



**BOARD OF DIRECTORS  
EAST BAY MUNICIPAL UTILITY DISTRICT**

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375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

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**AGENDA  
Tuesday, February 25, 2020**

**REGULAR CLOSED SESSION  
11:00 a.m., Boardroom**

**ROLL CALL:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

**ANNOUNCEMENT OF CLOSED SESSION AGENDA:**

1. Existing litigation pursuant to Government Code section 54956.9(a):
  - a. *Timothy Alford, et al. v. East Bay Municipal Utility District, et al.*  
Contra Costa County Superior Court, Case No. MSC16-01348
2. Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2):
  - a. Town of Moraga  
Claim No. 2017-L-290
  - b. William Strauss and Suzanne Strauss  
Claim No. 2018-L-076
  - c. Two matters.

*(The Board will convene to Conference Room 8 to discuss Closed Session agenda items.)*

**REGULAR BUSINESS MEETING  
1:15 p.m., Boardroom**

**ROLL CALL:**

**BOARD OF DIRECTORS:**

- Pledge of Allegiance

**ANNOUNCEMENTS FROM CLOSED SESSION:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

**CONSENT CALENDAR:** (Single motion and vote approving 11 recommendations, including 1 resolution.)

1. Approve the Regular Meeting Minutes of February 11, 2020.
2. File correspondence with the Board.
3. Award a contract to NuSpective, Inc., in an amount, after the addition of taxes, not to exceed \$460,000 for supplying next generation firewall hardware, software, support, and implementation services for three years, beginning on or after February 25, 2020.
4. Authorize an agreement beginning on or after February 25, 2020 with Kleen Solution Environmental in an amount not to exceed \$33,000 annually for two years with two options to renew for additional one-year periods for a total cost of \$132,000 for hauling and disposal of wastewater digester spoils from the Main Wastewater Treatment Plant.
5. Authorize an agreement beginning on or after February 25, 2020 with Mott MacDonald Group, Inc., in an amount not to exceed \$1,290,000 for the design and construction inspection services of the Oakland Inner Harbor pipeline crossing.
6. Authorize an agreement beginning on or after February 25, 2020 with South Bayside Waste Management Authority to waive the tip fee for loads of processed liquid food waste in support of a pilot project to assess the effectiveness of new equipment in extracting organics from municipal solid waste.
7. Authorize an agreement beginning on or after February 25, 2020 with West County Wastewater District for providing treated secondary effluent to the District's North Richmond Water Recycling Plant and Richmond Advanced Recycled Water Expansion facility for 10 years in an amount not to exceed \$4,000,000.
8. Authorize an agreement beginning on or after February 25, 2020 with WSP USA, Inc., in an amount not to exceed \$3,424,300 for planning and engineering services for the Mokelumne Aqueducts Delta Tunnel.
9. Authorize a third amendment to the agreement awarded under Board Motion No. 133-15 with Western Area Power Administration to extend the termination date from September 30, 2020 to December 31, 2024 for electricity purchases at District facilities under the Custom Product Contract for Scheduling Coordinator Services Agreement.
10. Approve the January 2020 Monthly Investment Transactions Report.



**CONSENT CALENDAR:** (Continued)

11. Take actions related to the amendment of the District's existing Long Term Renewal Contract with the United States Bureau of Reclamation (Reclamation) for Central Valley Project (CVP) water service to convert the Long Term Renewal Contract to a permanent Repayment Contract.

(Resolution)

- 11.1. Make the following determinations regarding California Environmental Quality Act (CEQA) compliance:
- a. The Freeport Regional Water Project Environmental Impact Report/Environmental Impact Statement (Freeport Project EIR/EIS) fully analyzed the potential effects of diverting water under the District's Long Term Renewal Contract and under that contract as amended by conversion to a permanent Repayment Contract.
  - b. None of the conditions exist requiring preparation of subsequent or supplemental CEQA review pursuant to Public Resources Code section 21166 or CEQA Guidelines section 15162.
  - c. The District's Long Term Renewal Contract as amended by conversion to a Repayment Contract falls within the scope of the project analyzed in the Freeport Project EIR/EIS.
  - d. No further CEQA review is required.
- 11.2. Make additional findings and determinations regarding the conversion of the District's Long Term Renewal Contract to a permanent Repayment Contract, approve the conversion, and direct the General Manager to execute a converted contract in substantially the same form attached to the enclosed Resolution.
- 11.3. Authorize District staff to make an accelerated repayment of the District's outstanding share of the costs of construction of CVP facilities, as calculated in accordance with the Repayment Contract's terms, applicable law, and duly-adopted Reclamation policies. The accelerated payments will include an initial payment of approximately \$72,969 upon execution of the amended contract and additional payments currently estimated at approximately \$800,000 between now and 2030.

**DETERMINATION AND DISCUSSION:**

12. Amend the Fiscal Year 2020 Water System budget in the amount of \$24,000,000 and the Wastewater System budget in the amount of \$5,000,000 to pay down a portion of each system's outstanding commercial paper. (Resolution)
13. General Manager's Report:
- Water Supply Update

**REPORTS AND DIRECTOR COMMENTS:**

14. Committee Reports:
  - Planning
  - Legislative/Human Resources
  - Finance/Administration
15. Other Items for Future Consideration.
16. Director Comments.

**ADJOURNMENT:**

***The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, March 10, 2020 in the Administration Center Boardroom, 375 Eleventh Street, Oakland, California.***

**Disability Notice**

*If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.*

**Document Availability**

*Materials related to an item on this agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11<sup>th</sup> Street, Oakland, California, during normal business hours, and can be viewed on our website at [www.ebmud.com](http://www.ebmud.com).*

## BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, February 25	<b>Finance/Administration Committee</b> Patterson {Chair}, Coleman, Katz	8:15 a.m. Training Resource Center	<ul style="list-style-type: none"> <li>• Fiscal Year 2020 Semi-Annual Budget Performance Report</li> <li>• Fiscal Year 2020 Water and Wastewater Systems' Budget Amendment for Commercial Paper Pay Down</li> <li>• Interest Rate Swap Portfolio Summary Report</li> <li>• 2020 Strategic Plan Update</li> <li>• Monthly Investment Transactions Report</li> <li>• Quarterly Financial Reports</li> </ul>
	<b>Long-Term Water Supply Workshop</b>	9:00 a.m. Training Resource Center	
	<b>Board of Directors</b>	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>
Tuesday, March 10	<b>Planning Committee</b> Linney {Chair}, McIntosh, Mellon	9:15 a.m. Training Resource Center	
	<b>Legislative/Human Resources Committee</b> Coleman {Chair}, McIntosh, Patterson	10:15 a.m. Training Resource Center	
	<b>Board of Directors</b>	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>
Tuesday, March 24	<b>Finance/Administration Committee</b> Patterson {Chair}, Coleman, Katz	TBD Training Resource Center	
	<b>Financial Stability Workshop</b>	TBD Training Resource Center	
	<b>Board of Directors</b>	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>
Tuesday, March 31	<b>Cesar Chavez Day 2020</b>		<i>District Offices Closed</i>



## **MINUTES**

**Tuesday, February 11, 2020**

**East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### **Regular Closed Session Meeting**

Vice-President Doug Linney called to order the Regular Closed Session Meeting of the Board of Directors at 11:00 a.m. in the Administration Building Board Room.

### **ROLL CALL**

Directors John A. Coleman, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and Vice-President Doug Linney were present at roll call. Director Andy Katz arrived in Conference Room 8 at 11:10 a.m. President Marguerite Young was absent (excused).

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Attorney Ayriel A. Bland (Items 1a, 1b, 2a, and 2b), Attorney Derek T. McDonald (Items 1b, 2a, and 2b), Manager of Risk Management Vladimir Bessarabov (Item 1a), Director of Engineering and Construction Jimi Yoloye (Items 1b, 2a, and 2b), and Engineering Manager Elizabeth Z. Bialek (Items 1b, 2a, and 2b).

### **PUBLIC COMMENT**

There was no public comment.

### **ANNOUNCEMENT OF CLOSED SESSION AGENDA**

Vice-President Linney announced the closed session agenda. The Board convened to Conference Room 8 for discussion.

### **Regular Business Meeting**

Vice-President Linney called to order the Regular Business Meeting of the Board of Directors at 1:15 p.m. in the Administration Building Board Room.

