



September 23, 2004

John A. Meyers
East Bay Municipal Utility District
375 Eleventh Street
Oakland, CA 94607-4240

Re: Agreement No. R0420005 Subject: Mokelumne River Hatchery
Operations And Maintenance

Enclosed for your record is one **fully executed** copy of the subject agreement. In communications concerning this agreement, please refer to the above agreement number.

Inquiries concerning the services to be performed under this agreement should be directed to the Contract Manager, Bob Anderson (209) 759-3383 concerning the processing or execution of this agreement should be referred to me at (916) 653-8981.

Sincerely,

Cathy Grunwaldt
Contract Analyst

Enclosure(s)

cc: File, Subject w/copy of agreement
C. Grunwaldt Claims, w/one (1) copy of agreement
SVCSR, Bob Anderson, w/copy of agreement
SVCSR, Gary Miller, w/copy of agreement

**OPERATION AND MAINTENANCE AGREEMENT FOR THE MOKELUMNE RIVER
FISH HATCHERY**

This Mokelumne River Fish Hatchery Operation and Maintenance Agreement ("O&M Agreement" or "Agreement") is entered into this 24th day of August, 2004, by and between East Bay Municipal Utility District ("EBMUD") and California Department of Fish and Game ("CDFG"). EBMUD and CDFG are collectively referred to herein as the "Parties."

WITNESSETH

WHEREAS, on July 3, 1956 the State issued decision D-858, which approved EBMUD's water right permit (Permit 10478, Application 13156) for the Camanche project on the Mokelumne River. As part of its decision in D-858, the State imposed special terms and conditions, including a requirement that EBMUD not divert under the new permit until an agreement was reached between permittee-EBMUD and CDFG with respect to flows to be by-passed for fish life. (Condition 2, page 83 of D-858.)

WHEREAS, EBMUD and CDFG executed such an agreement on January 3, 1961 (1961 Agreement) that required, inter alia, EBMUD to construct certain specified fishery facilities (later known as the Mokelumne River Fish Hatchery) at its cost, to be operated and maintained by CDFG. EBMUD constructed a hatchery station in 1964, which CDFG has since operated; and

WHEREAS, after approval of the 1961 Agreement, the parties entered into various related agreements and amendments of the 1961 Agreement. These agreements and amendments are summarized below; and

WHEREAS the 1961 Agreement was supplemented on March 23, 1962 and January 11, 1963, and was amended on December 23, 1963; July 1, 1966; July 1, 1972; and May 22, 1979 to address various issues including water releases for downstream fisheries, fish trapping and hauling, payment for annual Hatchery operating costs, Hatchery maintenance and modification costs, and/or mitigation obligations; and

WHEREAS on January 25, 1963 the Parties entered into an agreement to implement various measures to improve wildlife habitat in the vicinity of Camanche Dam and Reservoir; and

WHEREAS on November 17, 1992 the Parties signed the Mokelumne Fish Hatchery Operations Protocol which defined areas of responsibilities and operations protocol for the Hatchery; and,

WHEREAS on February 23, 1993 the Parties entered into a lease agreement for construction of an expanded fish Hatchery facility at Camanche Dam; and

WHEREAS on March 23, 1998 the Parties, together with the U.S. Fish and Wildlife Service, entered into a Joint Settlement Agreement (JSA) concerning flow and non-flow measures to protect and enhance the anadromous fishery resources and habitat of the lower Mokelumne River. The JSA was subsequently submitted to the Federal Energy Regulatory Commission (FERC) for approval; and

WHEREAS on November 27, 1998 FERC issued an "Order Approving Settlement Agreement and Amending License" for EBMUD's Lower Mokelumne River Project, FERC Project No. 2916. The effect of this order was to approve the JSA and to incorporate, inter alia, as a matter of federal law under EBMUD's FERC License on Project No. 2916, certain provisions of the JSA regarding fish hatchery operations; and

WHEREAS, Section F.6 of the JSA required EBMUD to provide funding to expand and upgrade the Mokelumne River Fish Hatchery in accordance with the EBMUD Hatchery Master Plan (1996), up to a maximum of \$12.5 million. EBMUD has subsequently met that obligation by expending \$12.5 million to expand and upgrade the Mokelumne River Fish Hatchery in accordance with the EBMUD Hatchery Master Plan and further input from CDFG and the National Marine Fisheries Service. On November 21, 2002, such Hatchery expansion and upgrading was complete, and on October 4, 2002, a formal Hatchery dedication ceremony was held; and

