 Contracting Officer shall so notify the Contractor as provided in subdivision (d) of Article 9.  
139 Within 24 hours of said notice, the Contractor shall revise its schedule accordingly.

140                   (e)     Exhibit “C” may be modified or replaced by mutual agreement of the  
141 Contractor and the Contracting Officer to reflect changes to the source of Non-Project Water  
142 without amendment of this Contract; *Provided*, That no such modification or replacement shall  
143 be approved by the Contracting Officer absent any appropriate environmental documentation,  
144 including but not limited to documents prepared pursuant to the National Environmental Policy  
145 Act of 1969 and the Endangered Species Act of 1973, as amended.

146                   (f)     All Exchanged Water delivered to the Contractor pursuant to this Contract  
147 shall be used for M&I purposes, only within that portion of Raw Water Service Area 2 that is  
148 within the CVP permitted water rights place of use.

149                   (g)     The Contractor shall not introduce Non-Project Water into the Project  
150 Facilities or take delivery of Exchanged Water unless and until a schedule or any revision(s)  
151 thereto have been approved by the Contracting Officer. At the beginning of each Year, the  
152 Contractor shall submit appropriate schedule(s) to the Contracting Officer and the designated  
153 Operating Non-Federal Entity(ies) showing the monthly estimated quantities of Non-Project  
154 Water to be introduced into the Project Facilities and the amount of Exchanged Water to be  
155 conveyed, stored, and later made available to the Contractor during the then-current Year. The  
156 initial schedule and any revision(s) thereof shall be in a form acceptable to the Contracting  
157 Officer and shall be submitted at such times and in such manner as determined by the  
158 Contracting Officer.

159                   (h)     Exchanged Water remaining in the Project Facilities on March 1 of each  
160 Year unless otherwise agreed to by the parties, shall incur a rescheduling fee or other appropriate  
161 fees, which shall be updated Annually. The Contracting Officer will notify the Contractor  
162 Annually of any changes to the rescheduling guidelines.

163 (i) Any Exchanged Water made available to the Contractor at its request for  
164 delivery which is not accepted by the Contractor or for which a revised schedule has not been  
165 submitted by the Contractor within 30 days after such water is made available shall be deemed to  
166 be unused water, available to the United States for other Project purposes.

167 (j) All Exchanged Water remaining in Project Facilities at Contract  
168 termination, shall be deemed to be unused water available to the United States for other Project  
169 purposes, unless the Contractor has a newly executed contract.

170 (k) In the event Excess Capacity becomes unavailable for Exchanged Water  
171 stored in Project Facilities, the Exchanged Water shall be deemed the first water spilled from  
172 Project Facilities; *Provided*, That the Contracting Officer will to the extent possible, within a  
173 reasonable time frame, inform the Contractor by written notice in addition to other means of  
174 notice of any impending spill from Project Facilities where Exchanged Water may be stored.

175 (l) Unless otherwise agreed to in writing by the Contracting Officer, the  
176 Non-Project Water shall be introduced, conveyed, exchanged, and/or delivered on behalf of the  
177 Contractor through existing Project Facilities in accordance with the Contractor's License  
178 No. 12-LC-20-0049, "License for the Installation, Operation & Maintenance of Facilities", dated  
179 February 12, 2014. If additional temporary inflow or delivery facilities are required to effectuate  
180 the introduction of Non-Project Water into the Project Facilities or the delivery of the Exchanged  
181 Water on behalf of the Contractor from the Project Facilities, the Contractor shall, at its own cost  
182 and expense, obtain all appropriate environmental documents necessary and land use  
183 authorization(s) issued by the United States for any such facilities located on certain lands for the  
184 right-of-way in connection with Project Facilities, including existing and any new construction  
185 of Project or non-Project facilities. The Contractor hereby grants to the Contracting Officer and

186 the Operating Non-Federal Entities access, for the purpose of this Contract, to all inflow and  
187 delivery facilities installed by the Contractor and in accordance with Contractor's License  
188 No. 12-LC-20-0049.

189 (m) Neither the introduction of Non-Project Water nor the delivery of  
190 Exchange Water pursuant to this Contract will be supported with Project-Use Power.  
191 Project-Use Power is not available to pump Non-Project Water, to operate pumps that were not  
192 built as Federal facilities as part of the Project, or to pump Project Water outside the authorized  
193 service area, or provide for other uses. If electrical power is required to introduce the  
194 Non-Project Water or pump the Exchanged Water at the point of delivery, the Contractor shall be  
195 responsible for the acquisition and payment of all electrical power and associated transmission  
196 service charges, and provide a copy of a power contract and copies of payment documents to the  
197 Contracting Officer as evidence that such electrical power has been contracted and paid for prior  
198 to the introduction or delivery of any Non-Project Water and Exchanged Water.

199 (n) The Contractor shall have no rights to any benefits from increased power  
200 generation that may result from the introduction of the Non-Project Water and or conveyance of  
201 Exchanged Water in or through Project Facilities authorized pursuant to this Contract.

202 (o) The introduction of Non-Project Water into the Project Facilities by the  
203 Contractor shall be conditioned upon compliance by the Contractor with the environmental  
204 measures described in the environmental documentation prepared in connection with the  
205 execution of this Contract as well as any amendments and/or supplements thereto and with the  
206 terms of the applicable operations practices approved by the Contracting Officer.

207 MEASUREMENT OF WATER

208 4. (a) All Non-Project Water shall be measured and recorded at the point(s) of  
209 introduction and point(s) of delivery and all Exchanged Water shall be measured and recorded at  
210 the point(s) of delivery established pursuant to Article 3 herein with measurement devices  
211 acceptable to the Contracting Officer and the methods used to make such measurements shall be  
212 in accordance with sound engineering practices.

213 (b) Unless otherwise agreed to in writing by the Contracting Officer, the  
214 Contractor, at its own cost and expense, shall be responsible for providing, installing, operating,  
215 maintaining, repairing, replacing, and removing all measurement devices required under this  
216 Contract in accordance with any right-of-use agreement(s) or other requisite authorization(s)  
217 issued by the United States. The Contractor shall be responsible for all costs associated with the  
218 issuance of such right-of-use agreement(s) and authorization(s).

219 (c) The Contractor shall maintain accurate records of the quantity of  
220 Non-Project Water and Exchanged Water, expressed in acre-feet, introduced into, conveyed,  
221 stored, exchanged and/or delivered from Project Facilities at said authorized point(s) of  
222 introduction and delivery and shall provide such records to the Contracting Officer and the  
223 Operating Non-Federal Entity(ies) at such times and in such manner as determined by the  
224 Contracting Officer.

225 (d) The Operating Non-Federal Entity, namely, the San Luis &  
226 Delta-Mendota Water Authority, hereinafter referred to as the SLDMWA, or its successor shall  
227 be responsible for the calibration, measurement, recording, and reporting of the flow  
228 measurements of Non-Project Water and Exchanged Water provided for under this Contract, and  
229 shall provide the Contracting Officer and the Contractor with monthly water delivery reports

230 demonstrating whether or not the Contractor has introduced Non-Project Water into the Project  
231 Facilities sufficient to offset the amount of Exchanged Water delivered for the Contractor from  
232 the Project Facilities and to account for any conveyance losses.

233 (e) Upon the request of the Contractor, the Contracting Officer shall  
234 investigate, or cause to be investigated by the Operating Non-Federal Entity, the accuracy of all  
235 measurements of Non-Project Water and/or Exchanged Water required by this Contract. If the  
236 investigation discloses errors in the recorded measurements, such errors shall be promptly  
237 corrected. If the investigation discloses that measurement devices are defective or inoperative,  
238 the Contracting Officer shall take any necessary actions to ensure that the responsible party  
239 makes the appropriate adjustments, repairs, or replacements to the measurement devices. In the  
240 event the Contractor, as the responsible party, neglects or fails to make such adjustments, repairs,  
241 or replacements to the measurement devices within a reasonable time and to the reasonable  
242 satisfaction of the Contracting Officer, the Contracting Officer may cause such adjustments,  
243 repairs, or replacements to be made and the costs thereof shall be charged to the Contractor and  
244 the Contractor shall pay said charges to the United States immediately upon receipt of a detailed  
245 billing. For any period of time during which accurate measurements of the Non-Project Water  
246 and/or Exchanged Water have not been made, the Contracting Officer shall consult with the  
247 Contractor and the Operating Non-Federal Entity prior to making a determination of the quantity  
248 of Non-Project Water and/or Exchanged Water introduced, conveyed and delivered for that  
249 period of time and such determination by the Contracting Officer shall be final and binding on  
250 the Contractor.



251 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITIES

252 5. (a) The operation and maintenance of a portion of the Project Facilities to be  
253 used to introduce Non-Project Water, and convey, store, and/or deliver the Exchanged Water to  
254 the Contractor, and responsibility for funding a portion of the costs of such operation and  
255 maintenance, have been transferred from the United States to the designated Operating  
256 Non-Federal Entities, which are the SLDMWA, pursuant to a separate agreement identified as  
257 Contract No. 8-07-20-X0354, dated March 1, 1998, as amended, and the California Department  
258 of Water Resources, hereinafter referred to as DWR, pursuant to a separate agreement identified  
259 as Contract No. 14-06-200-9755, as amended. Such separate agreements shall not interfere with  
260 or affect the rights or obligations of the Contractor or the United States hereunder.

261 (b) The Contractor shall pay directly to the SLDMWA, or to any successor  
262 approved by the Contracting Officer under the terms and conditions of the separate agreement  
263 described in subdivision (a) of this Article 5, all rates, charges, or assessments of any kind,  
264 including any assessment for reserve funds, that the SLDMWA or such successor determines,  
265 sets, or establishes for the operation and maintenance of the portion of the Project Facilities  
266 operated and maintained by the SLDMWA or such successor used to convey and deliver the  
267 Non-Project Water and Exchanged Water to the Contractor.

268 (c) If the operation and maintenance of any portion of the Project Facilities  
269 used to convey, store, and/or deliver the Non-Project Water or Exchanged Water to the  
270 Contractor is performed by DWR, or any successor thereto, the Contractor shall pay directly to  
271 SLDMWA, or to any successor approved by the Contracting Officer under the terms and  
272 conditions of the separate agreement described in subdivision (a) of this Article 5, all rates,  
273 charges, or assessments of any kind, including any assessment for reserve funds, that SLDMWA

274 or such successor determines, sets, or establishes for the operation and maintenance of the  
275 portion of the Project Facilities operated and maintained by DWR or such successor used to  
276 convey and deliver the Non-Project Water and Exchanged Water to the Contractor. The  
277 Contracting Officer shall adjust those components of the Rates for the Non-Project Water and  
278 Exchanged Water conveyed under this Contract by deleting the costs associated with the activity  
279 being performed by DWR or its successor.