### **ROLL CALL**

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and Vice-President Doug Linney were present at roll call. President Marguerite Young was absent (excused).

Staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer and Secretary of the District Rischa S. Cole.

### **BOARD OF DIRECTORS**

Vice-President Linney led the Pledge of Allegiance.

## **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

## **PUBLIC COMMENT**

- Addressing the Board was Ivette Rivera, EBMUD Grounds Foreman, who played a two minute audio clip of 9<sup>th</sup> Circuit Federal Court proceedings in Ivette Rivera versus EBMUD et al.

## **CONSENT CALENDAR**

- Motion by Director McIntosh, seconded by Director Coleman to approve the recommended actions for Items 1-7 on the Consent Calendar, carried (6-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, and Linney); NOES (None); ABSTAIN (None); ABSENT (Young).
1. **Motion No. 026-20** – Approved the Special and Regular Meeting Minutes of January 28, 2020.
  2. The following correspondence was filed with the Board: **1)** Memorandum dated February 11, 2020, to Board of Directors from Marguerite Young, President, regarding 2020 Board Committee Assignments; **2)** Presentation entitled, “Duffel Photovoltaic Renewable Energy Project Update and Final Mitigated Negative Declaration,” dated February 11, 2020; **3)** Presentation entitled, “Water Supply Update,” dated February 11, 2020; **4)** Memorandum dated February 11, 2020, to Board of Directors Mellon, Linney, Coleman, Young, McIntosh, Patterson, Katz, General Manager Alec (sp) Coate and General Counsel Craig Spencer from Ivette Rivera, Grounds Foreman regarding Continuation of playing 2 minutes of the Public Record: YouTube Clip of 9<sup>th</sup> Circuit Court Proceeding; Ivette Rivera v. EBMUD et al <https://youtu.be/FRNQd5qOBZQ>; and **5)** and Speakers’ Bureau and Outreach Record CY20, dated February 11, 2020.
  3. **Motion No. 027-20** – Authorized the purchase of fish feed to supply the Mokelumne River Fish Hatchery from Moore-Clark U.S.A., Inc. dba Bio-Oregon (Bio-Oregon), under the terms of the existing statewide contract between the State of California and Bio-Oregon, in an average annual amount, after the addition of taxes, of \$205,000 for five years, for a total cost not to exceed \$1,025,000.
  4. **Motion No. 028-20** – Authorized an agreement beginning on or after February 11, 2020 with Advanced Engine Technologies Corporation in an amount not to exceed \$294,580 for the Main Wastewater Treatment Plant Power Generation Station assessment project.
  5. **Motion No. 029-20** – Authorized an agreement beginning on or after February 11, 2020 with Chain Link Fence & Supply, Inc., in an amount not to exceed \$275,931 for the installation of security fencing at two District-owned properties referred to as the Orinda Sports Field and Upper San Leandro West Portal staging areas.
  6. **Motion No. 030-20** – Authorized an agreement beginning on or after February 11, 2020 with Water Systems Optimization, Inc. in an amount not to exceed \$412,960 to prepare a Water Loss Control Master Plan.

7. **Motion No. 031-20** – Authorized a second amendment to the agreement awarded under Board Motion No. 029-19 with LEE & RO, Inc., to increase the amount by \$151,613 to a total amount not to exceed \$289,325 for design services during construction of the Demonstration Recharge, Extraction, and Aquifer Management Project.

## **DETERMINATION AND DISCUSSION**

8. **Legislative Update.**

Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met this morning and supported the staff recommended positions in the Legislative Report.

Manager of Legislative Affairs Marlaigne K. Dumaine reviewed the recommended positions in Legislative Report No. 01-20. Staff is asking the Board to consider supporting two bills – SCR 77 (Glazer) and H.R. (TBD) (Huffman), known as the FUTURE Act. SCR 77 is a resolution to rename the fourth bore of the Caldecott Tunnel the Representative Ellen O’Kane Tauscher Bore. The FUTURE Act is a bill under development that includes provisions for infrastructure development, technology and data improvements, ecosystem protection and restoration, and water workforce development. Ms. Dumaine responded to Board questions regarding the provisions in Congressman Huffman’s bill and potential benefits for the District.

- Motion by Director Coleman, seconded by Director Patterson, to approve the recommended actions for Item 8, carried (6-0) by the following voice vote: AYES (Coleman, Katz, Linney, McIntosh, Patterson, and Mellon); NOES (None); ABSTAIN (None); ABSENT (Young).

**Motion No. 032-20** – Received Legislative Report No. 01-20 and approved positions on the following bills: SUPPORT SCR 77 (Glazer) Representative Ellen O’Kane Tauscher Memorial Bore; SUPPORT H.R. (TBD) (Huffman) Furthering Underutilized Technologies and Unleashing Responsible Expenditures (FUTURE) for Drought Resiliency Act; and received information on: Status Of Public Safety Power Shutoff Discussions; AB 1839 (Bonta) Climate Change: California Green New Deal; and Climate Resilience/Water Bonds.

Next, Ms. Dumaine provided information on the status of legislative discussions regarding public safety power shutoffs, bill language for AB 1839 (Bonta), and climate resilience/water bonds. She reported District staff is actively engaged in discussions on public safety power shutoffs and presented at an Assembly hearing in Sacramento on this topic earlier in the day. Staff is also engaged in discussions with the author’s office on aspects of AB 1839 with a nexus to EBMUD’s policies, objectives, and operations. The bill is in the early stages of discussion in the legislature and is expected to change significantly. Accordingly, staff is not recommending a position at this time. She reviewed activities to date on climate resilience/water bonds and said AB 1298 (Mullin) will not be going forward. Staff will keep the Board apprised on the status of all these topics and will bring bills to the Board for consideration as appropriate. Director Coleman asked staff to provide an excerpt of the District’s analysis and position on the FUTURE Act legislation to the Upper Mokelumne River Water Authority Board.

**9a.-9e. Adopt the Final Mitigated Negative Declaration (MND) for the Duffel Photovoltaic (PV) Renewable Energy Project (Project); make findings in accordance with the California Environmental Quality Act (CEQA); adopt the Mitigation Monitoring and Reporting Plan in accordance with CEQA; adopt the Practices and Procedures Monitoring and Reporting Plan; and approve the Project.**

Planning Committee Chair Doug Linney reported the Committee met this morning and supported the staff recommendations for the project.

Manager of Maintenance and Construction/Water Operations David A. Briggs presented an overview of the project, the environmental review process and public outreach efforts. The proposed project will construct a 5 megawatt (MW) PV system under a Power Purchase Agreement (PPA) using approximately 20 acres of available San Pablo watershed property in Orinda. The system would generate an estimated 12,000 MW hours of renewable energy per year under PG&E's Renewable Energy Self-Generation Bill Credit Transfer Program and would initially offset approximately 2,200 metric tons of greenhouse gas emissions annually. The project MND circulated for a 31-day public comment period which ended September 30, 2019. Staff also presented project information to City of Orinda staff, the City Council, and Planning Commission at various meetings in 2019. Comments received focused on permitting, site drainage, oak tree retention and restoration, zoning and land use, and are addressed in the final MND. He noted the MND determined project-related construction could potentially generate environmental impacts to agricultural and forestry resources, biological resources, and land use and planning, and described the planned mitigation measures that would reduce these impacts to less than significant. If the Board approves the project, staff will present the PPA and an agreement with PG&E to construct the necessary electrical interconnection to the Board for consideration by June 2020. Project construction would start in 2021. The Board asked staff to confirm the PPA includes provisions to pay prevailing wages for the construction.

- Motion by Director Katz, seconded by Director Mellon to approve the recommended actions for Items 9a.-9e., carried (6-0) by the following voice vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, and Linney); NOES (None); ABSTAIN (None); ABSENT (Young).

**Resolution No. 35164-20** – Adopting The Mitigated Negative Declaration For The Duffel Photovoltaic Renewable Energy Project, Adopting The Mitigation Monitoring And Reporting Plan And Practices And Procedures Monitoring And Reporting Plan, And Approving The Project.

**10. General Manager's Report.**

Manager of Maintenance and Construction/Water Operations David A. Briggs presented the Water Supply update and said based on projections, February is shaping up to be a dry water month. He reported on gross water production, the snow depth and snow water content at Caples Lake, and noted that through February 9, 2020, precipitation in the East Bay is 49 % of average and 65% of average in the Mokelumne. As of February 9, the District's total system storage was 608,640 acre feet, which is 106% of average and 79% of capacity. The Board raised no questions.