WHEREAS, while the bypass flow provisions of the 1961 Agreement, as amended, have been superseded by separate federal and state decisions, other aspects of the 1961 Agreement, such as provisions concerning the Mokelumne River Fish Hatchery (Hatchery) facility operation and maintenance, remain in force; and

WHEREAS, given that the 1961 Agreement has been amended on at least five separate occasions; that it has also been modified by at least two other supplemental agreements; and that various other agreements between EBMUD and CDFG also modify other portions of the 1961 Agreement, it is at times difficult to determine what the current status of the agreed upon operation and maintenance terms are for a given Hatchery-related matter. It is therefore the intent of the Parties to update, clarify and incorporate into a single document their respective roles and responsibilities as to Hatchery operation and maintenance only.

NOW, THEREFORE, EBMUD and CDFG agree as follows:

To the extent that inconsistencies exist between the 1961 Agreement, as amended, and this O&M Agreement, the provisions of this new O&M Agreement prevail.

1. **Definitions.** For purposes of this O&M Agreement the following definitions apply:

- a. The Mokelumne River Fish Hatchery (Hatchery) includes all the facilities and appurtenances constructed on EBMUD property located at 25800 North McIntire Road, Clements, California, which is at the base of Camanche Dam, and consists of a Hatchery building, administration building, shop, freezer, storage buildings, raceways, holding tanks, fish ladders, drainage channels, storage yard, fuel facility, parking lot, bird enclosure, fencing, landscaping, feed silos, aerators, visitor amenities, as well as associated water, wastewater, and electrical systems.
- b. The Mokelumne River Fish Hatchery Residences includes all the permanent and temporary single-family homes and appurtenances constructed on EBMUD property located at 25700, 25712, and 25724 North McIntire Road, Clements, California, which is at the base of Camanche Dam, and consists of two permanent houses with attached garages, one mobile home, one storage building, fences, sheds, and water well with treatment facility, and septic systems.

- c. The Hatchery Manager is the CDFG employee designated by CDFG to oversee the operation and management of the Mokelumne River Fish Hatchery.
- d. The Partnership consists of representatives of EBMUD, CDFG and the U.S. Fish and Wildlife Service and was established under the terms of the JSA approved by FERC in its November 27, 1998 "Order Approving Settlement Agreement and Amending License" for EBMUD's Lower Mokelumne River Project, FERC Project No. 2916.
- e. The Water Quality Resource Management Program (WQRMP) is the plan developed by the Partnership to define reasonable goals, measures, performance criteria and responsive actions associated with the implementation of the JSA. The WQRMP was approved by FERC on May 9, 2001. The WQRMP may be amended from time to time.
- f. The Hatchery Coordinator is the EBMUD employee designated by EBMUD to coordinate CDFG's operation and management of the Hatchery with EBMUD.
- g. The Annual Report is the document prepared at the conclusion of each fiscal year by CDFG that describes the operation of the Hatchery for each fiscal year (July 1 through June 30). The document shall include, but is not limited to, number of fish entering the Hatchery trapped by CDFG (by date, species, sex and age), number of eggs taken or imported (by date, species and age), number of juveniles imported (by date, species and age), egg and fish losses (by date, species and age), incidence of diseases (by date, disease, location, number of fish affected, mortalities, and corrective measures taken), process water supply management, water quality data, fish tagging and marking operations (by date, number, mark or code, species, age, size and weight), fish planted or fish/eggs transferred (by date, time, number, mark or code, species, location, age, weight, temperature of transport and receiving water and condition of fish), and number of visitors to the Hatchery.

2. **Access.** EBMUD staff and contractors will have unrestricted access to the Hatchery, however, EBMUD staff and contractors must notify the Hatchery Manager and/or his/her designee at least 48 hours prior to any proposed entry to the Hatchery Building (spawning, incubation and fry rearing building), except in an emergency or unless accompanied by CDFG staff. In an emergency, (e.g. broken water line) EBMUD staff and contractors may enter the Hatchery without such prior notice,

and will give the Hatchery Manager notice of entry and a description of any work done at the earliest possible convenience.