280 (d) In the event the United States reassumes operation and maintenance of any  
281 portion of the Project Facilities from the Operating Non-Federal Entities the Contracting Officer  
282 shall so notify the Contractor, in writing, and shall revise the Rates on Exhibit "B" to include the  
283 costs associated with the operation and maintenance activities reassumed by the United States.  
284 The Contractor shall, thereafter, in the absence of written notification from the Contracting  
285 Officer to the contrary, pay the Rates specified in the revised Exhibit "B" directly to the United  
286 States in compliance with Article 6 of this Contract.

287 PAYMENTS AND ADJUSTMENTS

288 6. (a) At the time the Contractor submits a schedule, or any revision(s) thereof  
289 pursuant to subdivision (i) of Article 3 of this Contract, the Contractor shall make an advance  
290 payment to the United States, 60 days in advance, at the Rate shown on Exhibit "B" for each  
291 acre-foot of Non-Project Water introduced into the Project Facilities; *Provided*, That where the  
292 Contractor's schedule provides for multiple introductions of Non-Project Water, advance  
293 payment may be made in increments corresponding to the amount of each scheduled  
294 introduction. Non-Project Water shall not be introduced into Project Facilities by the Contractor  
295 prior to such payment being received by the United States.

296 (b) The amount of any overpayment by the Contractor by reason of the  
297 quantity of Non-Project Water introduced into the Project Facilities and Exchanged Water  
298 conveyed, stored, and/or delivered pursuant to this Contract, as exclusively determined by the  
299 Contracting Officer, having been less than the quantity which the Contractor otherwise under the  
300 provisions of this Contract would have been required to pay for, shall be applied first to any  
301 accrued indebtedness arising out of this Contract then due and owing to the United States by the  
302 Contractor. Within 60 days after March 1 of each Year, unless otherwise agreed to by the  
303 parties, the Contractor may request a refund of any amount of such payment; *Provided*, that no  
304 refund shall be made by the United States to the Contractor for any quantity of Non-Project  
305 Water or Exchanged Water deemed to be unused water available to the United States for other  
306 Project purposes pursuant to subdivision (i) and (j) of Article 3 of this Contract.

307 (c) The payment of the Rates set forth in this Article for the use of Project  
308 Facilities are exclusive of operation and maintenance costs to be paid directly to the Operating  
309 Non-Federal Entities by the Contractor, and any additional charges that the Contractor may  
310 assess its water users.

311 (d) The Rates and costs, set forth in Exhibit "B", shall be updated Annually  
312 without amending this Contract.

313 OTHER PAYMENTS

314 7. In addition to the payments described in Article 6 above, the Contractor is  
315 required upon execution and for the duration of this Contract, to have an executed letter of  
316 agreement as provided for in Exhibit "E", with the Contracting Officer to among other things,  
317 allow for payment in advance of all costs incurred by Reclamation while administering this  
318 Contract. The letter of agreement is the instrument funded by the Contractor to cover

319 Reclamation's costs for ongoing administration and monitoring of this Contract or other actions  
320 applicable to this Contract that may occur until the expiration or termination of this Contract.  
321 The letter of agreement may be modified, revised, or amended without amending this Contract.

322 MEDIUM FOR TRANSMITTING PAYMENTS

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

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

331 EXCESS CAPACITY

332 9. (a) The availability of Excess Capacity shall be determined exclusively by the  
333 Contracting Officer, which may involve consultation with SLDMWA and/or DWR or their  
334 respective successors. Nothing contained in this Contract shall limit or preclude the  
335 United States from utilizing available capacity in the Project Facilities for the storage and  
336 conveyance of Project Water pursuant to Federal law, Reclamation law or policy, and existing  
337 contract(s); or for using Excess Capacity in the Project Facilities for the introduction of  
338 Non-Project Water and the conveyance, storage, and/or delivery of Exchanged Water.

339 (b) The Contracting Officer will retain regulatory authority and operational  
340 control over exchanges to ensure: (i) that Project Water is positioned where it can continuously  
341 serve Project purposes; (ii) that storage space is maintained to allow for scheduled movement of  
342 Project Water; (iii) that conveyance capacity is maintained for scheduled movement of Project  
343 Water; and (iv) that the interest of the Project and its beneficiaries are protected.

344 (c) The Contracting Officer and the Operating Non-Federal Entities shall not  
345 be obligated to allow introduction of Non-Project Water, or to convey, store, and/or deliver  
346 Exchanged Water during periods of maintenance or for other operating requirements.

347 (d) If at any time the Contracting Officer determines that there will not be  
348 Excess Capacity in the Project Facilities sufficient to allow the Non-Project Water to be  
349 introduced, and/or Exchanged Water to be conveyed, stored and/or delivered in accordance with  
350 an approved schedule submitted by the Contractor, the Contracting Officer or the Operating  
351 Non-Federal Entities shall so notify the Contractor with as much advance notice as feasible with  
352 written or electronic notification to follow within a reasonable timeframe. Within 24 hours of  
353 said notice, the Contractor shall revise its schedule accordingly.

354 (e) No provision of this Contract shall be construed in any way as a basis for  
355 the Contractor to establish a priority to or a permanent right to the use of Excess Capacity in  
356 Project Facilities nor to set a precedent to obligate the United States to enter into contracts with  
357 any other entities or individuals.

358 RECEIPT AND DISTRIBUTION OF NON-PROJECT AND EXCHANGE  
359 WATER – SALE, TRANSFER, OR EXCHANGE OF NON-PROJECT WATER

360 10. (a) The Contractor shall comply with all applicable Federal, State, and local  
361 laws, rules and regulations, including but not limited to, State water law, applicable State and  
362 Federal court decisions, and/or decisions, or orders of any other entity of competent jurisdiction,  
363 in relation to the Non-Project Water. The Contractor shall provide written notice to the  
364 Contracting Officer at the time any action is commenced in State court, Federal court, or any  
365 other entity of competent jurisdiction, related to the Contractor's rights to the Non-Project Water.  
366 It is expressly understood by the parties that the United States does not claim any interest in the

367 acquisition or use of the Non-Project Water beyond the terms specifically set forth in this  
368 Contract.

369 (b) The Exchanged Water provided to the Contractor pursuant to this  
370 Contract shall be delivered only to Raw Water Service Area 2 lands that are within the CVP  
371 water rights permitted place of use as defined in subdivision (n) of Article 1 and identified in  
372 Exhibit "A" herein.

373 (c) The Contracting Officer makes no representations as to the accuracy of the  
374 description or of the validity of the Contractor's rights to the Non-Project Water described in  
375 Exhibit "C". The Contracting Officer does not guarantee, certify or warrant the right to  
376 Non-Project Water of the Contractor.

377 (d) No sale, transfer, or exchange of Exchanged Water conveyed under this  
378 Contract may, except as otherwise expressly provided herein, take place without the prior written  
379 approval of the Contracting Officer.

380 WATER CONSERVATION

381 11. (a) Prior to the delivery of water provided from or conveyed through federally  
382 constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop  
383 a water conservation plan, as required by subsection 210(b) of the RRA and 43 C.F.R. 427.1.

384 (b) The Contractor may provide a water conservation plan developed by the  
385 City of Tracy that meets the requirements in subdivision (a) of this Article.

386 UNITED STATES NOT LIABLE

387 12. (a) The United States, its officers, agents and employees, including the  
388 Operating Non-Federal Entities, shall not be responsible for the control, care, or distribution of  
389 the Non-Project Water before it is introduced into Project Facilities or Exchanged Water after it  
390 is delivered from the Project Facilities.

391 (b) The Contractor shall indemnify and hold harmless the United States, its  
392 officers, agents and employees, and the Operating Non-Federal Entities, from any loss or damage  
393 and from any liability on account of personal injury, death, or property damage, or claims for  
394 personal injury, death, or property damage, of any nature whatsoever arising out of any actions  
395 or omissions of the Contractor, its directors, officers, agents, contractors, and employees, under  
396 this Contract, including the determination of the quantity of Excess Capacity available and the  
397 manner or method or quantity in which the Non-Project Water and Exchanged Water is  
398 introduced, conveyed, stored, exchanged, and/or delivered to/from the Project Facilities,  
399 excepting only such personal injury, death or property damage caused solely by the willful  
400 misconduct of the United States, its officers, agents and employees or the willful misconduct of  
401 the Operating Non-Federal Entities. Nothing contained in this Article shall be construed as an  
402 assumption of liability by the Contractor with respect to such matters.

403 OPINIONS AND DETERMINATIONS

404 13. (a) Where the terms of this Contract provide for actions to be based upon the  
405 opinion or determination of either party to this Contract, said terms shall not be construed as  
406 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or  
407 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly  
408 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,  
409 or unreasonable opinion or determination. Each opinion or determination by either party shall be  
410 provided in a timely manner. Nothing in subdivision (a) of this Article 13 is intended to or shall  
411 affect or alter the standard of judicial review applicable under Federal law to any opinion or  
412 determination implementing a specific provision of Federal law embodied in statute or  
413 regulation.

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

419 PROTECTION OF WATER AND AIR QUALITY

420 14. (a) Project Facilities used to make available, convey, store, and deliver  
421 Exchanged Water to the Contractor shall be operated and maintained in the most practical  
422 manner to maintain the quality of the Exchanged Water at the highest level possible as  
423 determined by the Contracting Officer: *Provided*, That the United States does not warrant the  
424 quality of the Exchanged Water delivered to the Contractor and is under no obligation to furnish  
425 or construct water treatment facilities to maintain or improve the quality of the Exchanged Water  
426 delivered to the Contractor.

427 (b) The Contractor shall comply with all applicable water and air pollution  
428 laws and regulations of the United States and the State of California; and shall obtain all required  
429 permits or licenses from the appropriate Federal, State, or local authorities necessary for the  
430 introduction of water by the Contractor; and shall be responsible for compliance with all Federal,  
431 State, and local water quality standards applicable to surface and subsurface drainage and/or  
432 discharges generated through the use of Project Facilities or Contractor facilities or water  
433 provided by the Contractor within the Contractor's boundaries.

434 (c) This Article shall not affect or alter any legal obligations of the Secretary  
435 to provide drainage or other discharge services.

436 (d) The Non-Project Water introduced into the Project Facilities shall be of  
437 such quality, as determined exclusively by the Contracting Officer, as to not significantly  
438 degrade the quality of the Project Water. If it is determined by the Contracting Officer that the  
439 quality of the Non-Project Water from any source identified in Exhibit "C" will significantly  
440 degrade the quality of Project Water in or introduced into the Project Facilities, the Contractor  
441 shall, upon receipt of a written notice, or otherwise from the Contracting Officer, arrange for the  
442 immediate termination of the introduction of Non-Project Water from such source into the  
443 Project Facilities, and Exhibit "C" shall be modified to delete such source of Non-Project Water.