General Manager Alexander R. Coate announced he was available to answer questions regarding the January 2020 Monthly Report and asked the Board to contact staff if they had questions regarding the latest Speakers Bureau and Outreach Record.

## **REPORTS AND DIRECTOR COMMENTS**

### **11. Committee Reports.**

- Filed with the Board were the Sustainability/Energy Committee Minutes of January 28, 2020.
- Planning Committee Chair Doug Linney reported the Committee met at 9:30 a.m. and received updates on the Duffel Photovoltaic Renewable Energy Project and Final Mitigated Negative Declaration; the Main Wastewater Treatment Plant Power Generation Station Engine Generators and Auxiliary Equipment Assessment; and the Resource Recovery Program.
- Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met at 10:30 a.m. and received updates on Legislative Report No. 01-20 and a semi-annual update on the District Values and Organizational Improvements Program.

### **12. Other Items for Future Consideration.**

- None.

### **13. Director Comments.**

- Director Coleman reported attending the ACWA Federal Affairs Committee Meeting on January 29 via teleconference from Oakland; a meeting with representatives from N3 Ranch on January 30 in Oakland; and a meeting with Perkins Coie for a land use briefing on February 6 in Walnut Creek. He reported on plans to attend/participate in the following events: East Bay Leadership Group Board of Directors Meeting on February 21 in Martinez, and the CASA and ACWA Conferences on February 22-24 in Washington, D.C.
- Director Linney reported attending the Planning and Conservation League Conference on January 25 in Sacramento.
- Director Mellon reported attending an ACWA Region 5 Board Meeting on January 29 in Marina, CA, and an ACWA Board of Directors meeting on January 30 in Sacramento.
- Director Patterson reported on plans to attend the Beloved Oakland event on February 19 in Oakland where he would be honored with the Principled Leadership in Government award and the Black Joy Parade on February 23 in Oakland.
- Director Katz, Director McIntosh, and President Young had no report.

**ADJOURNMENT**

Vice-President Linney adjourned the meeting at 1:50 p.m.

SUBMITTED BY:

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Rischa S. Cole, Secretary of the District

APPROVED: February 25, 2020

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Marguerite Young, President of the Board



AGENDA NO.

3.

MEETING DATE

February 25, 2020

TITLE **NEXT GENERATION FIREWALL HARDWARE AND SOFTWARE**☒ MOTION ☐ RESOLUTION ☐ ORDINANCE**RECOMMENDED ACTION**

Award a contract to NuSpective, Inc. in an amount, after the addition of taxes, not to exceed \$460,000 for supplying next generation firewall hardware, software, support, and implementation services for three years, beginning on or after February 25, 2020.

**SUMMARY**

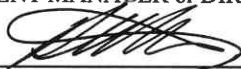

The existing firewall infrastructure will reach end of support in August 2020. A refresh of the firewall infrastructure is necessary to maintain and enhance a critical layer of the District's cybersecurity capabilities to protect the District's information resources and stay ahead of continually evolving cyber threats.

**DISCUSSION**

The District evaluated four market-leading next generation firewall products. The selected firewall and services provided by NuSpective, Inc. best met the District's requirements and will provide advanced cybersecurity features necessary to protect the District's information resources. It will also allow the District to consolidate currently separate cybersecurity infrastructure into the firewall platform which will reduce costs and management complexity. This item supports the District's Long-Term Financial Stability Strategic Plan goal by implementing technologies that improve the efficiency, effectiveness, and security of business processes.

**VENDOR SELECTION**

Under Public Contract Code, Section 10298, agencies such as EBMUD are specifically allowed to purchase directly through State of California contracts or through State-authorized participating agreements without pursuing separate competitive bidding. The State of California Department of General Services has certified contract No. 7-17-70-40-05/AR#2472 for the selected firewall manufacturer. By leveraging the State of California contracts, the District was able to receive highly favorable quotes with pre-negotiated pricing.

Funds Available: FY20		Budget Code: WSO/252/8773/5243
DEPARTMENT SUBMITTING Information Systems	DEPARTMENT MANAGER or DIRECTOR  Andrew J. Levine	APPROVED  General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

## **SUSTAINABILITY**

### **Economic**

This item is included in the FY20 Equipment Replacement Fund. Additionally, there will be budget savings in FY21 by decommissioning other products that will be consolidated into the new firewall platform.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

## **ALTERNATIVE**

**Do not authorize the purchase of next generation firewalls.** This alternative is not recommended because existing products will be at end of support in 2020 and the District would be at higher risk of cybersecurity events that could compromise the District's information systems.

### **Attachments**

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary



## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

<b>TITLE</b> <b>General Services Agreement</b> Next Generation Firewall Hardware and Software						<b>DATE:</b> February 14, 2020						
<b>CONTRACTOR:</b> NuSpective, Inc. Pleasanton, CA 94588					<b>PERCENTAGE OF CONTRACT DOLLARS</b>							
State Contract / Local / Small Business					<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>			
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			<b>White Men</b>		<b>25%</b>		<b>100.0%</b>			
		<b>Ethnicity</b>		<b>Gender</b>		<b>White Women</b>		<b>6%</b>		<b>0.0%</b>		
\$460,000		White		Men		<b>Ethnic Minorities</b>		<b>25%</b>		<b>0.0%</b>		
<b>CONTRACT EQUITY PARTICIPATION</b>												
<b>COMPANY NAME</b>		<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>						
				<b>M      W</b>		<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>	<b>Foreign</b>
<b>PRIME:</b> NuSpective, Inc.		\$460,000	White	X		100.0%						
<b>SUBS:</b> None												
<b>TOTAL</b>		\$460,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>												
		<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>				
<b>No. of Employees:</b>		4		2		0		6				
<b>Percent of Total Employees:</b>		66.7%		33.3%		0.0%						
<b>MSA Labor Market %:</b>		24.5%		21.6%		53.9%						
<b>MSA Labor Market Location:</b>		Alameda County										
<b>COMMENTS</b>												
Contract Equity Participation - 100% White Men participation.												
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>				
NA				NA				<i>Beverly Johnson</i>				





AGENDA NO.  
MEETING DATE

4.  
February 25, 2020

**TITLE     HAULING AND DISPOSAL OF WASTEWATER DIGESTER SPOILS**

☒ **MOTION**                      ☐ **RESOLUTION**                      ☐ **ORDINANCE**

**RECOMMENDED ACTION**

Authorize an agreement beginning on or after February 25, 2020 with Kleen Solution Environmental in an amount not to exceed \$33,000 annually for two years with two options to renew for additional one-year periods for a total cost of \$132,000 for hauling and disposal of wastewater digester spoils from the Main Wastewater Treatment Plant (MWWTP).

**SUMMARY**



The District operates 11 anaerobic digesters at the MWWTP. Each digester is cleaned every five to ten years for regular maintenance or other ad hoc needs. Digester cleaning generates spoils that must be transported to a landfill for disposal. This agreement will provide timely and reliable spoils hauling and disposal services and will allow the District to maintain digester cleaning efforts while minimizing impact to operations.

**DISCUSSION**

Cleaning each MWWTP anaerobic digester generates approximately 100 tons of dewatered spoils material. Sludge vacuum bins containing the spoils need to be transported to a landfill to dispose of the contents. Transporting the bins requires a truck with a gross vehicle weight rating of more than 10,000 pounds, necessitating a Class A Driver License. Previously, the hauling and disposal work was conducted under waste hauling contracts and small purchase orders. Given that several digesters must be cleaned in the coming years to support major digester upgrades and warranty inspections under schedule constraints, the District needs an individual agreement for ongoing hauling and disposal service. This agreement supports the District's Water Quality and Environmental Protection Strategic Plan goal, specifically to ensure that management of biosolids is cost-effective and environmentally safe.

**SERVICE PROVIDER SELECTION**

A request for proposals was sent to the three contractors currently providing hauling services for the MWWTP, 75 hauling contractors from the vendor database maintained by the Contract Equity Office, and

Funds Available: FY20/21		Budget Code: WWG/913/1423/5377	
DEPARTMENT SUBMITTING  Wastewater	DEPARTMENT MANAGER or DIRECTOR   Eileen M. White		APPROVED   General Manager



posted on the District's website. Kleen Solution Environmental was selected because they provided the lowest cost and has demonstrated reliability and responsiveness

## **SUSTAINABILITY**

### **Economic**

Funding for this work is available in the FY20/21 operating budget.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

Local 444 was notified of this agreement on February 6, 2020 and did not raise any specific issues related to this agreement.