3. WORMP Monitoring. The Parties agree that EBMUD has the right to and will continue to monitor water quality in the Hatchery and upstream of the hatchery pursuant to the WORMP. The WORMP was developed to define reasonable goals, measures, performance criteria and responsive actions associated with the implementation of the JSA and may be subject to change as determined by the Partnership.

4. Hatchery NPDES Permit and Regulatory Compliance. Unless otherwise agreed in writing or directed by the SWRCB, CDFG will be responsible for the acquisition of and compliance with any required NPDES permit for the Hatchery. EBMUD will provide funding for the NPDES permit fee. EBMUD will use its best efforts to assist CDFG in complying with any required NPDES permit for the hatchery. CDFG will collect all water quality samples, obtain all laboratory analyses required by the permit and file the required reports and plans with the SWRCB. CDFG will provide copies of all results of said samples and required reports and plans to EBMUD. Any fines assessed by the SWRCB for an alleged violation of any required NPDES permit or other fine for operation of the Hatchery will be paid by the party responsible for the violation. If DFG is responsible for the violation, the fine will be paid out of the funding identified in section 10 and based on the proportional costs for the mitigation program only.

CDFG will be responsible for compliance with any other regulatory requirements that apply to the Hatchery, including the acquisition of and compliance with other permits, development and maintenance of required plans, training of staff, inspection of facilities, payment of applicable fees, maintenance of records, and maintenance of required safety equipment. Funding for the administration of this program will be paid out of funding identified in section 10, based on the proportional costs for the mitigation program only.

5. Annual Operations Plan. As specified below, CDFG will develop annual plans for operation of the Hatchery. Annual operation plans will determine the timing, type and number of fish to be spawned; release timing and location; egg and fry importation; brood stock management; egg handling; fish ladder operation; fish transportation; planting techniques and locations; and, water quality monitoring in addition to those defined in the WORMP. CDFG will present each draft

annual plan to EBMUD for review at least 60 days prior to the annual operation of the Hatchery fish ladder. EBMUD will provide biological resource information to assist CDFG in developing the annual plans and will provide review and comment within 15 days of receipt of the draft annual operation plan. CDFG will finalize each annual operation plan and provide written justification for any EBMUD review comments not incorporated in the annual plan prior to operation of the Hatchery fish ladder.

6. Annual Report. CDFG will provide the Annual Report to EBMUD within 60 days of the end of the previous fiscal year (June 30). The Hatchery Coordinator will assist in the preparation of the Annual Report by compiling data collected by CDFG and EBMUD during the fiscal year.

7. Fish Marking & Tagging. CDFG will mark all Hatchery steelhead as required by state or federal law and assist EBMUD's juvenile Chinook salmon marking/tagging program as defined in the JSA and WQRMP. CDFG will make its best efforts to secure funding from the commercial salmon trollers salmon stamp funds to mark/tag the enhancement fish.

8. Hatchery Water. Except in emergencies or situations beyond EBMUD's control, EBMUD will provide an adequate quantity of water to operate the Hatchery as requested by CDFG, not to exceed 60 cubic feet per second. Provision of water to the Hatchery shall be a part of the JSA flows that EBMUD releases from Camanche Reservoir. EBMUD will do everything reasonably possible to provide for these flows unless they cannot be provided because of the depletion of the Camanche Reservoir coldwater pool (volume of water colder than 16.4 C as defined in the WQRMP). In the event of such a depletion, CDFG may still elect to request up to 60 cfs of Hatchery water as provided in this Section, even though the water is warmer than 16.4 C, so long as CDFG assumes responsibility for any adverse effects on the fish in the Hatchery from this warmer water.

- a. Between January 1 and May 30 CDFG may request additional flows, up to a maximum of 10 cfs (70 cfs total flow). EBMUD will provide the additional flow provided the water is available. The provision of water to the Hatchery as specified in this section shall not result in any increase in total release from Camanche Reservoir; it shall instead be provided from Camanche Reservoir releases required for other purposes.

- b. Between July 1 and September 30, for a period not to exceed 28 days, flows to the Hatchery may be reduced to not less than 30 cfs to accommodate required inspection of EBMUD's powerhouse, penstocks, valves and instrumentation. EBMUD will notify CDFG at least 60 days prior to any planned flow reductions.