444 (e) Exhibit "D" identifies the Quality Assurance Project Plan and includes the  
445 minimum water quality standards for monitoring the quality of Non-Project Water introduced by  
446 the Contractor into Project Facilities and the laboratories approved by the Contracting Officer  
447 that are to be used for conducting water quality analyses. The Contractor is responsible for  
448 sampling and analytical costs associated with evaluating quality of the Non-Project Water.  
449 Non-Project Water introduced into Project Facilities for purposes of water quality testing is  
450 considered Project water.

451 (f) At all times during the term of this Contract, the Contractor shall be in  
452 compliance with the requirements of the then-current Quality Assurance Project Plan approved  
453 by the Contracting Officer. The Quality Assurance Project Plan describes the sample collection  
454 procedures, water testing methods, and data review process, including quality control/quality  
455 assurance protocols, to verify analytical results.

456 (g) The Contracting Officer reserves the right to require additional analyses to  
457 ensure the Non-Project Water meets the Bureau of Reclamation's water quality acceptance  
458 criteria.

459 CHARGES FOR DELINQUENT PAYMENTS

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

467 payment is delinquent beyond the due date, based on the remaining balance of the payment due  
468 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt  
469 collection services associated with a delinquent payment.

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

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

477 EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

511 (e) The Contractor will furnish all information and reports required by  
512 EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant  
513 thereto, and will permit access to his books, records, and accounts by the Contracting Agency  
514 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,  
515 regulations, and orders.

516 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
517 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be  
518 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
519 ineligible for further Government contracts in accordance with procedures authorized in  
520 EO 11246, and such other sanctions may be imposed and remedies invoked as provided in  
521 EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by  
522 law.

523 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
524 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
525 Secretary of Labor issued pursuant to Section 204 of EO 11246, so that such provisions will be  
526 binding upon each subcontractor or vendor. The Contractor will take such action with respect to  
527 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of  
528 enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in  
529 the event the Contractor becomes involved in, or is threatened with, litigation with a  
530 subcontractor or vendor as a result of such direction, the Contractor may request the United  
531 States to enter into such litigation to protect the interests of the United States.

532 CERTIFICATION OF NONSEGREGATED FACILITIES

533 17. The Contractor hereby certifies that it does not maintain or provide for its  
534 employees any segregated facilities at any of its establishments and that it does not permit its  
535 employees to perform their services at any location under its control where segregated facilities  
536 are maintained. It certifies further that it will not maintain or provide for its employees any  
537 segregated facilities at any of its establishments and that it will not permit its employees to  
538 perform their services at any location under its control where segregated facilities are  
539 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
540 Employment Opportunity clause in this Contract. As used in this certification, the term  
541 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
542 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
543 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
544 facilities provided for employees which are segregated by explicit directive or are in fact  
545 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
546 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
547 identical certifications from proposed subcontractors for specific time periods) it will obtain  
548 identical certifications from proposed subcontractors prior to the award of subcontracts  
549 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
550 Opportunity clause; that it will retain such certifications in its files; and that it will forward the

541 following notice to such proposed subcontractors (except where the proposed subcontractors  
542 have submitted identical certifications for specific time periods):

543 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT  
544 FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

545 A Certification of Nonsegregated Facilities must be submitted prior to the award  
546 of a subcontract exceeding \$10,000 which is not exempt from the provisions of  
547 the Equal Employment Opportunity clause. The certification may be submitted  
548 either for each subcontract or for all subcontracts during a period (i.e., quarterly,  
549 semiannually, or annually). Note: The penalty for making false statements in  
550 offers is prescribed in 18 U.S.C.1001.

551 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

552 18. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
553 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
554 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,  
555 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990  
556 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and  
557 with the applicable implementing regulations and any guidelines imposed by the U.S.  
558 Department of the Interior and/or Bureau of Reclamation.

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

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

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

576 GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

577 19. (a) The obligation of the Contractor to pay the United States as provided in  
578 this Contract is a general obligation of the Contractor notwithstanding the manner in which the

579 obligation may be distributed among the Contractor's water users and notwithstanding the  
580 default of individual water users in their obligation to the Contractor.

581 (b) The payment of charges becoming due pursuant to this Contract is a  
582 condition precedent to receiving benefits under this Contract. The United States shall not allow  
583 the introduction of Non-Project Water and make Exchanged Water available to the Contractor  
584 through Project Facilities during any period in which the Contractor is in arrears in the advance  
585 payment of Rates and charges due the United States. The Contractor shall not introduce  
586 Non-Project Water and deliver Exchanged Water under the terms and conditions of this Contract  
587 for lands or parties that are in arrears in the advance payment of rates and charges as levied or  
588 established by the Contractor.

589 BOOKS, RECORDS, AND REPORTS

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

600 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

609 OFFICIALS NOT TO BENEFIT

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

613

CHANGES IN CONTRACTOR'S ORGANIZATION

614           24.     While this Contract is in effect, no change may be made in the Contractor's Raw  
615 Water Service Area 2, by inclusion or exclusion of lands or by any other changes which may  
616 affect the respective rights, obligations, privileges, and duties of either the United States or the  
617 Contractor under this Contract including, but not limited to, dissolution, consolidation, or  
618 merger, except upon the Contracting Officer's written consent.

619

NOTICES

620           25.     Any notice, demand, or request authorized or required by this Contract shall be  
621 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
622 delivered to the Bureau of Reclamation, Area Manager, South-Central California Area Office,  
623 1243 "N" Street, Fresno, California 93721, and on behalf of the United States, when mailed,  
624 postage prepaid, or delivered to the Board of Directors of the Byron Bethany Irrigation District,  
625 7995 Bruns Road, Byron, California 94514-1625. The designation of the addressee or the  
626 address may be changed by notice given in the same manner as provided in this Article for other  
627 notices.

628

INCORPORATION OF EXHIBITS

629           26.     Exhibits "A" through "E" are attached hereto and incorporated herein by  
630 reference and may be updated without amending this Contract.

631

CONTRACT DRAFTING CONSIDERATIONS

632           27.     This Contract has been negotiated and reviewed by the parties hereto, each of  
633 whom is sophisticated in the matters to which this Contract pertains. The double-spaced articles  
634 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party  
635 shall be considered to have drafted the stated articles.

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

638

UNITED STATES OF AMERICA

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
*Steph R. Pale*  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR

639

By: *Pablo R. Amador*

640

FOR Regional Director, Mid-Pacific Region  
Bureau of Reclamation

641

ACTING

642

BYRON BETHANY IRRIGATION DISTRICT

643 (SEAL)

644

By: *J. Amador*

645

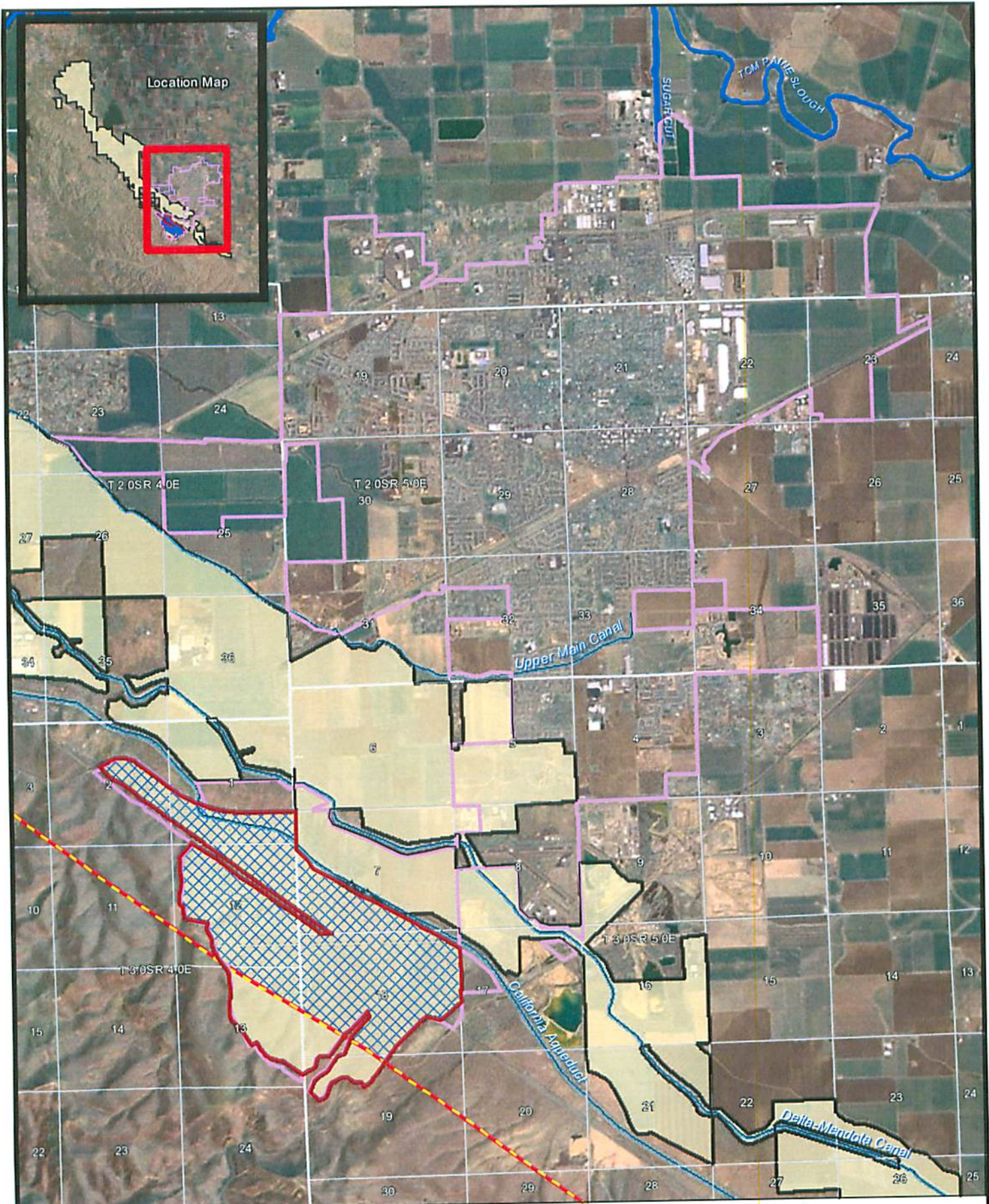
President of the Board of Directors

646 Attest:

647

*[Signature]*

648 Secretary of the Board of Directors



- Tracy Hills Development Raw Water Service Area #2
- City of Tracy
- Consolidated POU (CPOU)
- Exchanged Water Service Area
- Byron-Bethany I.D.