### **Environmental**

Responsible hauling and disposal of digester spoils is required for compliance with solid waste laws. Special sludge vacuum bins are used to minimize truck trips and limit the District's environmental footprint.

## **ALTERNATIVES**

**Perform the work entirely with District forces.** This alternative is not recommended because staff is committed to other work and cannot complete the spoils hauling and disposal on the required schedule. In addition, the District does not have the type of truck required or staff available with the required Class A Driver License.

**Select a different contractor to perform the work.** This alternative is not recommended because Kleen Solution Environmental provided the lowest cost and has demonstrated reliability and responsiveness.

### **Attachments**

P-035 – Contract Equity Program Summary  
P-061 – Affirmative Action Summary





## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE					DATE:						
<b>General Services Agreement</b> Hauling and Disposal of Wastewater Digester Spoils - Two-Year Contract with 2 One-Year Renewal Options					February 10, 2020						
CONTRACTOR:				PERCENTAGE OF CONTRACT DOLLARS							
Kleen Solution Environmental Santa Rosa, CA 95401				Small Business		Availability Group		Contracting Objectives		Participation	
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		100.0%			
		Ethnicity	Gender	White Women		6%		0.0%			
		White	Men	Ethnic Minorities		25%		0.0%			
\$33,000 /yr.*											
CONTRACT EQUITY PARTICIPATION											
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
			M	W	White- Men	White- Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME: Kleen Solution Environmental		\$33,000	White	X		100.0%					
SUBS: None											
TOTAL		\$33,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)											
		White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:		2		0		1		3			
Percent of Total Employees:		66.7%		0.0%		33.3%					
MSA Labor Market %:		32.3%		27.8%		39.9%					
MSA Labor Market Location:		9 Bay Area Counties									
COMMENTS											
Contract Equity Participation - 100.0% White Men participation.											
*Total not to exceed: \$132,000.00											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
NA				NA							



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

<b>Title:</b> <b>Hauling and Disposal of Wastewater Digester Spoils - Two-Year Contract with 2 One-Year Renewal Options</b>		<b>Ethnic Minority Percentages From U.S. Census Data</b>							
			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>		
		<b>National</b>	10.5	10.7	3.7	0.7	27.3		
<b>General Services Agreement</b>		<b>DATE:</b> 2/10/2020	<b>9 Bay Area Counties</b>		5.5	16.2	14.2	0.4	39.9
		<b>Alameda/CC Counties</b>		10.7	15.6	15.4	0.5	46.2	
<b>R=Recmmd P=Prime S=Sub</b>	<b>Composition of Ownership</b>	<b>Number of Ethnic Minority Employees</b>							
<b>Company Name, Owner/Contact Person, Address, and Phone Number</b>			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	<b>PERCENT</b>	<b>MSA %</b>
<b>RP</b>	<b>WM: SBE</b>	<b>Company Wide</b>	0	1	0	0	1	33.3%	39.9%
Kleen Solution Environmental Brandon Weinholz 2426 San Joaquin Court Santa Rosa, CA 95401 707-293-0928		<b>Manager/Prof</b>	0	0	0	0	0	0.0%	
		<b>Technical/Sales</b>	0	0	0	0	0	0.0%	
		<b>Clerical/Skilled</b>	0	1	0	0	1	33.3%	
		<b>Semi/Unskilled</b>	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	0	1	0	0	1	33.3%	39.9%
		<b>Co. Wide MSA:</b>	<b>9 Bay Area Counties</b>		<b># Employees-Co. Wide:</b>		<b>3</b>	<b>Bay Area:</b>	<b>3</b>
<b>P</b>	<b>WM: L/SBE</b>	<b>Company Wide</b>	5	4	4	0	13	34.2%	27.3%
Pipe and Plant Solutions, Inc. William Gilmartin IV 225 3rd Street Oakland, CA 94607 888-978-8264		<b>Manager/Prof</b>	0	1	0	0	1	25.0%	
		<b>Technical/Sales</b>	3	2	1	0	6	60.0%	
		<b>Clerical/Skilled</b>	1	0	3	0	4	25.0%	
		<b>Semi/Unskilled</b>	1	1	0	0	0	0.0%	
		<b>Bay Area</b>	3	4	4	0	11	50.0%	39.9%
		<b>Co. Wide MSA:</b>	<b>Total USA</b>		<b># Employees-Co. Wide:</b>		<b>38</b>	<b>Bay Area:</b>	<b>22</b>
<b>P</b>	<b>EMW: A/PI - LBE</b>	<b>Company Wide</b>	1	28	4	0	33	55.0%	48.4%
Bradley Tanks, Inc. Kelly Graser 402 Hartz Avenue, Building C Danville, CA 94526 925-229-2900		<b>Manager/Prof</b>	0	1	1	0	2	22.2%	
		<b>Technical/Sales</b>	0	0	0	0	0	0.0%	
		<b>Clerical/Skilled</b>	1	24	2	0	27	65.9%	
		<b>Semi/Unskilled</b>	0	3	1	0	0	0.0%	
		<b>Bay Area</b>	1	26	3	0	30	61.2%	39.9%
		<b>Co. Wide MSA:</b>	<b>California</b>		<b># Employees-Co. Wide:</b>		<b>60</b>	<b>Bay Area:</b>	<b>49</b>

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



AGENDA NO.  
MEETING DATE

5.  
February 25, 2020

**TITLE OAKLAND INNER HARBOR PIPELINE CROSSING DESIGN AND  
CONSTRUCTION INSPECTION SERVICES**

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

**RECOMMENDED ACTION**

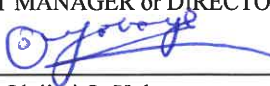

Authorize an agreement beginning on or after February 25, 2020 with Mott MacDonald Group, Inc. (Mott MacDonald) in an amount not to exceed \$1,290,000 for the design and construction inspection services of the Oakland Inner Harbor pipeline crossing.

**SUMMARY**

Mott MacDonald will prepare final design drawings and specifications for the pipeline crossing of the Oakland Inner Harbor installed by horizontal direction drilling (HDD). The design drawings and specifications will be included in the Oakland Inner Harbor Pipeline Crossing (Project) construction bid package. Mott MacDonald will also augment the District's construction management team and provide construction inspection support during the HDD installation. This project was discussed at the Planning Committee on December 13, 2016 and referenced during the FY20/21 Budget Workshop No. 2 on March 26, 2019.

**DISCUSSION**

The Alameda-North Bay Farm Island Crossing Master Plan (Master Plan) identified the need to replace the underwater pipelines serving Alameda to ensure long-term reliability and redundancy of the water distribution system, meet existing and future demands, and replace aging infrastructure. The District is initiating the first crossing identified in the Master Plan, the Project. The Project will replace an existing 24-inch diameter underwater pipeline crossing south of the Posey tube with 3,000 feet of 24-inch high density polyethylene (HDPE) pipeline under the Oakland Inner Harbor, installed by HDD. The Project will also include design by District forces of 3,500 feet of 24-inch welded steel pipeline in Oakland and 6,400 feet of 24-inch HDPE pipeline in Alameda installed by open trench method. This project supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

Funds Available: FY 20-21, CIP#1006298; Page 23		Budget Code: WSC/534/799/5231/2011560:22
DEPARTMENT SUBMITTING Engineering and Construction	DEPARTMENT MANAGER or DIRECTOR  Olujimi O. Yolo	APPROVED  General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

## **CONSULTANT SELECTION**

A request for proposal was posted on the District's website and sent to all firms on the Engineering Consulting Roster with expertise in water infrastructure and horizontal directional drilling. The District received three proposals that were evaluated by a selection committee comprised of District staff. Mott MacDonald was selected based on their project understanding, proposed approach, qualifications, and experience in HDD.

## **SUSTAINABILITY**

### **Economic**

Funding for this item is included in the FY20/21 budget for the Large Diameter Pipelines Project.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

Work under this agreement is subject to the payment of current prevailing wages according to determinations for each craft as established by the Director of Industrial Relations of the State of California.

Locals 2019 and 21 were notified of this agreement on March 28, 2019. Locals 2019 and 21 did not raise any specific issues related to this agreement.