9. Operations & Maintenance. CDFG will operate and perform necessary maintenance of equipment and facilities listed in Attachment 1. Any maintenance performed by CDFG will be paid for out of the funding provided in section 10. Unless otherwise agreed in writing, CDFG will be responsible for the maintenance of any new or modified equipment or facilities purchased by or undertaken by CDFG.

10. Operations & Maintenance Funding. On an annual basis, as specified below, EBMUD will provide funds to CDFG to operate and maintain the Hatchery.

The budget for the first fiscal year under this Agreement, July 1, 2004 through June 30, 2005 (FY2005), shall not exceed \$634,620. EBMUD and CDFG will meet biennially in November (beginning in November 2004) to jointly develop Hatchery operating budgets for the succeeding two fiscal years (FYs) and to update the Hatchery five-year capital budget. The budgets for the next two fiscal years and for each succeeding two year period thereafter shall be developed biennially based on CDFG's projected fiscal year costs to carry out the annual operating plan for the mitigation program identified in Section 5 (consisting of CDFG's labor expenses for the prior biennial budget adjusted by the CPI for the greater Sacramento Metropolitan Area, actual direct contract and material expenses for the prior biennial budget adjusted by CPI for the greater Sacramento Metropolitan Area, and the non-federal reimbursement overhead rate used by CDFG) incurred in operating and maintaining the Hatchery. Said annual budgets shall be a cap on the total annual obligation of EBMUD to provide funds to CDFG to operate and maintain the Hatchery. The parties hereto acknowledge that there could be an adjustment in the salaries and wage rates of the State employees, as approved by the Governor, over and above the increase built into the budget projections to become effective during the term of the Agreement. In such event, it is understood and agreed that CDFG must provide EBMUD the new pay rates immediately upon notice of change and that the appropriate annual budget shall be amended to reflect these increased costs of performance.

On a quarterly basis during each fiscal year CDFG shall submit to EBMUD invoices for CDFG's actual labor expenses, actual direct contract and material expenses, and a non-federal reimbursement overhead rate, incurred in operating and maintaining the Hatchery during the prior quarter. For the final quarter of each fiscal year, CDFG shall submit to EBMUD the final invoices for April and May no later than July 12. CDFG shall also submit an estimate for June expenses by July 12. CDFG shall submit the final June invoice no later than December 1st, with payment due after EBMUD receives the invoice. EBMUD shall timely review said invoices and shall reimburse CDFG for all approved expenses. CDFG shall maintain for a period of not less than five years, open to inspection by EBMUD, accurate records of all of CDFG's expenses and costs incurred in operating and maintaining the Hatchery, including all Hatchery equipment, systems, and facilities listed in Attachment 1. EBMUD reserves the right to approve or deny compensation for any work that has not been approved by EBMUD or is not part of the annual budgets.

11. **Approved Additional Funding**. If in any fiscal year CDFG requests from EBMUD any funds in excess of those specified in Section 10 of this Agreement because of the failure of any system or equipment in the Hatchery identified as the responsibility of CDFG in Attachment 1, and if such request is supported by an analysis acceptable to EBMUD demonstrating that such additional funds are needed to repair or replace a failed system in order to operate the Hatchery safely and effectively, EBMUD will provide such additional funds. CDFG will make its best efforts to secure commercial salmon trollers salmon stamp funds to pay for at least one-third of any replacement costs of the capital equipment identified in Attachment 1 or any new equipment requested by CDFG to facilitate operation of the Hatchery.

The parties recognize that electrical costs in California are now volatile and are difficult to predict into the future. If in any fiscal year CDFG requests from EBMUD any funds in excess of those specified in section 10 of this Agreement due to increased unit cost of electricity and CDFG presents bills or invoices acceptable to EBMUD demonstrating that such additional funds are necessary to operate the Hatchery effectively, EBMUD will provide such additional funds. If CDFG incurs extraordinary expenses in excess of those specified in section 10 or above in this section, then CDFG and EBMUD will meet and confer regarding how to meet the operational needs of the Hatchery.