**Byron-Bethany I.D. Long-Term Exchange Contract**  
 Exchange Contract No. 11-WC-20-0149  
 Exhibit A



214-202-97

Date: May 29, 2012; Revised: 7/19/12, 7/30/12, 8/10/12, 11/4/12  
 Name: n:\data\cb\contrad\byron\_bethany\TracyHills.mxd





**EXHIBIT B**

**BYRON BETHANY IRRIGATION DISTRICT  
YEAR 2014 ANNUAL RATES  
(Per Acre-Foot)**

<b>Cost of Service (COS) Rate<sup>1</sup></b>	<b>M&amp;I Water</b>
<b>Cost Component</b>	
<b>Water Marketing</b>	
Construction	\$0.00
O&M	\$4.83
<b>Storage</b>	
Construction	\$0.42
O&M	\$10.85
<b>Conveyance</b>	
Construction	\$0.39
O&M <sup>2</sup>	\$0.00
<b>Conveyance Pumping</b>	
O'Neill Pumping Plant	\$0.11
<b>Other Cost</b>	\$0.31
<b>Facilities Use Charge<sup>3, 4</sup></b>	\$0.00
<b>Total COS (O&amp;M +Capital)<sup>5</sup></b>	<b>\$16.91</b>

**EXPLANATORY NOTES**

1. 2014 Special – Section 4 – Warren Act Contract, Schedule W-1.
2. Conveyance and conveyance pumping O&M costs were removed for ratesetting purposes and are to be billed directly by the Operating Non-Federal Entities.
3. Cost of Exchanged Water awaiting return (benefits for use of facilities).
4. Cost of Returning Water to Raw Water Service Area 2 (Facilities usage and pumping required for the return of water).
5. All costs components identified in the Cost of Service Rate of this rate exhibit are required to be paid for each acre-foot of Non-Project water introduced, conveyed, stored, exchanged, and/or delivered.

**Additional details of the rate components are available on the Internet at  
[www.usbr.gov/mp/cvpwaterrates/ratebooks/special](http://www.usbr.gov/mp/cvpwaterrates/ratebooks/special)**

**EXHIBIT C**  
**SOURCE(S) OF CONTRACTOR'S NON-PROJECT WATER**  
**BYRON BETHANY IRRIGATION DISTRICT**

**Source of Non-Project Water:** The source of Non-Project Water is the Contractor's asserted entitlement to pre-1914 Water Rights with a priority date of May 18, 1914 for 40,000 miners inches (equivalent to 700,000 acre-feet annually) measured under four-inch pressure from Italian Slough, a tributary to Old River. Pursuant to "Agreement Between Byron Bethany Irrigation District and the State of California Department of Water Resources," executed May 4, 1964, the Department of Water Resources (DWR) was allowed to cross and destroy a portion of the District's lateral. In exchange, the Contractor was granted permanent and perpetual use, as its point of diversion, the DWR's State Water Project Intake Channel.

For the purposes of this Contract, the Contractor is requesting to divert up to 4,725 acre-feet of this source of Non-Project Water through a newly constructed pipeline under Contractor's License No. 12-LC-20-0171 ("Long-Term License for the Erection, Operation, Maintenance, and Storage of Temporary Structures") from the District's Pump Station 3 off Canal 70 for the conveyance and introduction into the Delta-Mendota Canal during the months of March through October on an annual basis.

**Point of Introduction:** Based on the availability of Excess Capacity and with Contracting Officer approval, the Contractor may introduce the Non-Project Water from their pipeline into the Delta-Mendota Canal at milepost 3.32R in accordance with an approved schedule.

**Point of Delivery:** Reclamation will convey the Contractor's Exchanged Water either to storage in Project facilities for later delivery or convey it directly to milepost 15.88L of the Delta-Mendota Canal or to such other location(s) mutually agreed to in writing by the Contracting Officer and the Contractor.

Long-Term Exchange Contract – Year 2014 - Year 2054  
M&I Only  
Contract No. 11-WC-20-0149

**EXHIBIT D**

**DELTA-MENDOTA CANAL**  
**(SURFACE WATER PUMP-IN PROGRAM)**  
**QUALITY ASSURANCE PLAN**  
*(Referenced in Article 11)*

# RECLAMATION

*Managing Water in the West*

## **Delta-Mendota Canal Non-Project Surface Water Pump-in Program 2014 Water Quality Monitoring Plan**



DMC Milepost 42.54L Patterson ID Pump-in Structure



U.S. Department of the Interior  
Bureau of Reclamation  
Mid-Pacific Region, South-Central California Area Office

Revised: 24 Jan 2014

### **Mission Statements**

**The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities.**

**The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.**

## List of Abbreviations and Acronyms

Authority	San Luis and Delta-Mendota Water Authority
°C	degrees Celsius
DMC	Delta-Mendota Canal
DMC Headworks	DMC Milepost 2.5, Jones Pumping Plant
DMC Check 13	DMC Milepost 70, O'Neill Forebay
DMC Check 20	DMC Milepost 111, near Firebaugh
DMC Check 21	DMC Milepost 116, terminus at Mendota Pool
COC	chain of custody
CVP	Central Valley Project
DFG	California Department of Fish and Game
EC	electrical conductivity, $\mu\text{S}/\text{cm}$
Exchange Contractors	San Joaquin River Exchange Contractors Water Authority
°F	degrees Fahrenheit
mg/L	milligrams per liter, equivalent to parts per million
QA	Quality Assurance
QC	Quality Control
QCO	Quality Control Officer
Reclamation	U.S. Department of the Interior, Bureau of Reclamation
Regional Board	California EPA, Central Valley Regional Water Quality Board
TDS	Total dissolved solids, mg/L
USGS	U.S. Geological Survey
$\mu\text{g}/\text{L}$	micrograms per liter, equivalent to parts per billion
$\mu\text{S}/\text{cm}$	microSiemens per cm, salinity in water

# Delta-Mendota Canal Non-Project Surface Water Pump-in Program 2014 Water Quality Monitoring Plan

## Introduction

The overall supply of Central Valley Project (CVP) water has been reduced by drought and restrictions on pumping from the Sacramento-San Joaquin Delta. Under the Warren Act of 1911, Reclamation may execute temporary contracts to convey non-project water in excess capacity in federal irrigation canals.

Water Year 2013 was the driest year of record, and forecast for 2014 indicate that the drought will continue.

In Contract Water Year<sup>1</sup> 2014, Reclamation proposes to execute temporary contracts with water districts to convey up to up to 35,000 acre-feet of non-project surface water in the Delta-Mendota Canal (DMC) subject to the monitoring and reporting requirements outlined in this document. The following districts could participate in this program:

Table 1. Non-Project Surface Water Pump-in Locations (Water Year 2014)

DMC Milepost	District	Total Acre-feet
3.32R	Byron-Bethany ID	5,000
20.42L	Banta-Carbona ID	10,000
31.31L	West Stanislaus ID	10,000
42.54L	Patterson ID	10,000

This document describes the plan for measuring the changes in the quality of water in the DMC caused by the conveyance of this non-project surface water during Water Year 2014. Various agencies will use these data to assess water quality in the upper portion of the DMC, and assess any impacts on the quality of water delivered to wetlands water supply channels, and the State Water Project through the O’Neill Forebay.

This document has been prepared by the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), in cooperation with the San Luis & Delta-Mendota Water Authority (Authority). This monitoring plan will be conducted by staff of Reclamation and the Authority, and the data will complement independent monitoring by other Federal, State, and private agencies.

Several sampling techniques will be used to collect samples of water, including real-time, grab, and composite. The techniques used at each location are summarized in Section 3.

---

<sup>1</sup> Contract Water Year 2014 = 01 March 2014 – 28 February 2015

Continuous measurement of specific conductance (salinity) will be recorded at two stations in the canal using sondes connected to digital data loggers. The data will be averaged every 15 minutes, sent via satellite to the California Data Exchange Center where it will be posted in the Internet as preliminary data:

<http://cdec.water.ca.gov/queryDaily.html>

Central Valley Operations Office will post the daily average salinity measurements on its website:

<http://www.usbr.gov/mp/cvo/wqrpt.html>

The real-time data will be collected by Reclamation and used in a mass balance to calculate and predict water quality conditions along the DMC. The calculated results will be reported to the Authority and other interested agencies.

Based on available funding, Reclamation will continue to operate autosamplers at two places along the DMC that will collect daily composite samples for measurement of selenium and salinity.

Reclamation will continue to collect monthly grab samples at McCabe Road to measure many other parameters including trace metals and pesticides.

Reclamation will use these data to assess changes in water quality caused by the conveyance of non-project surface water and groundwater in Water Year 2014, and will implement the terms and conditions of the Warren Act Contracts and exchange agreements.

## **Background**

The Delta Division facilities of the federal Central Valley Project (CVP) delivers water to almost a million acres of farmland and wetlands in the San Joaquin Valley of California. This is the sole source of clean water for the Cities of Tracy and Dos Palos, and for state and federal wildlife refuges and many private wetlands in Fresno, Merced, San Joaquin, and Stanislaus Counties.

The source of water for the Division is the northern Sierra mountains, passing through the delta of the Sacramento and San Joaquin Rivers. This water is typically suitable in quality for irrigation and wetlands. California is regularly affected by droughts that reduce the supply of water. Environmental regulations also restrict the operation of the Jones Pumping Plant to divert water from the Delta. The salinity of water in the Delta is highly variable due to the influence of tides and outflow of river water.

The Delta-Mendota Canal carries CVP water to farms, communities, and wetlands between Tracy and Mendota. The 116 mile canal is operated and maintained by the San Luis and Delta-Mendota Water Authority (Authority) under contract with Reclamation.



Inflows of tailwater and subsurface water add contaminants to the canal. The conveyance of non-project water may further degrade the quality of water in the canal.

The districts and refuges in the Delta Division use non-project water to supplement their contractual supply from the CVP. The term “Non-Project Water” applies to supplies of water that have not been appropriated by the United States for the purposes of the CVP.

The Warren Act of 1911<sup>2</sup> authorizes Reclamation to execute temporary contracts to impound, store, and carry non-project water in federal irrigation canals when excess capacity is available. Such contracts will be negotiated by Reclamation with Delta Division water districts to allow the introduction of non-project water into the Delta-Mendota Canal to supplement the supply of CVP water to help farmers deliver enough water to irrigate and sustain valuable permanent crops like grapes, citrus, and deciduous fruit, and to sustain the local multi-billion dollar farming economy.

The quality of non-project water is variable and must be measured to confirm that there will be no harm to downstream water users when this water is pumped into the canal. Reclamation has developed a set of standards for the acceptance of non-project water in the canal based on the requirements of downstream water users.