### **Environmental**

The Environmental Impact Report was certified by the Board of Directors on December 13, 2016.

## **ALTERNATIVES**

**Perform the work with District forces.** This alternative is not recommended. District staff does not have experience designing and inspecting large diameter HDD pipeline projects. District forces will design the 9,900 feet of 24-inch diameter pipeline installed by open trench method.

**Do not perform the work.** This alternative is not recommended. The crossing is critical to maintaining a reliable water supply to Alameda and the existing crossing needs to be replaced.

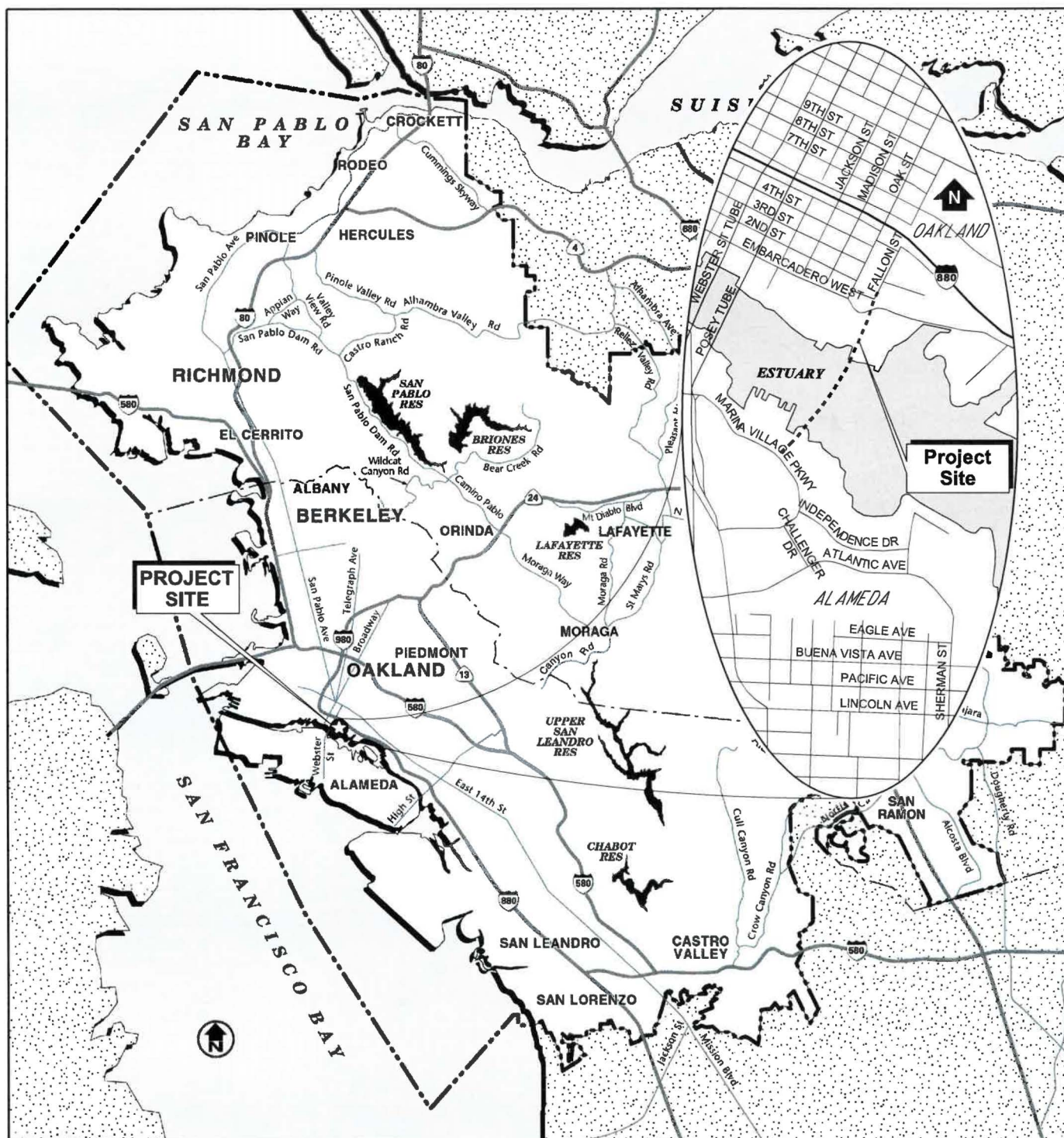
Attachments

Location Map

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary





## PROJECT SITE LOCATION MAP

NOT TO SCALE

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**OAKLAND INNER HARBOR  
PIPELINE CROSSING  
DESIGN AND CONSTRUCTION  
INSPECTION SERVICES**





# CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

<b>TITLE</b> <b>Professional Services Agreement</b> Oakland Inner Harbor Pipeline Crossing Design and Construction Inspection Services				<b>DATE:</b> January 7, 2020							
<b>CONTRACTOR:</b> Mott MacDonald Group, Inc. San Ramon, CA 94583				<b>PERCENTAGE OF CONTRACT DOLLARS</b>							
<b>Local Business</b>				<b>Availability Group</b>	<b>Contracting Objectives</b>	<b>Participation</b>					
<b>BID/PROPOSER'S PRICE:</b> \$1,290,000	<b>FIRM'S OWNERSHIP</b>		<b>White Men</b>	<b>25%</b>	<b>98.5%</b>						
	<b>Ethnicity</b>	<b>Gender</b>	<b>White Women</b>	<b>6%</b>	<b>1.5%</b>						
	White	Men	<b>Ethnic Minorities</b>	<b>25%</b>	<b>0.0%</b>						
<b>CONTRACT EQUITY PARTICIPATION</b>											
<b>COMPANY NAME</b>	<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>						
			<b>M</b>	<b>W</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>	<b>Foreign</b>
<b>PRIME:</b> Mott MacDonald Group, Inc.	\$920,024	White	X		71.3%						
<b>SUBS:</b> GEI Consultants, Inc.	\$351,076	White	X		27.2%						
Macauley Trenchless	\$18,900	White		X		1.5%					
<b>TOTAL</b>	\$1,290,000				98.5%	1.5%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>											
	<b>White Men</b>	<b>White Women</b>	<b>Ethnic Minorities</b>	<b>Total Employees</b>							
<b>No. of Employees:</b>	1,157	327	396	1,880							
<b>Percent of Total Employees:</b>	61.5%	17.4%	21.1%								
<b>MSA Labor Market %:</b>	39.0%	33.7%	27.3%								
<b>MSA Labor Market Location:</b>	Total USA										
<b>COMMENTS</b>											
Contract Equity Participation - 98.5% White Men participation and 1.5% White Women participation.											
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>			
NA				NA							



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: <b>Oakland Inner Harbor Pipeline Crossing Design and Construction Inspection Services</b>			Ethnic Minority Percentages From U.S. Census Data						
				B	H	A/PI	AI/AN	TOTAL	
			National	10.5	10.7	3.7	0.7	27.3	
<b>Professional Services Agreement</b>		DATE: 1/7/2020	9 Bay Area Counties		5.5	16.2	14.2	0.4	39.9
			Alameda/CC Counties		10.7	15.6	15.4	0.5	46.2
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM: LBE	Company Wide	86	117	41	3	247	13.1%	27.3%
Mott MacDonald Group, Inc. Melanie Graham 12647 Alcosta Blvd., Suite 275 San Ramon, CA 94583 (Local Office) 925-469-5372		Manager/Prof	35	66	3	1	105	9.2%	
		Technical/Sales	43	39	35	1	118	18.4%	
		Clerical/Skilled	6	11	3	1	21	22.3%	
		Semi/Unskilled	2	1	0	0	3	60.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		1,880	Bay Area:	0
S	WM: LBE	Company Wide	16	39	37	0	92	12.0%	27.3%
GEI Consultants Julie Jennings Kale 180 Grand Avenue, Suite 1410 Oakland, CA 94612 916-631-4533		Manager/Prof	7	25	27	0	59	10.1%	
		Technical/Sales	6	6	8	0	20	15.5%	
		Clerical/Skilled	3	8	2	0	13	23.2%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	5	10	0	15	57.7%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		767	Bay Area:	26
S	WW	Company Wide	INFORMATION NOT PROVIDED						
Macauley Trenchless  33743 31st Avenue SW Federal Way, WA 98023 253-205-4470		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
P	WM: LBE	Company Wide	5	36	60	6	107	20.9%	27.3%
GHD, Inc. Meghan Connors 6001 Shellmound Street, Suite 850 Emeryville, CA 94608 (Local Office) 716-205-1988		Manager/Prof	5	22	47	3	77	21.0%	
		Technical/Sales	0	9	5	3	17	18.3%	
		Clerical/Skilled	0	5	8	0	13	25.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	1	8	15	2	26	19.8%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		511	Bay Area:	131
P	WM	Company Wide	10	7	28	3	48	23.1%	27.3%
McMillen Jacobs Associates Greta Miller 49 Stevenson Street, 3rd Floor San Francisco, CA 94105 925-705-4114		Manager/Prof	9	4	22	1	36	20.5%	
		Technical/Sales	0	1	3	1	5	26.3%	
		Clerical/Skilled	1	2	3	1	7	53.8%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	1	8	15	2	26	12.5%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		208	Bay Area:	208

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)





AGENDA NO.  
MEETING DATE

6.