12. **Residences.** Occupation of each of the Mokelumne River Fish Hatchery Residences by CDFG employees is subject to execution of a Mokelumne River Fish Hatchery Residence Lease Agreement in a form substantially similar to that attached hereto (Attachment 2).
13. **Reservoir Fishery.** At EBMUD's request and with approval from CDFG, CDFG agrees to implement a program to produce steelhead at the Hatchery for supplementing the recreational fisheries at Camanche and/or Pardee reservoirs. All steelhead produced for this program shall be marked with an adipose fin clip. EBMUD will bear the incremental cost of producing and marking fish for this program, over and above the funding provided in section 10 through proceeds from the Pardee and Camanche Reservoir fish ticket access program.
14. **Amendment.** The terms of this Agreement may be amended in writing signed by both parties.
15. **Notice.** Any notice which EBMUD may desire or is required at any time to give or serve CDFG may be delivered personally, or be sent by United States mail, postage prepaid, addressed to Mokelumne River Fish Hatchery, 23024 N. McIntire Road, Clements, CA 95227 attention: Hatchery Manager; and to the Senior Hatchery Supervisor, 1701 Nimbus Road, Suite A, Rancho Cordova, CA 95670, or at such other address as shall have been last furnished in writing by CDFG to EBMUD. Any notice which CDFG may desire or is required at any time to give or serve upon EBMUD may be delivered personally at EBMUD, 375 - 11th Street, Oakland, CA 94607-4240, or be sent by United States mail, postage prepaid, addressed to Manager of Natural Resources Department, P.O. Box 24055, Oakland, CA 94623-1055, or at such other address as shall have been last furnished in writing by EBMUD to CDFG.

Such personal delivery or mailing in such manner shall constitute a good, sufficient and lawful notice and service thereof in all such cases.

16. **Validity.** Should any part of this O&M Agreement be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this O&M Agreement, which shall continue in full force and effect, provided that the remainder of this O&M Agreement can be interpreted to give effect to the intentions of the parties.

17. **Copies.** Multiple copies of this O&M Agreement may be executed by the parties and the parties agree that the O&M Agreement on file at the DISTRICT is the version of the O&M Agreement that shall take precedence should any differences exist among counterparts of the O&M Agreement.

18. **State Law.** This O&M Agreement and all matters relating to it shall be governed by the laws of the State of California.

19. **No Discrimination.** There shall be no discrimination against any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, gender, age, marital status, disability, or sexual orientation in the performance of this O&M Agreement.

20. **Term.** The term of this O&M Agreement shall be from July 1, 2004 and not exceed 20 years. At the end of five years, the contract administrators will meet and assess the adequacy of the Agreement and confirm its continuation by mutual consent. The parties may extend the term of this Agreement by mutual agreement in writing.

21. **Counterparts.** This O&M Agreement may be executed in counterpart. A facsimile of an executed signature page will be valid.

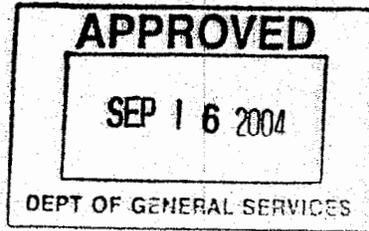
22. **Approval.** This O&M Agreement is of no force or effect until signed by both parties and approved by the Department of General Services.

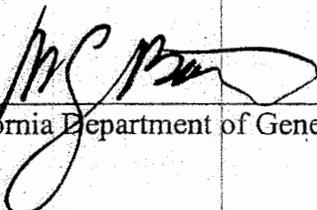
IN WITNESS WHEREOF, the Parties have caused this Mokelumne River Fish Hatchery Operations and Maintenance Agreement to be executed as of the dates listed below.

CALIFORNIA DEPARTMENT OF FISH AND GAME

By:  Date: 9/16/04

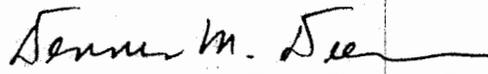
 Renee Renwick
Deputy Director
Administrative Division
California Department of Fish and Game