In Water Year 2014, environmental regulations and climate change continue to reduce the supply of surface water for the Central Valley Project. Water managers now must depend on non-project water to supplement a diminished supply of CVP water.

Reclamation will require information about each source of non-project water and more monitoring of the water in the canal to measure changes and to determine the feasibility of continuing this program in the future. Staff from the Authority will take regular measurements of each source of non-project surface water and of water in the canal downstream of each pump-in.

This monitoring plan will ensure that data will measure any changes in the quality of CVP water in the Delta-Mendota Canal and Mendota Pool. The data will be used by the Authority and Reclamation to regulate the pump-in program and evaluate future programs.

### **Monitoring Mission and Goals**

The mission of this monitoring plan is to produce physical measurements that will determine the changes in the quality of the water in canal caused by the conveyance of non-project surface water during Water Year 2014. The data will be used to implement the terms of the 2014 Warren Act Contracts and exchange agreements, and to ensure that the quality of CVP water is commensurate with the needs of all water users.

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<sup>2</sup> Act of February 21, 1911, ch. 141, 36 Stat. 925

## **Program Goals**

The general goals of monitoring are:

- Evaluate the quality of each source of non-project surface water, and
- Confirm that the blend of CVP water and non-project surface water is suitable for domestic, agricultural, and wetlands uses.
- Provide reliable data for managers to regulate the overall non-project water pump-in program to prevent contamination problems

## **Study Area**

The Study Area for this program encompasses the Delta-Mendota Canal from Tracy to Santa Nella, plus the O'Neill Forebay and the connection to the State Water Project.

## **Water Quality Standards**

The quality of water in each source of non-project water will be compared with the standards listed in Table 5. The list has been developed by Reclamation to measure constituents of concern that would affect downstream water users. In particular, the concentration of selenium in any pump-in water shall not exceed 2 µg/L, the limit for the Grasslands wetlands water supply channels specified in the 1998 Basin Plan.<sup>3</sup> The other constituents are mainly agricultural chemicals listed in the California Drinking Water Standards (Title 22)<sup>4</sup>.

## **Water Quality Monitoring Plan**

### **In-stream Monitoring**

The quality of water in the DMC will be measured at the locations listed in Tables 1, 2, and 3.

Reclamation will operate and maintain the real-time stations listed in Table 1. Based on available funding, Reclamation will continue to collect water samples at the sites listed in Table 2 under the DMC Water Quality Monitoring Program. Reclamation will be responsible for the costs of sampling and analysis of water sampled from the DMC under this monitoring program.

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<sup>3</sup> California Regional Water Quality Control Board, Central Valley Region, Fourth Edition of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins.  
[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf)

<sup>4</sup> California Code of regulations, Title 22. The Domestic Water Quality and Monitoring Regulations specified by the State of California Health and Safety Code (Sections 4010 4037), and Administrative Code (Sections 64401 et seq.), as amended.  
<http://www.cdph.ca.gov/certlic/drinkingwater/Documents/Lawbook/dwregulations-06-24-2010.pdf>

Table 3 is a list of places along the canal where non-project surface water could be pumped into the canal under this program. If the real-time monitoring is not sufficient to identify in-stream changes in quality caused by the addition of the non-project water, Reclamation may require weekly measurements at the checks listed in Table 3 to determine local effects from each group of wells. Furthermore, if flow of CVP water in the canal is limited, Reclamation will require detailed monitoring to identify the individual and cumulative changes in water quality caused by the addition of non-project water.

## **Non-Project Water Monitoring Plan**

### **Initial Analysis**

All districts participating in the 2014 DMC Surface Water Pump-in Program must provide the following information about each source of non-project water to Reclamation prior to pumping that water into the DMC:

- the current license to erect and maintain the pump-in structure within the DMC right-of-way
- the current Warren Act Contract that allows the non-project water to be conveyed in the DMC
- the schedule and pump-in rate of each source;
- and complete report of water quality analysis (Table 5).

The Districts must provide access to each pump-in facility for Reclamation and Authority staff.

All water samples must be sampled and preserved according to established protocols in correct containers. Reclamation will assist with the collection of these samples.

Analyses should be conducted by laboratories that have been approved by Reclamation, listed in Tables 6a and 6b. Each sample of non-project surface water must be sampled and analyzed at the expense of the Warren Act Contract district.

### **Compliance Monitoring**

#### **Daily Salinity**

Mean daily salinity of water in the San Joaquin River, DMC, and California Aqueduct will be measured with sensors along the canal that report real-time data to CDEC, listed in Table 2. Reclamation will monitor daily changes in salinity while the non-project surface water is being pumped into the canal.

## **Weekly Monitoring**

Reclamation may require weekly measurements of salinity along the DMC if the real-time sensors are not sufficient to identify changes. If necessary, Reclamation will direct the Authority to measure the EC of water in the canal at the check structures listed in Table 3. These sites are located upstream and downstream from each pump-in structure. In addition, Reclamation may also direct Authority staff to measure the EC of the water in each active pump-in.

The monthly volume of water pumped into the DMC from each pump-in structure will be measured by the Authority and sent to Reclamation at the beginning of each month.

## **Selenium Monitoring**

Based on available funds, Reclamation will continue to measure selenium in the canal with autosamplers at the DMC headworks and Check 13. Reclamation may collect random samples of water from the active pump-ins and at other places in the DMC; the cost of these selenium tests will be borne by Reclamation.

## **Data Compilation and Review**

All monitoring data collected by the Authority (i.e., volume of water pumped into the DMC, weekly salinity in the DMC) will be presented each week to Reclamation via e-mail. Reclamation will review the data to identify changes in the quality of water in the canal. Reclamation will use a mass-balance to assess the effects of the pump-ins on salinity in the DMC.

## **Water Quality Monitoring Parameters and Data Management**

The following sections describe the parameters for real-time and laboratory measurement of water quality, as well as methods for quality control, data management, and data reporting.

### **Real-Time Water Quality Monitoring Parameters**

The Central Valley Operations Office (CVO) operates four sensors along the DMC that measure salinity and temperature of water. These continuous measurements are posted on the Internet in real-time. The Department of Water Resources operates similar sensors along the San Joaquin River and California Aqueduct. Preliminary data from these sensors are reported by the California Data Exchange Center.

### **Salinity**

Salinity is a measure of dissolved solids in water. It is the sum weight of many different elements within a given volume of water, reported in milligrams per liter (mg/L) or parts per million (ppm). Salinity is an ecological factor of considerable importance, influencing the types of organisms that live in a body of water. Also, salinity influences the kinds of

plants and fish that will grow in a water body. Salinity can be estimated by measuring the electrical conductivity (EC) of the water.

### **Sampling For Laboratory Analyses of Water Quality**

The following sections describe constituents for laboratory analyses of water quality, as well as methods for water quality sampling and chain of custody documentation.

#### **Constituents**

Table 5 lists of constituents to be measured at in each well that will pump into the DMC during Water Year 2014. Parameters include selenium, mercury, boron, nutrients, and other compounds that cannot be measured with field sensors. Table 7 is a list of laboratories whose sampling and analytical practices have been approved by Reclamation.

#### **Sampling methods**

Grab samples will be collected in a bucket or bottle from the point of discharge into the canal. Samples of canal water should be collected mid-stream from a bridge or check structure. Grab samples should be poured directly into sample bottles appropriate to the analyses. This technique is for samples collected weekly or less frequently. The analytical laboratory will specify the sample volume, type of bottle, need for preservative, and special handling requirements. Reclamation may train field staff on proper sample collection and handling.

Time composite samples will be collected from the DMC by Reclamation using an autosampler. Daily composite samples will consist of up to eight subsamples taken per day and mixed into one sample.

#### **Chain of Custody documentation**

Chain of custody (COC) forms will be used to document sample collection, shipping, storage, preservation, and analysis. All individuals transferring and receiving samples will sign, date, and record the time on the COC that the samples are transferred.

Laboratory COC procedures are described in each laboratory's Quality Assurance Program Manual. Laboratories must receive the COC documentation submitted with each batch of samples and sign, date, and record the time the samples are transferred. Laboratories will also note any sample discrepancies (e.g., labeling, breakage). After generating the laboratory data report for the client, samples will be stored for a minimum of 30 days in a secured area prior to disposal.

#### **Chain of Custody documentation**

Chain of custody (COC) forms will be used to document sample collection, shipping, Quality control (QC) is the overall system of technical activities that measure the attributes and performance of a process, item, or service against defined standards to verify that stated requirements are met.

Quality assurance (QA) is an integrated system of management activities involving, planning, implementation, documentation, assessment, reporting, and quality

improvement to ensure that a process, item, or service is of the type and quality needed and expected by the customer.

QA objectives will be used to validate the data for this project. The data will be accepted, rejected, or qualified based on how sample results compare to established acceptance criteria.

The precision, accuracy, and contamination criteria will be used by the QCO to validate the data for this project. The criteria will be applied to the blind external duplicate/split, blank, reference, or spiked samples submitted with the production samples to the analytical laboratories by the participating agencies to provide an independent assessment of precision, accuracy, and contamination.

Laboratories analyze their own QC samples with the client's samples. Laboratory QC samples, including laboratory fortified blanks, matrix spikes, duplicates, and method blanks, assess precision, accuracy, and contamination. Laboratory QC criteria are stated in the analytical methods or determined by each laboratory. Since internal control ranges are often updated in laboratories based on instrumentation, personnel, or other influences, it is the responsibility of the QCO to verify that these limits are well documented and appropriately updated during system audits. The preferred method of reporting the QC results is for the laboratory to provide a QC summary report with acceptance criteria for each QC parameter of interest.

For water samples, the QCO will use a statistical program to determine if current concentrations for parameters at given sites are consistent with the historical data at these sites. A result is determined to be a historical outlier if it is greater than 3 standard deviations from the average value for the site. The presence of an outlier could indicate an error in the analytical process or a significant change in the environment.

Samples must be prepared, extracted, and analyzed within the recommended holding time for the parameter. Data may be qualified if the sample was analyzed after the holding time expires.

Completeness refers to the percentage of project data that must be successfully collected, validated, and reported to proceed with its intended use in making decisions.

Constraints with regard to time, money, safety, and personnel were some of the factors in choosing the most representative sites for this project. Monitoring sites have been selected by considering the physical, chemical, and biological boundaries that define the system under study.

Sites also were selected to be as representative of the system as possible. However, Reclamation will continue to evaluate the choice of the sites with respect to their representativeness and will make appropriate recommendations to the Contracting Officer given a belief or finding of inadequacy.

Comparability between each agency's data is enhanced through the use of Standard Operating Procedures that detail methods of collection and analysis. Each agency has

chosen the best available protocol for the sampling and analyses for which it is responsible based on the agency's own expertise. Audits performed by the QCO will reinforce the methods and practices currently in place and serve to standardize techniques used by the agencies.