February 25, 2020

**TITLE** SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY FOOD WASTE PILOT

☒ **MOTION** \_\_\_\_\_ ☐ **RESOLUTION** \_\_\_\_\_ ☐ **ORDINANCE** \_\_\_\_\_

### RECOMMENDED ACTION



Authorize an agreement beginning on or after February 25, 2020 with South Bayside Waste Management Authority (SBWMA) to waive the tip fee for loads of processed liquid food waste in support of a pilot project to assess the effectiveness of new equipment in extracting organics from municipal solid waste (MSW).

### SUMMARY

SBWMA, a joint exercise of powers authority comprising twelve member public agencies in San Mateo County, is piloting equipment to extract food waste from MSW for anaerobic digestion. Under this agreement, the District will support the pilot project by waiving the tip fee for a limited amount of processed liquid food waste. This agreement is consistent with the 2017 Memorandum of Understanding between SBWMA and the District. Staff discussed this pilot as part of the Resource Recovery Program Update at the February 11, 2020 Planning Committee meeting.

### DISCUSSION

The Main Wastewater Treatment Plant (MWWTP) has excess digestion capacity that is utilized by accepting trucked-in high-strength waste to generate energy and revenue through the Resource Recovery (R2) Program. Contamination removal from food waste feedstock continues to be one of the primary challenges for the beneficial recovery of organics. The SBWMA pilot project will evaluate the effectiveness of new preprocessing equipment to extract organics and produce high-quality feedstock from MSW. SBWMA is moving aggressively to install pilot equipment and expects to begin producing material as early as March 2020. The pilot is expected to last approximately one year. All solids processing will take place at the SBWMA-owned and operated Shoreway Environmental Center in San Carlos, and liquid food waste slurry will be delivered to a variety of wastewater treatment plants. The District's primary interest in the pilot is to evaluate the effectiveness of the preprocessing equipment for use in other projects or at the MWWTP. The pilot will advance industry knowledge for processing MSW feedstock and, if successful, other regional agencies may adopt this system and send food waste slurry to the MWWTP. The District's secondary interest in the pilot is to support the beneficial relationship with

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING  Wastewater	DEPARTMENT MANAGER or DIRECTOR   Eileen M. White	APPROVED   General Manager

SBWMA and increase the likelihood of a permanent project with some portion of this food waste going to the MWWTP.

The agreement would allow SBWMA to deliver a specified number of food waste loads to the MWWTP within the one-year study with no tip fee. Once the discounted loads are completed, the District will charge SBWMA the published trucked-waste rates for any additional loads. This project supports the District's Water Quality and Environmental Protection Strategic Plan goal.

## **SUSTAINABILITY**

### **Economic**

The in-kind cost to the District in the form of increased labor, chemicals, and biosolids management is estimated to be \$53,000. Funding for this work is available in the FY20/21 operating budgets.

### **Social**

Numerous entities, including the United States Environmental Protection Agency, California Air Resources Board (CARB), and CalRecycle, have identified existing anaerobic digesters as a socially responsible and environmentally conscious means for beneficial use of food waste in urban areas. A partnership with SBWMA could help the District to grow and improve its food waste program.

### **Environmental**

This agreement furthers the District's ability to generate renewable energy at the MWWTP. In addition, this agreement is consistent with the Negative Declaration the Board adopted for the R2 Program in 2003, satisfying the California Environmental Quality Act requirements for this action.

Supporting this project helps achieve statewide environmental goals, including those in the CARB's Short Lived Climate Pollutant Reduction Strategy and CalRecycle's goals and mandates regarding diverting organic material from landfills to reduce greenhouse gas emissions.

## **ALTERNATIVE**

**Delay action or do not approve agreement.** This alternative is not recommended because the SBWMA pilot has a limited term and the District could lose the opportunity to analyze the effectiveness of new food waste processing equipment.



AGENDA NO.  
MEETING DATE

7.

February 25, 2020

**TITLE      RECYCLED WATER SUPPLY AGREEMENT WITH WEST COUNTY  
              WASTEWATER DISTRICT**

☒ MOTION                      ☐ RESOLUTION                      ☐ ORDINANCE

**RECOMMENDED ACTION**

Authorize an agreement beginning on or after February 25, 2020 with West County Wastewater District (WCWD) for providing treated secondary effluent to the District's North Richmond Water Recycling Plant (NRWRP) and Richmond Advanced Recycled Water Expansion (RARE) facility for 10 years in an amount not to exceed \$4,000,000.



**SUMMARY**

The Recycled Water Supply Agreement (Agreement) will ensure consistent and reliable effluent water quality from WCWD's Water Quality Resource Recovery Plant (Plant) for use at the District's NRWRP and RARE. Per the terms of the Agreement, for months when the District receives treated effluent from the WCWD, the District will pay WCWD the additional power and chemical costs incurred by WCWD to treat to a higher level water quality than the quality level required by WCWD's National Pollutant Discharge Elimination System (NPDES) permit. Staff provided an overview of the Agreement at the January 14, 2020 Planning Committee meeting.

**DISCUSSION**

Secondary effluent from WCWD's Plant supplies two District recycled water facilities, the NRWRP and RARE. NRWRP has been providing recycled water for cooling towers at the Chevron Richmond Refinery (Chevron) since 1995. RARE has been providing recycled water for Chevron's boilers since 2011. Historically, effluent from WCWD's Plant sustained high ammonia and turbidity levels. At NRWRP, this required the District to blend potable water with treated recycled water and use extra chemicals to meet Chevron's water quality criteria to protect their cooling towers from corrosion and scaling. This resulted in increased operating costs for the District and variable recycled water quality, which did not meet Chevron's needs.

In 2018, the WCWD completed construction of significant upgrades at its plant. These upgrades enable WCWD to produce effluent that will reduce the need for potable water blending and extra chemicals at NRWRP, reducing overall treatment costs at NRWRP and providing consistent recycled water quality for

Funds Available: FY20-FY21		Budget Code: WRP/608/4052/5241
DEPARTMENT SUBMITTING  Wastewater	DEPARTMENT MANAGER or DIRECTOR   Eileen M. White	APPROVED   General Manager

Chevron. In addition, utilizing the treatment capabilities at the WCWD plant eliminates the need to invest in capital improvements at NRWRP to address WCWD effluent water quality issues.

Per the terms of the Agreement, the District will pay WCWD the additional power and chemical costs incurred by WCWD to treat to a higher water quality level (as measured by ammonia concentration in the effluent) than the quality level required by WCWD's NPDES permit. If the WCWD NPDES permit changes to contain more stringent water quality requirements in the future, these costs to the District will decrease. Payment will be on a monthly basis and will be made only if the District receives treated effluent from the WCWD and the ammonia concentration of the effluent delivered by WCWD meets specified requirements for that month. This Agreement supports the District's Long-Term Water Supply Strategic Plan goal to reduce potable water demand through water recycling.

## **SUSTAINABILITY**

### **Economic**

Costs paid to WCWD for treatment are expected to reduce District treatment costs at the NRWRP. Funding for this item is included in the FY20/21 operating budgets.

### **Social**

The Agreement provides improved operational reliability at the NRWRP by ensuring consistent water quality from WCWD, and improves the District's service to Chevron by providing a reliable supply of recycled water that meets Chevron's water quality criteria.

### **Environmental**

The Agreement reduces the District's carbon footprint by reducing the use of chemicals at the NRWRP, and eliminates the need to construct additional treatment facilities at the NRWRP.