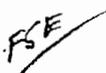


Approved: 
California Department of General Services

Date: _____

EAST BAY MUNICIPAL UTILITY DISTRICT

By:  Date: 8/24/04

Dennis M. Diemer
General Manager
East Bay Municipal Utility District 

FACILITIES OPERATED AND MAINTAINED BY CDFG

1. Raceway slide/stop gates
 - (1) – 18" X 18" in Channel #4
 - (1) – 42" X 42" east raceway outlet (AWS)
 - (1) – 36" X 36" east raceway outlet
 - (2) – 30" X 30" in AWS box
2. Crowders – both electric and gas powered
3. Raceways and water supply lines – 12" butterfly valves & aerators and water supply lines less than 36 inches in diameter
4. Hydraulic Power System for fish lift and fish knife
5. Fish ladders
6. Electroshock system
7. Cooler/freezer controls, evaporator, condensers, blowers and associated equipment
8. Office heat pump, exhaust fans, fire alarms, building lighting, phone system, plumbing, drinking fountains and bath fixtures
9. Administration evaporation coolers
10. Air compressors and associated equipment
11. Hot water heaters, circulate pumps and tanks
12. Shop dust collection system and air compressors
13. Shop hoist (1.5 ton) and trolley
14. Shop heaters
15. Roll up doors and controls
16. Bird enclosure – screening, fencing & electric fencing
17. Flood lights within bird enclosure
18. Fuel Station – pumps, controls & associated equipment
19. Truck Fill Station – valves and associated equipment
20. Emergency Showers
21. Fire extinguishers and hydrants
22. Hatchery Building minor repairs and painting that are capable of being performed by CDFG Hatchery personnel
23. Residence minor repairs and painting that are capable of being performed by CDFG Hatchery personnel
24. Periodically pumping out the septic tank
25. Janitorial service
26. Parking lot cleaning
27. Visitor amenities
28. Landscaping and irrigation

ATTACHMENT 2

EAST BAY MUNICIPAL UTILITY DISTRICT
MOKELUMNE RIVER FISH HATCHERY RESIDENCE
LEASE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2004, by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation of the State of California ("District") and _____, ("Tenant"), an employee of the California Department of Fish and Game ("CDFG"). It is understood by both parties that it is the intention to provide on-site living accommodations and continuing stewardship of the property on which this lease is located.

WITNESSETH

1. **Premises.** District, in consideration of the faithful performance and observance by Tenant of the covenants, terms and conditions herein contained, does hereby rent to Tenant for the purposes hereinafter specified that certain real property ("the premises"), described as follows: _____ McIntire Road, Clements, CA.
2. **Term.** The term of this Agreement shall be for a period commencing on _____ and ending on _____, provided however that:
 - a. Upon termination of employment, the Tenant may continue on the premises for no more than thirty (30) days from the date of termination of employment unless unusual circumstances warrant an extension as permitted by the District.
 - b. If Tenant is married or co-habits with another adult (collectively referred to as "spouse/other"), the spouse/other acknowledges and agrees that if the Tenant's occupancy is terminated, spouse/other's occupancy is terminated on the same date and time without the necessity of further or specific notice to such effect.
 - c. District may terminate the term hereof upon ninety (90) days prior written notice to Tenant upon a decision by District's General Manager that the residence is no longer feasible to maintain or is required for some other District use.
 - d. In addition to termination under subsection c., above, and subsection e., below, this Agreement may be terminated as provided in Sections 12, 15 and 16.
 - e. Both parties may mutually agree in writing to terminate this Agreement.
3. **Tenant Special Duties.** During the period of occupancy, the Tenant agrees to protect District's Mokelumne River Fish Hatchery facilities and the premises during day or night. Tenant shall have duties including, but not limited to, responding to emergencies at the Mokelumne River Fish Hatchery and providing security for the Mokelumne River Fish Hatchery facilities and the premises.

4. **Rent Due.**

In consideration of Tenant Special Duties outlined in Section 3 above, no monthly rent will be required.

5. **Occupancy.** The premises shall be used by Tenant only for the purpose of a single-family dwelling house. The premises shall not be used by Tenant for any other purposes whatsoever. The number of persons to permanently reside on the premises during the term of this agreement shall be limited to ____ adult(s) and ____ children. Tenant shall make no alterations to the buildings on the premises or construct any building, or make any major improvements on the premises without prior written consent from District. Tenant shall promptly pay all debts incurred by him/her for materials, supplies, equipment, merchandise or services used in or about or in connection with their residency on the premises. Tenant shall permit no liens to be levied upon or to attach to the premises.

6. **Utilities.** District agrees to furnish at District's own cost and expense all heat, light, power and all other utilities required at the premises. Water service to the premises shall be furnished by District, and shall meet state standards for drinking water.