**Chain of Custody documentation**

Chain of custody (COC) forms will be used to document sample collection, shipping, Real-Time Data – Raw data from field sensors, must be identified as preliminary, subject to change.

Provisional Data - Data that have been reviewed by the collecting agency but may be changed pending re-analyses or statistical review.

Laboratory Data – Data produced by the laboratory following laboratory QA/QC protocols.

**Chain of Custody documentation**

Chain of custody (COC) forms will be used to document sample collection, shipping, In-stream data will be collected by Reclamation. Routine measurements of flow and EC in each pump-in will be collected by the Authority and sent to Reclamation each month.

Reclamation will compile these data in a water balance model to predict the change in salinity in the canal with the addition of non-project surface water and groundwater.

Real-time data will be used to monitor day-to-day patterns and assess actual conditions. The real-time data will be posted in regular e-mail messages to the districts and Authority. Reclamation will compile all flow and water quality data into a quarterly reports.

**Chain of Custody documentation**

Chain of custody (COC) forms will be used to document sample collection, shipping, and handling.

**Water Quality Requirements**

Each week, Reclamation staff will use the real-time salinity measurements (Table 2) and optional weekly in-stream measurements (Table 3) to monitor and determine the changes in salinity in the DMC, and determine if the pump-ins have caused these changes. Reclamation staff will compile other water quality data collected for this program and by others do evaluate changes in the canal.

Reclamation and the Authority will allow non-project surface water and groundwater to be pumped into the DMC if such water does not cause the concentration of important constituents in the canal to exceed certain thresholds listed in Table 8.

Reclamation will direct the Authority contact the Districts to stop pumping non-project water into the upper DMC if the concentration of any of these constituents in the canal exceed the maximum allowable concentrations listed in Table 4a.

Reclamation reserves the right to modify this monitoring program at any time to change.

Table 1. Non-Project Surface Water Pump-in Locations (Water Year 2014)

Table 2. Real-time Water Quality Monitoring Stations

Table 3. Water Quality Monitoring Stations

Table 4. Monitoring Schedule

Table 5. Water Quality Standards

Table 6. Water Year Totals (Acre-feet)

Table 7a. Approved Laboratory List for the Mid-Pacific Region Environmental Monitoring Branch

Table 7b. Approved Laboratory Matrix for the Mid-Pacific Region Environmental Monitoring Branch (MP-157)

Table 8. Parameters for Accepting Non-Project Surface Water in the Upper DMC\*

Revised: 13 Mar 2014 SCC-107



**Delta-Mendota Canal  
Non-Project Surface Water Pump-in Program  
2014 Water Quality Monitoring Plan  
Jones Pumping Plant to Check 13 (O'Neill Forebay)**

**Table 1. Non-Project Surface Water Pump-in Locations (Water Year 2014)**

<b>DMC Milepost</b>	<b>District</b>	<b>Total acre-feet</b>
3.32R	Byron-Bethany ID	5,000
20.42L	Banta-Carbona ID	10,000
31.31L	West Stanislaus ID	10,000
42.54L	Patterson ID	10,000

**Delta-Mendota Canal  
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**Table 2. Real-time Water Quality Monitoring Stations**

<b>DMC Milepost</b>	<b>Location</b>	<b>Operating Agency</b>	<b>Parameters</b>	<b>CDEC</b>
3.46	Jones Pumping Plant	CVO	EC	DMC
20.42L	San Joaquin River, Mossdale Bridge	DWR	EC	MSD
31.31L	San Joaquin River, Maze Road Bridge	DWR	EC	MRB
42.54L	San Joaquin River at Patterson	DWR	EC	SJP
70.01	DMC Check 13	CVO	EC	ONI
	California Aqueduct Check 13 at O'Neill Forebay	DWR	EC	C12

Key:

CDEC: California Data Exchange Center

CVO: Central Valley Operations Office

DWR: California Department of Water Resources

EC: Electrical conductivity

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**Table 3. Water Quality Monitoring Stations**

<b>DMC Milepost</b>	<b>Location</b>	<b>Operating Agency</b>	<b>Parameters</b>	<b>Frequency/ method</b>	<b>CDEC</b>
3.30L	Pump-in from State Water Project	Byron-Bethany ID	EC	Real-time	HRD
		CVO	EC	Real-time	DMC
3.46	Top of siphon downstream of Jones Pumping Plant	Reclamation	EC, selenium	Daily composite from autosampler	
16.19	DMC Check 2	SLDMWA	EC	Weekly grab*	
20.42L	pump-in from San Joaquin River	Banta-Carbona ID	Table 5	Annual	MSD
20.63	DMC Check 3	SLDMWA	EC	Weekly grab*	
31.31L	pump-in from San Joaquin River	West Stanislaus ID	Table 5	Annual	MRB
34.42	DMC Check 6	SLDMWA	EC	Weekly grab*	
38.68	DMC Check 7	SLDMWA	EC	Weekly grab*	
42.54L	pump-in from San Joaquin River	Patterson ID	Table 5	Annual	SJP
44.26	DMC Check 8	SLDMWA	EC	Weekly grab*	
68.03	DMC at McCabe Road	Reclamation	Various	Monthly grab	
		CVO	EC	Real-time	ONI
70.01	DMC Check 13 O'Neill Forebay	Reclamation	EC, selenium	Daily composite from autosampler	
	California Aqueduct at O'Neill Forebay	DWR	EC	Real-time	C12

**Key:**

- CDEC: California Data Exchange Center
- CVO: Central Valley Operations Office
- DWR: California Department of Water Resources
- EC: Electrical conductivity
- Reclamation: MP-157 Environmental Monitoring Branch
- SLDMWA: San Luis and Delta-Mendota Water Authority
- \* Optional instream sampling will be conducted as needed

**Delta-Mendota Canal  
 Non-Project Surface Water Pump-in Program  
 2014 Water Quality Monitoring Plan  
 Jones Pumping Plant to Check 13 (O'Neill Forebay)**

**Table 4. Monitoring Schedule**

Frequency	DMC Milepost	Locations	Parameters	Notes
Daily	3.46	DMC Headworks	EC	
	70.01	DMC Check 13	EC	
		San Luis Canal Check 13	EC	
Weekly	16.19	DMC Check 2	EC, turbidity	As needed
	20.42L	pump-in from San Joaquin River	EC, turbidity	As needed
	20.63	DMC Check 3	EC, turbidity	As needed
	31.31L	pump-in from San Joaquin River	EC, turbidity	As needed
	34.42	DMC Check 6	EC, turbidity	As needed
	38.68	DMC Check 7	EC, turbidity	As needed
	42.54L	pump-in from San Joaquin River	EC, turbidity	As needed
	44.26	DMC Check 8	EC, turbidity	As needed
Monthly	68.03	DMC at McCabe Road	Various	
Annual	3.30L	Pump-in from State Water Project	Table 5	
	20.42L	pump-in from San Joaquin River	Table 5	
	31.31L	pump-in from San Joaquin River	Table 5	
	42.54L	pump-in from San Joaquin River	Table 5	

**Delta-Mendota Canal  
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**Table 5. Water Quality Standards**

Constituent	Units	Maximum Contaminant Level	Detection Limit for Reporting	CAS Registry Number	Recommended Analytical Method
<b>Primary</b>					
Aluminum	mg/L	1 (1)	0.05 (2)	7429-90-5	EPA 200.7
Antimony	mg/L	0.006 (1)	0.006 (2)	7440-36-0	EPA 200.8
Arsenic	mg/L	0.01 (1)	0.002 (2)	7440-38-2	EPA 200.8
Barium	mg/L	1 (1)	0.1 (2)	7440-39-3	EPA 200.7
Beryllium	mg/L	0.004 (1)	0.001 (2)	7440-41-7	EPA 200.7
Boron	mg/L	0.7 (13)		7440-42-8	EPA 200.7
Cadmium	mg/L	0.005 (1)	0.001 (2)	7440-43-9	EPA 200.7
Chromium, total	mg/L	0.05 (1)	0.01 (2)	7440-47-3	EPA 200.7
Lead	mg/L	0.015 (9)	0.005 (8)	7439-92-1	EPA 200.8
Mercury	mg/L	0.002 (1)	0.001 (2)	7439-97-6	EPA 245.1
Nickel	mg/L	0.1 (1)	0.01 (2)	7440-02-0	EPA 200.7
Nitrate (as NO <sub>3</sub> )	mg/L	45 (1)	2 (2)	7727-37-9	EPA 300.1
Nitrate + Nitrite (sum as nitrogen)	mg/L	10 (1)			EPA 353.2
Nitrite (as nitrogen)	mg/L	1 (1)	0.4 (2)	14797-65-0	EPA 300.1
Selenium	mg/L	0.002 (10)	0.0004	7782-49-2	EPA 200.8
Thallium	mg/L	0.002 (1)	0.001 (2)	7440-28-0	EPA 200.8
<b>Secondary</b>					
Chloride	mg/L	250 (7)		16887-00-6	EPA 300.1
Copper	mg/L	1 (10)	0.05 (8)	7440-50-8	EPA 200.7
Iron	mg/L	0.3 (6)		7439-89-6	EPA 200.7
Manganese	mg/L	0.05 (6)		7439-96-5	EPA 200.7
Molybdenum	mg/L	0.01 (11)		7439-98-7	EPA 200.7
Silver	mg/L	0.1 (6)		7440-22-4	EPA 200.7
Sodium	mg/L	69 (12)		7440-23-5	EPA 200.7
Specific Conductance	µS/cm	2,200 (7)			SM 2510 B
Sulfate	mg/L	250 (7)		14808-79-8	EPA 300.1
Total Dissolved Solids	mg/L	1,500 (7)			SM 2540 C
Zinc	mg/L	5 (6)		7440-66-6	EPA 200.7
<b>Radioactivity</b>					
Gross Alpha	pCi/L	15 (3)	3 (3)		SM 7110C
<b>Organic Chemicals</b>					
Dibromochloropropane (DBCP)	µg/L	1 (4)	0.5 (5)	96-12-8	EPA 504.1
Ethylene Dibromide (EDB)	µg/L	18 (4)	2 (5)	206-93-4	EPA 504.1
Chlordane	µg/L	18 (4)	5 (5)	57-74-9	EPA 505
Endrin	µg/L	0.1 (4)	0.1 (5)	72-20-8	EPA 505
Heptachlor	µg/L	25 (4)	0 (5)	76-44-8	EPA 505
Heptachlor Epoxide	µg/L	70 (4)	10 (5)	1024-57-3	EPA 505
Lindane	µg/L	160 (4)	0 (5)	58-89-9	EPA 505
Methoxychlor	µg/L	0.2 (4)	0.01 (5)	72-43-5	EPA 505
Toxophene	µg/L	2 (4)	0.1 (5)	8001-35-2	EPA 505
Diazinon	µg/L	0.16 (11)		333-41-5	EPA 507
Atrazine	µg/L	700 (4)	25 (5)	1912-24-9	EPA 508.1
Simazine	µg/L	0.01 (4)	0.01 (5)	122-34-9	EPA 508.1
Bentazon	µg/L	0.01 (4)	0.01 (5)	25057-89-0	EPA 515.1-4
2, 4, 5-TP (Silvex)	µg/L	30 (4)	10 (5)	93-72-1	EPA 515.1-4
2,4-D	µg/L	0.2 (4)	0.2 (5)	94-75-7	EPA 515.1-4

## Delta-Mendota Canal

### Non-Project Surface Water Pump-in Program

Molinate	µg/L	20	(4)	2	(5)	2212-67-1	EPA 525.2
Thiobencarb	µg/L	50	(4)	1	(5)	28249-77-6	EPA 525.2
Carbofuran	µg/L	4	(4)	1	(5)	1563-66-2	EPA 531.1-2
Glyphosate	µg/L	70	(4)	1	(5)	1071-83-6	EPA 547
Chlorpyrifos	µg/L	0.025	(11)			2921-88-2	EPA 8141

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#### Sources:

#### Sources:

Title 22. The Domestic Water Quality and Monitoring Regulations specified by the State of California Health and Safety Code (Sections 4010-4037), and Administrative Code (Sections 64401 et seq.), as amended.