## **ALTERNATIVES**

**Do not authorize the Agreement.** This alternative is not recommended because the NRWRP and RARE rely on the effluent from WCWD, and reimbursing WCWD for operating costs incurred to meet the District's water quality needs reduces the District's overall operating costs.

**Negotiate different terms for the Agreement.** This alternative is not recommended because the terms in the Agreement represent a reasonable approach to cost recovery for WCWD; the Agreement will result in overall decreased operating costs for the District; and the ammonia concentration limits are reasonable for WCWD to consistently achieve.





AGENDA NO.  
MEETING DATE

8.  
February 25, 2020

**TITLE      MOKELUMNE AQUEDUCTS DELTA TUNNEL PLANNING AND ENGINEERING SERVICES**

☒ MOTION      ☐ RESOLUTION      ☐ ORDINANCE

**RECOMMENDED ACTION**

Authorize an agreement beginning on or after February 25, 2020 with WSP USA, Inc. (WSP) in an amount not to exceed \$3,424,300 for planning and engineering services for the Mokelumne Aqueducts Delta Tunnel.

**SUMMARY**

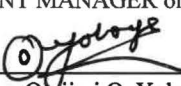

WSP will provide engineering consulting services to prepare an Alternative Analysis Report (AAR) and a Conceptual Engineering Report (CER) for the preferred project, the Delta Tunnel. WSP will review project alternatives to the Delta Tunnel, and develop the Delta Tunnel to preliminary design level. The AAR and CER will support preparation of the Environmental Impact Report (EIR).

**DISCUSSION**

The Mokelumne Aqueducts are vulnerable to failure in the Delta from flood and earthquake hazards due to the fragility of the Delta levee system. In 2007, a District report, Strategy for Protecting the Aqueducts in the Delta (SPAD), was presented to the Board which recommended a Mokelumne Aqueduct tunnel beneath the Delta as the long-term solution for risks to the aqueducts.

In 2014, a feasibility level design for replacing the existing aqueducts through the Delta with a deep tunnel was developed as part of the Mokelumne Aqueducts Delta Tunnel Study. The proposed Delta Tunnel is envisioned to be approximately 16.5 miles long, beginning west of Interstate 5 and ending at the District's Bixler Maintenance Yard.

In 2019, the District completed the Delta Tunnel Phase 1 Geotechnical Exploration Program which included reviewing existing geotechnical data, conducting subsurface explorations, installing geotechnical field instrumentation, conducting a laboratory testing program, and preparing a geotechnical data report, a geotechnical interpretative report, and a seismic hazards report. The study augmented historical

Funds Available: FY 20-21, CIP#1000810; Page 37		Budget Code: WSC/534/799/5231/2013538:01
DEPARTMENT SUBMITTING  Engineering and Construction	DEPARTMENT MANAGER or DIRECTOR   Olujimi O. Yolo	APPROVED   General Manager

geotechnical data, characterized the ground conditions, and reduced the geologic uncertainties in order to analyze tunnel boring machine performance in soft ground, which typifies the Delta.

Work under this agreement is required to initiate the California Environmental Quality Act (CEQA) EIR process for the Delta Tunnel. The CER will advance the Delta Tunnel design to the preliminary design level and identify permanent and temporary project features, such as the location and number of shafts, the tunnel elevations, stockpile locations, access roads, haul routes, utilities, construction phase activities, and both temporary and permanent property acquisitions. In addition, the CER will provide estimated project costs and construction schedule.

The AAR will analyze the project alternatives, which includes the Delta Tunnel and the no tunnel option, i.e., retrofitting and maintaining the existing Mokelumne Aqueducts. The AAR evaluation criteria will include risk mitigation, permitting issues, hydraulics, environmental impacts, right-of ways, costs, and schedules. Further studies may be required, such as biological evaluation, habitat mapping, wetland delineation, and review of cultural resources. The AAR will support the selection of the preferred project alternative, the Delta Tunnel. This project supports the District's Long-Term Infrastructure Investment Strategic Plan goal.

## **CONSULTANT SELECTION**

A request for proposal was posted on the District's website and sent to all firms on the Engineering Consulting Roster with expertise in water infrastructure and environmental documentation. The District received five proposals that were evaluated by a selection committee comprised of District staff. WSP was selected based on their project understanding, proposed approach, qualifications and experience in tunnel design and CEQA.

## **SUSTAINABILITY**

### **Economic**

Funding for this item is included in the FY20/21 budget for the Raw Water Studies and Improvements Project.

### **Social**

The completed P-035 and P-061 forms for the Contract Equity Program are attached.

Work under this agreement is subject to the payment of current prevailing wages according to determinations for each craft as established by the Director of Industrial Relations of the State of California.

Locals 2019 and 21 were notified of this agreement on August 29, 2018. Locals 2019 and 21 did not raise any specific issues related to this agreement.

## **Environmental**

The goal of this project is to provide documents to facilitate the CEQA/Environmental Compliance process.

## **ALTERNATIVES**

**Perform the work with District forces.** This alternative is not recommended. District staff does not have experience designing and evaluating the environmental impacts for large tunnel projects.

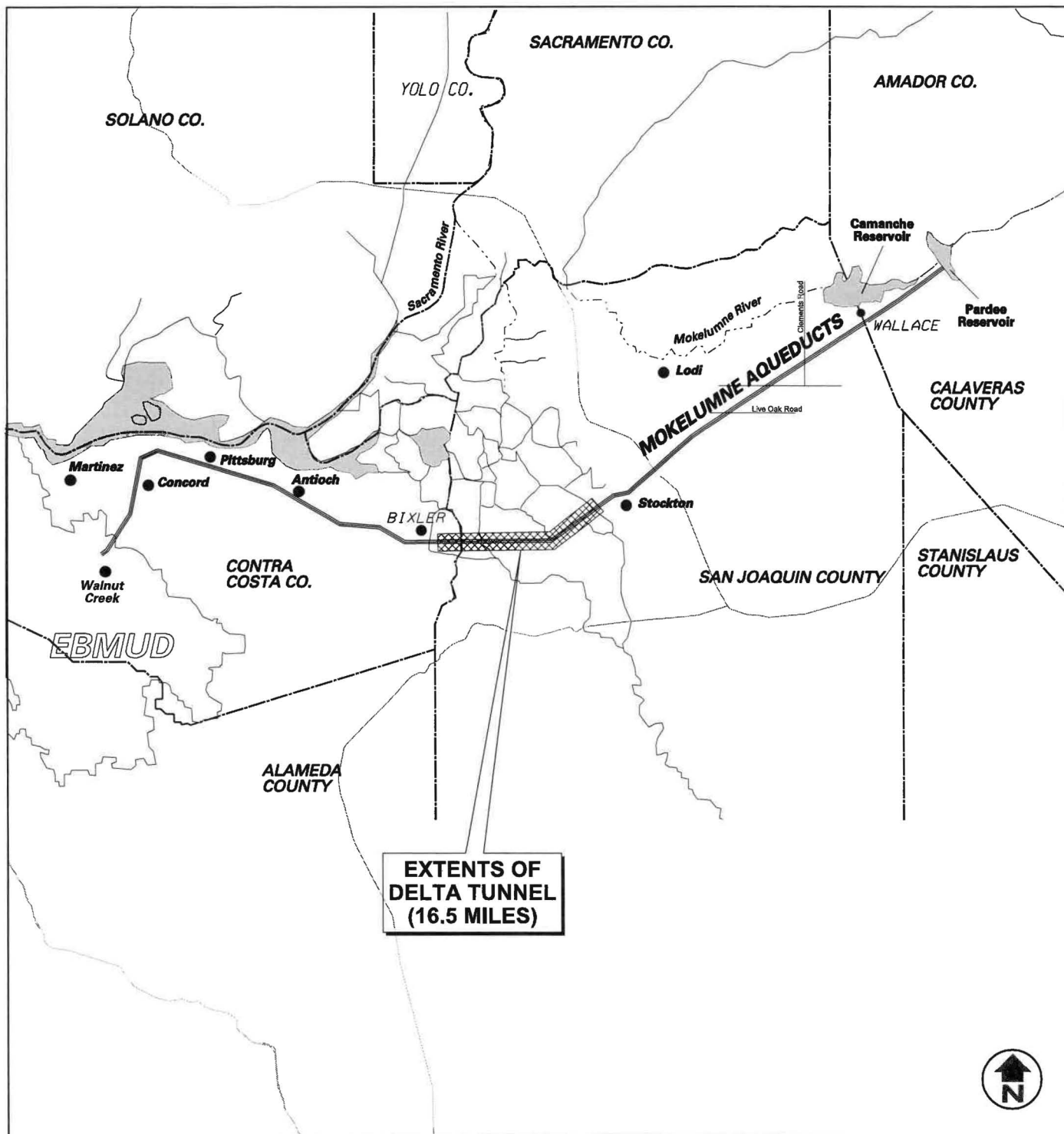
**Do not perform the work.** This alternative is not recommended. The Delta Tunnel is the recommended long-term risk mitigation for the flood and earthquake hazards in the Delta for the Mokelumne Aqueducts. This work is required to initiate the EIR process for the Delta Tunnel.