7. **Use of Premises.** In his/her use of the premises, Tenant shall:

- a. Maintain the premises in a clean, neat and orderly condition at all times during occupancy.
- b. Dispose from the premises all rubbish, garbage and other waste, in a clean and sanitary manner.
- c. Properly use and operate all electric, gas and plumbing fixtures and keep them as clean and sanitary as their condition permits.
- d. Not permit any person on the premises to willfully or wantonly destroy, deface, damage, impair, or remove any part of the premises, or himself so any such thing.
- e. Not use or permit the use of the premises for any illegal purpose.
- f. Comply with all State laws, local ordinances and regulations concerning the premises and the use thereof, including regulations promulgated by District.
- g. Not store or use or permit the storage or use of pesticides, herbicides, inflammable or hazardous material on the premises.
- h. Tenant shall not do, bring or keep anything in or about the premises that would cause a cancellation of any insurance covering the premises.

8. **Repair of Premises.**

- a. Tenant shall repair all deteriorations or damages to the premises which occur as a result of Tenant's lack of ordinary care, Tenant's negligence, or any willful and deliberate acts which cause damage or destruction.
- b. No duty on the part of District shall arise with respect to repairs if Tenant is in violation of any one or more of the obligations set forth in Section 7, above.
- c. District shall not be responsible for the maintenance or repair of any fixtures or household appliances except as provided in Section 8(d).
- d. Except as provided in Section 8(a) hereof, District shall be responsible for the repair and replacement of the structural portions of the premises and for any required replacements or repair to the roof and to electrical, plumbing (including toilets, sinks,

- bathbubs, etc.), heating/air conditioning and water facilities (such as water heater) and external painting. Tenant shall be responsible for minor repair, painting of the interior, and the exterior landscaping. When in the opinion of Tenant, maintenance for which District is responsible hereunder is needed; Tenant agrees to give written notice thereof to District, unless immediate notice by telephone is required to prevent further damage.
- e. District may, at its discretion, install a burglar alarm for the security of the residence and other attached structures. District will be responsible for keeping such security system in good operating condition. District shall supply a minimum of two (2) smoke alarms. Tenant shall be responsible for the installation and battery replacement of these units.
 - f. Items identified on Attachment "A" were installed and/or purchased by the Tenant and are considered to be personal property. Tenant may remove these items upon Tenant's vacation of the premises but only if the removal of these items does not cause damage to the premises. Any items replaced by District at District's expense will not be considered personal property and shall not be removed by the Tenant.
9. **Tenant's Duties upon Termination.** Upon termination of this Agreement, Tenant agrees to remove all personal property belonging to Tenant and to leave the premises in at least as good and clean condition as existed as of the day possession of the property was taken, allowing for ordinary and normal usage during occupancy. Tenant agrees to reimburse District for any damage done to the premises caused by Tenant's occupancy or tenancy, and for reasonable expenses incurred by District for cleaning the premises upon termination of the tenancy. At no time shall District be responsible for relocation expenses or benefits.
10. **Liability.** Tenant agrees to indemnify, defend and hold harmless District, its directors, officers and employees, against all claims, expenses, causes of action or liabilities of any kind by reason of the death or injury to any person, including Tenant and other occupants of the premises, or damage to property, including the property of Tenant, due to negligence or willful misconduct of Tenant, other occupants of the premises, or guests of Tenant. District shall not be responsible for keeping the premises insured against fire or any other insurable risk. District recommends that Tenant maintain at his/her expense Tenant's liability insurance on the premises, including fire/legal liability coverage in an amount not less than \$300,000.
11. **Assignment and Subletting.** Tenant further agrees not to sell, transfer or assign this Agreement or any part thereof or interest therein, no to sublet the whole or any part of the premises. It is understood that any assignment or transfer by law shall be deemed a violation of this covenant against the assignment of this Agreement.
12. **Destruction of Buildings.** It is understood and agreed that if at any time during the term of this Agreement any building on the premises or any part thereof is destroyed or damaged by fire, act of God or any other cause so as to render it untenable, District may at its option either restore said building to its previous condition, or District may, at its option, terminate this Agreement upon providing Tenant with ninety (90) days notice.

DFG # R0420005

21. **Time is of the Essence.** Time is of the essence of each and every provision of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in duplicate, the day and year first above written.

TENANT

By: _____
Name

Approved: _____ Date: _____
California Department of General Services

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Stephen J. Boeri
Manager of Real Estate Services

Approved as to Form