- (1) Title 22. Table 64431-A Maximum Contaminant Levels, Inorganic Chemicals
- (2) Title 22. Table 64432-A Detection Limits for Reporting (DLRs) for Regulated Inorganic Chemicals
- (3) Title 22. Table 64442 Radionuclide Maximum Contaminant Levels (MCLs) and Detection Levels for Purposes of Reporting
- (4) Title 22. Table 64444-A Maximum Contaminant Levels, Organic Chemicals
- (5) Title 22. Table 64445.1-A Detection Limits for Purposes of reporting (DLRs) for Regulated Organic Chemicals
- (6) Title 22. Table 64449-A Secondary Maximum Contaminant Levels "Consumer Acceptance Contaminant Levels"
- (7) Title 22. Table 64449-B Secondary Maximum Contaminant Levels "Consumer Acceptance Contaminant Level Ranges"
- (8) Title 22. Table 64678-A DLRs for Lead and Copper
- (9) Title 22. Section 64678 (d) Lead Action level

2013 California Drinking Water Regulations:

<http://www.cdph.ca.gov/certlic/drinkingwater/Pages/Lawbook.aspx>

<http://www.cdph.ca.gov/certlic/drinkingwater/Documents/Lawbook/dwregulations-2013-07-01.pdf>

California Regional Water Quality Control Board, Central Valley Region, Fourth Edition of the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins.

- (10) Basin Plan, Table III-1 (µg/L) (selenium in Grasslands water supply channels)
- (11) Basin Plan, Table III-2A (µg/L) (chlorpyrifos & diazinon in San Joaquin River from Mendota to Vernalis)

Sacramento & San Joaquin River Basin Plan 2009

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/sacsjr.pdf](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf)

Ayers, R. S. and D. W. Westcot, *Water Quality for Agriculture*, Food and Agriculture Organization of the United Nations - Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985).

- (12) Ayers, Table 1 (mg/L) (sodium)
- (13) Ayers, Table 21 (mg/L) (boron)

Water Quality Standards for Agriculture 1985

<http://www.fao.org/DOCREP/003/T0234E/T0234E00.HTM>

revised: 06 Jan 2014

**Delta-Mendota Canal  
 Non-Project Surface Water Pump-in Program  
 2014 Water Quality Monitoring Plan  
 Jones Pumping Plant to Check 13 (O'Neill Forebay)**

**Table 6. Water Year Totals (Acre-feet)**

Milepost	District	WY 2009	WY 2010	WY 2011	WY 2012	WY 2013	WY 2014*
3.32R1	Byron-Bethany ID	782	1,440	0	2,588	102	0
3.32R2	Byron-Bethany ID	782	1,383	0	2,241	98	0
20.42L	Banta-Carbona ID	14,011	10,580	6,215	11,468	15,226	8,759
31.31L	West Stanislaus ID	0	0	0	0	2,505	1,269
31.31L	West Stanislaus ID	0	0	0	0	3,346	1,446
42.54L	Patterson ID	0	142	731	10,018	19,712	3,689
		15,575	13,545	6,946	26,315	40,989	15,163

Data from San Luis & Delta-Mendota Water Authority  
 Water Year = October - September  
 \*October 2013 - February 2014 totals

# RECLAMATION

*Managing Water in the West*

Table 7a. Approved Laboratory List for the Mid-Pacific Region Environmental Monitoring Branch

<b>APPL Laboratory</b>	<b>Address</b>	908 North Temperance Avenue, Clovis, CA 93611
	<b>Contact</b>	Renee' Patterson, Project Manager
	<b>P/F</b>	(559) 275-2175 / (559) 275-4422
	<b>Email</b>	rpatterson@applinc.com; danderson@applinc.com;
	<b>Methods</b>	<i>Approved for inorganic and organic parameters in water and soil</i>
<b>Basic Laboratory</b>	<b>Address</b>	2218 Railroad Avenue Redding, CA 96001 USA
	<b>Contact</b>	Josh Kirkpatrick, Nathan Hawley, Melissa Hawley
	<b>P/F</b>	(530) 243-7234 / (530) 243-7494
	<b>Email</b>	jkirkpatrick@basiclab.com (QAO and PM); nhawley@basiclab.com, mhawley@basiclab.com (invoices); poilar@basiclab.com (sample custody), khawley@basiclab.com (sample custody)
	<b>Methods</b>	<i>Approved for inorganic/organic parameters</i>
<b>California Laboratory Services</b>	<b>Address</b>	3249 Fitzgerald Road Rancho Cordova, CA 95742
	<b>Contact</b>	Scott Furnas
	<b>P/F</b>	(916) 638-7301 / (916) 638-4510
	<b>Email</b>	janetm@californialab.com (QA); scottf@californialab.com (PM)
	<b>Methods</b>	<i>Approved for inorganic, organic, and microbiological parameters</i>
<b>Calscience Environmental Laboratories</b>	<b>Address</b>	7440 Lincoln Way; Garden Grove, CA 92841
	<b>Contact</b>	Don Burley
	<b>P/F</b>	714-895-5494 (ext. 203)/714-894-7501
	<b>Email</b>	<a href="mailto:DBurley@calscience.com">DBurley@calscience.com</a>
	<b>Methods</b>	<i>Approved for inorganic and organic parameters in water, sediment, and soil.</i>
<b>Caltest Analytical Laboratory</b>	<b>Address</b>	1885 N. Kelly Rd. Napa, CA 94558
	<b>Contact</b>	Mike Hamilton, Patrick Ingram (Lab Director)
	<b>P/F</b>	(707) 258-4000/(707) 226-1001
	<b>Email</b>	Mike_Hamilton@caltestlabs.com; Patrick_Ingram@caltestlabs.com info@caltestlabs.com
	<b>Methods</b>	<i>Approved for inorganic and microbiological parameters</i>
<b>Dept. of Fish &amp; Game - WPCL</b>	<b>Address</b>	2005 Nimbus Road Rancho Cordova, CA 95670 USA
	<b>Contact</b>	David B. Crane - Laboratory Director, Patty Bucknell - Inorganic Chemist (916) 358-4398 Gail Chow - QA Manager + re-analysis requests (916) 358-2840
	<b>P/F</b>	(916) 358-2858 / (916) 985-4301, Sample Receiving: (916) 358-0319 Scott or Mary
	<b>Email</b>	dcrane@ospr.dfg.ca.gov; pbucknell@ospr.dfg.ca.gov; gcho@ospr.dfg.ca.gov
	<b>Methods</b>	<i>Approved only for metals analysis in tissue, organics pending</i>



**Table 7a. Approved Laboratory List for the Mid-Pacific Region Environmental Monitoring Branch**

<b>Eurofins Eaton Analytical, Inc. (formerly MWH Laboratories)</b>	<b>Address</b>	750 Royal Oaks Drive Ste. 100 Monrovia, CA 91016 USA
	<b>Contact</b>	Linda Geddes (Project Manager), Rick Zimmer (quotes)
	<b>P/F</b>	(626) 386-1100, Linda - (626) 386-1163, Rick - (626) 386-1157
	<b>Email</b>	lindageddes@eurofinsus.com
	<b>Methods</b>	Approved for all inorganic, organic, and radiochemistry parameters in water
<b>Fruit Growers Laboratory</b>	<b>Address</b>	853 Corporation Street Santa Paula, CA 93060 USA
	<b>Contact</b>	David Terz, QA Director
	<b>P/F</b>	(805) 392-2024 / (805) 525-4172
	<b>Email</b>	davidt@fglinc.com
	<b>Methods</b>	Approved for general physical analysis in soils and most inorganic and organic parameters in water and soil; not approved for mercury in water or silver in soil.
<b>Sierra Foothill Laboratory, Inc.</b>	<b>Address</b>	255 Scottsville Blvd, Jackson, CA 95642
	<b>Contact</b>	Sandy Nurse (Owner) or Karen Lantz (Program Manager)
	<b>P/F</b>	(209) 223-2800 / (209) 223-2747
	<b>Email</b>	sandy@sierrafoothilllab.com, CC: dale@sierrafoothilllab.com
	<b>Methods</b>	Approved for all inorganic parameters (except low level TKN), microbiological parameters, acute and chronic toxicity.
<b>South Dakota Agricultural Laboratories</b>	<b>Address</b>	Brookings Biospace, 1006 32nd Avenue, Suites 103,105, Brookings, SD 57006-4728
	<b>Contact</b>	Regina Wixon, Jessie Davis, Steven Hauger (sample custodian)
	<b>P/F</b>	(605) 692-7325/(605) 692-7326
	<b>Email</b>	regina.wixon@sdaglabs.com, annie.mouw@sdaglabs.com, emily.weissenfluh@sdaglabs.com, darin.wixon@sdaglabs.com
	<b>Methods</b>	Approved for selenium analysis
<b>TestAmerica</b>	<b>Address</b>	880 Riverside Parkway West Sacramento, CA 95605 USA
	<b>Contact</b>	Linda Laver
	<b>P/F</b>	(916) 374-4362 / (916) 372-1059 fax
	<b>Email</b>	Linda.Laver@TestAmericaInc.com
	<b>Methods</b>	Approved for all inorganic parameters and hazardous waste organics. Ag analysis in sediment, when known quantity is present, request 6010B
<b>Western Environmental Testing Laboratories</b>	<b>Address</b>	475 East Greg Street # 119 Sparks, NV 89431 USA
	<b>Contact</b>	Kurt Clarkson/Logan Greenwood (Client Services), Andy Smith (Lab Drctr)
	<b>P/F</b>	(775) 355-0202 / (775) 355-0817
	<b>Email</b>	kurtc@wetlaboratory.com, logang@wetlaboratory.com, andy@wetlaboratory.com
	<b>Methods</b>	Approved for inorganic parameters (metals, general chemistry) and coliforms.

Revised: 09 Dec 2013

**Table 7b. Approved Laboratory Matrix for the Mid-Pacific Region Environmental Monitoring Branch (MP-157)**

Laboratory	Water					Sediment/Soil				Tissue/Vegetation	
	Inorganic	Organic	Micro-biological	Radio-chemistry	Toxicity	Inorganic	Organic	General physical	Toxicity	Inorganics	Organics
APPL Laboratory	X	X				X	X				
Basic Laboratory	X	X				X	X				
California Laboratory Service	X	X	X			X	X				
Calscience Environmental Laboratories	X	X				X	X				
Caltest Analytical Laboratory	X		X								
Dept. of Fish & Game - WPCI		pending				X	pending			X	pending
Eurofins Eaton Analytical, Inc. (formerly MWH)	X	X		X							
Fruit Growers Laboratory	X (not for mercury)	X				X (not for silver)	X	X			
Sierra Foothill Laboratory, Inc.	X (not for TKN)		X		X				X		
South Dakota Agricultural Laboratories	selenium					selenium				selenium	
TestAmerica	X	X				X	X				
Western Environmental Testina Laboratories	X		X								

revised: 11 Dec 2013

**Delta-Mendota Canal  
 Non-Project Surface Water Pump-in Program  
 2014 Water Quality Monitoring Plan  
 Jones Pumping Plant to Check 13 (O'Neill Forebay)**

**Table 8. Parameters for Accepting Non-Project Surface Water in the Upper DMC**

<b>Parameter</b>	<b>Monitoring Location</b>	<b>Values in the DMC</b>
Minimum dilution flow*	Jones PP	More than 500 cfs
Increase in Specific conductance (EC)*	Check 13	Less than 1,000 $\mu\text{S}/\text{cm}$
Increase in Conductance*	Between Jones PP and Check 13	Less than 50 $\mu\text{S}/\text{cm}$
Increase in Turbidity*	Between Jones PP and Check 13	Less than 5 NTU
Increase in Selenium	Between Jones PP and Check 13	Less than 1 $\mu\text{g}/\text{L}$

\* Duration of five consecutive days or more

Long-Term Exchange Contract – Year 2014 - Year 2054  
M&I Only  
Contract No. 11-WC-20-0149

**EXHIBIT E**

**LETTER OF AGREEMENT NUMBER 9-07-20-W1610**  
*(referenced in Article 7)*



# United States Department of the Interior

BUREAU OF RECLAMATION  
South-Central California Area Office  
Tracy Office  
16650 Kelso Road  
Byron CA 94514-1909

# Received

MAR 25 2014

Byron - Bethany  
Irrigation District

Letter of Agreement  
No. 9-07-20-W1610

RECEIVED  
MAR 27 AM 9:50  
BUREAU OF RECLAMATION  
SOUTH-CENTRAL CALIFORNIA AREA OFFICE  
TRACY, CALIFORNIA

IN REPLY REFER TO:

TO-440  
WTR-4.00

MAR 21 2014

Board of Directors  
Byron Bethany Irrigation District  
7995 Bruns Road  
Byron, California 94514

Subject: Amendment to Letter of Agreement No. 9-07-20-W1610 for the Long-Term Exchange Contract Between the Bureau of Reclamation and Byron Bethany Irrigation District (Tracy Hills Development Project) – Central Valley Project (CVP), California

Dear Board Members:

This Amended Letter of Agreement No. 9-07-20-W1610 (Agreement) is identified as Exhibit E to Exchange Contract No. 11-WC-20-0149 (Exchange Contract). Cost Authority Number RR175296522200401 XXXR0680R1 is assigned to this Agreement. Upon the effective date of the Exchange Contract, this Agreement is changing from environmental and negotiation processes to administration and monitoring of the Exchange Contract. This change allows for payment in advance of costs to be incurred by Reclamation while administering and monitoring the long-term Exchange Contract.

### Authority

Consistent with the "Other Payments" in Article 7 of the Exchange Contract, this Agreement allows for payment in advance of all costs incurred by Reclamation while administering the Exchange Contract. This Agreement is the instrument funded by the Byron Bethany Irrigation District to cover Reclamation's costs for ongoing administration and monitoring of the Exchange Contract or other actions applicable to the Exchange Contract that may occur until the expiration or termination of the Exchange Contract. Consistent with Article 7 in the Exchange Contract, this Agreement may be modified, revised, or amended without amending the Exchange Contract.

### Background

Effective March 1, 2014, Byron Bethany entered into the 40-year Exchange Contract for a term beginning March 1, 2014 through February 28, 2054. To meet the provision in Article 7 of the Exchange Contract, the terms and conditions of the original letter of agreement dated June 11, 1999 (\$1,000), and subsequent amendments requesting additional funds dated September 23, 2011 (\$35,000), February 29, 2012 (\$50,000), and October 25, 2012 (\$100,000), are replaced with this Agreement.

*Continued on next page.*

*Subject: Amendment to Letter of Agreement No. 9-07-20-W1610 for the Long-Term Exchange Contract Between the Bureau of Reclamation and Byron Bethany Irrigation District (Tracy Hills Development Project) – Central Valley Project (CVP), California*

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Previously, funds advanced covered the expenditures incurred by Reclamation's participation in negotiations, technical sessions, contract drafting/review, federal environmental analyses, water quality/water rights reviews, Central Valley Operations coordination, Regional/Denver Policy Oversight, Finance (Ratesetting), and Public Affairs.

By counter-signing on page 3 of this Amended Agreement, the District agrees to the following:

1. The reimbursable account balance shall be maintained at a minimum amount of not less than \$25,000. As of March 19, 2014, the reimbursable account balance is \$84,881.80.
2. The term of this Agreement is extended to August 30, 2054, to allow Reclamation:
  - a. Up to six months after expiration or termination of the Exchange Contract to reconcile the reimbursable account; and
  - b. Determine if either a refund to or additional funds from the District is/are due.
3. Within 15 working days of Reclamation's written request<sup>1</sup> the District shall advance additional funds to Reclamation for payment of costs to be incurred by Reclamation for administration and monitoring of the Exchange Contract. When submitting payments associated with this Agreement, please reference the Agreement number and Cost Authority number on all correspondence and checks, and send to the address below:

**United States Bureau of Reclamation  
South Central California Area Office (Tracy)  
16650 Kelso Road  
Byron, California 94514  
Attention: (TO-440)**

4. Within 30 calendar days of the District's written request, Reclamation shall provide a summary of costs incurred in administering and monitoring the Exchange Contract.

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<sup>1</sup> For purposes of this Agreement, written notice may occur through one or a number of methods such as, email, facsimile, U.S. mail, hand delivered, etc.

*Continued on next page.*

*Subject: Amendment to Letter of Agreement No. 9-07-20-W1610 for the Long-Term Exchange Contract Between the Bureau of Reclamation and Byron Bethany Irrigation District (Tracy Hills Development Project) – Central Valley Project (CVP), California*

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5. This Amended Agreement is effective on the same date as the Exchange Contract and shall remain in effect through August 30, 2054 or upon termination of the Exchange Contract by either party: *Provided that,*
- a. Upon notice, the District shall submit additional funds needed to pay for Reclamation's expenses up to and including the date of termination of the Exchange Contract and this Agreement.
  - b. Uncommitted funds remaining in the reimbursable account, after the six months reconciliation period, shall be refunded to the District.

If the updated terms and conditions of this Agreement are satisfactory, please have the appropriate District official(s) sign all three originals of this letter. Please return two signed originals of this letter, a certified copy of your resolution authorizing the signature of the District official(s), to the heading address above Attention: TO-440.

If there are any questions concerning this Agreement, please contact me by electronic mail at [enjones@usbr.gov](mailto:enjones@usbr.gov) or call 209-836-6271 (TDD 209-836-6282).

Sincerely,



Eileen N. Jones  
Repayment Specialist

In Triplicate

BYRON BETHANY IRRIGATION DISTRICT

Jack Gilmore

Print Name



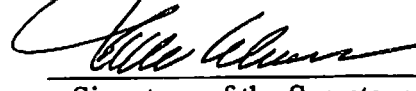
Signature of the General Manager

3/26/14

Date

Rick Gilmore

Print Name



Signature of the Secretary

3/26/14

Date

*Continued on next page.*

*Subject: Amendment to Letter of Agreement No. 9-07-20-W1610 for the Long-Term Exchange Contract Between the Bureau of Reclamation and Byron Bethany Irrigation District (Tracy Hills Development Project) – Central Valley Project (CVP), California*

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cc: Mr. Rick Gilmore  
Byron Bethany Irrigation District  
7995 Bruns Road  
Byron, California 94514



RESOLUTION 2014-2  
APPROVING EXECUTION OF A LONG-TERM CONTRACT PROVIDING FOR EXCHANGE OF WATER  
BETWEEN THE UNITED STATES AND  
BYRON BETHANY IRRIGATION DISTRICT – DELTA DIVISION AND SAN LUIS UNIT AND  
RELATED ITEMS THERETO

BE IT RESOLVED as follows:

1. The Contract is approved and the President and Secretary are authorized and directed to execute the Contract, subject to the Contract being approved as to form and sufficiency by General Counsel;
2. Said Contract is attached as "Attachment A" to this resolution.
3. Authorizes the President and General Manager to execute any additional items related to the subject agreement.

PASSED AND ADOPTED at a Regular Meeting of the Board of Directors of the Byron Bethany Irrigation District on 18 February, 2014 by the following vote:

Ayes: **BROWN, ENOS, KAGEHIRO, M.MAGGIORE, T.MAGGIORE, TUSO**

Noes:

Abstained:

Absent: **MUSCO**

  
\_\_\_\_\_  
Mr. Russell Kagehiro, President

Secretary's Certification

I, Rick Gilmore, Secretary of the Board of Directors of the Byron Bethany Irrigation District, do hereby certify that the foregoing Resolution is a true and correct copy entered into the Minutes of the Regular Meeting of 18 February, 2014 at which time a quorum was present, and no motion to amend or rescind the above resolution was made.

  
\_\_\_\_\_  
Rick Gilmore, Secretary