## **Attachments**

Location Map

P-035 – Contract Equity Program Summary

P-061 – Affirmative Action Summary



## PROJECT SITE LOCATION MAP

NOT TO SCALE

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**PLANNING AND ENGINEERING  
SERVICES FOR THE MOKELUMNE  
AQUEDUCTS DELTA TUNNEL**





# CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

<b>TITLE</b> <b>Professional Services Agreement</b> Planning and Engineering Services for the Mokelumne Aqueducts Delta Tunnel				<b>DATE:</b> January 27, 2020							
<b>CONTRACTOR:</b> WSP USA, Inc. Oakland, CA 94612				<b>PERCENTAGE OF CONTRACT DOLLARS</b>							
Local Business				<b>Availability Group</b>	<b>Contracting Objectives</b>	<b>Participation</b>					
<b>BID/PROPOSER'S PRICE:</b> \$3,424,300	<b>FIRM'S OWNERSHIP</b>		<b>White Men</b>	<b>25%</b>	<b>83.1%</b>						
	<b>Ethnicity</b>	<b>Gender</b>	<b>White Women</b>	<b>6%</b>	<b>8.4%</b>						
	White	Men	<b>Ethnic Minorities</b>	<b>25%</b>	<b>8.5%</b>						
<b>CONTRACT EQUITY PARTICIPATION</b>											
<b>COMPANY NAME</b>	<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>						
			<b>M</b>	<b>W</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>	<b>Foreign</b>
<b>PRIME:</b> WSP USA, Inc.	\$2,846,952	White	X		83.1%						
<b>SUBS:</b> Panorama Environmental, Inc.	\$199,400	Asian		X			5.8%				
SRT Consultants	\$287,968	White		X		8.4%					
Nomad Ecology, LLC	\$46,160	Hispanic	X				1.3%				
Duke Cultural Resources Management, LLC	\$43,820	Hispanic	X				1.3%				
<b>TOTAL</b>	\$3,424,300				83.1%	8.4%	8.5%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)</b>											
	<b>White Men</b>	<b>White Women</b>	<b>Ethnic Minorities</b>	<b>Total Employees</b>							
<b>No. of Employees:</b>	31	23	56	110							
<b>Percent of Total Employees:</b>	28.2%	20.9%	50.9%								
<b>MSA Labor Market %:</b>	32.3%	27.8%	39.9%								
<b>MSA Labor Market Location:</b>	9 Bay Area Counties										
<b>COMMENTS</b>											
<b>Contract Equity Participation</b> - 83.1% White Men participation 8.4% White Women participation and 8.5% Ethnic Minority participation.											
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>			
NA				YES							



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

<b>Title:</b> <b>Planning and Engineering Services for the Mokelumne Aqueducts Delta Tunnel</b>		<b>Ethnic Minority Percentages From U.S. Census Data</b>							
			<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>		
		<b>National</b>	10.5	10.7	3.7	0.7	27.3		
<b>Professional Services Agreement</b> <b>DATE:</b> <b>1/27/2020</b>		<b>9 Bay Area Counties</b>	5.5	16.2	14.2	0.4	39.9		
		<b>Alameda/CC Counties</b>	10.7	15.6	15.4	0.5	46.2		
<b>R=Recmmd</b> <b>P=Prime S=Sub</b>	<b>Composition of Ownership</b>	<b>Number of Ethnic Minority Employees</b>							
<b>Company Name, Owner/Contact Person, Address, and Phone Number</b>		<b>B</b>	<b>H</b>	<b>A/PI</b>	<b>AI/AN</b>	<b>TOTAL</b>	<b>PERCENT</b>	<b>MSA %</b>	
<b>P</b>	<b>WM: LBE</b>	<b>Company Wide</b>	3	8	43	0	54	49.1%	39.9%
<b>WSP USA Inc.</b> <b>Ken Mack</b> <b>1221 Broadway, #800</b> <b>Oakland, CA 94612</b> <i>(Local Office)</i> <b>717-859-7426</b>		<b>Manager/Prof</b>	2	7	40	0	49	48.5%	
		<b>Technical/Sales</b>	1	1	2	0	4	66.7%	
		<b>Clerical/Skilled</b>	0	0	1	0	1	33.3%	
		<b>Semi/Unskilled</b>	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	3	8	43	0	54	49.1%	39.9%
		<b>Co. Wide MSA:</b>	<b>9 Bay Area Counties</b>		<b># Employees-Co. Wide: 110</b>		<b>Bay Area: 110</b>		
<b>S</b>	<b>EMW: A/PI - SBE</b>	<b>Company Wide</b>	0	1	7	0	8	40.0%	48.4%
<b>Panorama Environmental, Inc.</b> <b>Tania Treis</b> <b>717 Market Street, Suite 650</b> <b>San Francisco, CA 94103</b> <b>650-373-1200</b>		<b>Manager/Prof</b>	0	1	7	0	8	42.1%	
		<b>Technical/Sales</b>	0	0	0	0	0	0.0%	
		<b>Clerical/Skilled</b>	0	0	0	0	0	0.0%	
		<b>Semi/Unskilled</b>	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	0	1	7	1	9	52.9%	39.9%
		<b>Co. Wide MSA:</b>	<b>California</b>		<b># Employees-Co. Wide: 20</b>		<b>Bay Area: 17</b>		
<b>S</b>	<b>WW: SBE</b>	<b>Company Wide</b>	0	0	5	0	5	27.8%	39.9%
<b>SRT Consultants</b> <b>Tatyana Yurovsky</b> <b>90 New Montgomery Street, Suite 905</b> <b>San Francisco, CA 94105</b> <b>415-231-5768</b>		<b>Manager/Prof</b>	0	0	5	0	5	27.8%	
		<b>Technical/Sales</b>	0	0	0	0	0	0.0%	
		<b>Clerical/Skilled</b>	0	0	0	0	0	0.0%	
		<b>Semi/Unskilled</b>	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	0	0	5	0	5	27.8%	39.9%
		<b>Co. Wide MSA:</b>	<b>9 Bay Area Counties</b>		<b># Employees-Co. Wide: 18</b>		<b>Bay Area: 18</b>		
<b>S</b>	<b>EMM: H - L/SBE</b>	<b>Company Wide</b>	0	1	1	0	2	18.2%	44.0%
<b>Nomad Ecology, LLC</b> <b>Heath Bartosh</b> <b>822 Main Street</b> <b>Martinez, CA 94553</b> <b>925-228-1027</b>		<b>Manager/Prof</b>	0	1	1	0	2	22.2%	
		<b>Technical/Sales</b>	0	0	0	0	0	0.0%	
		<b>Clerical/Skilled</b>	0	0	0	0	0	0.0%	
		<b>Semi/Unskilled</b>	0	0	0	0	0	0.0%	
		<b>Bay Area</b>	0	1	1	0	2	18.2%	39.9%
		<b>Co. Wide MSA:</b>	<b>San Francisco</b>		<b># Employees-Co. Wide: 11</b>		<b>Bay Area: 11</b>		
<b>S</b>	<b>EMM: H</b>	<b>Company Wide</b>	<b>INFORMATION NOT PROVIDED</b>						
<b>Duke Cultural Resources Management, LLC</b> <b>Curt Duke</b> <b>18 Technology Drive, #103</b> <b>Irvine, CA 92618</b> <b>949-356-6660</b>		<b>Manager/Prof</b>							
		<b>Technical/Sales</b>							
		<b>Clerical/Skilled</b>							
		<b>Semi/Unskilled</b>							
		<b>Bay Area</b>							
		<b>Co. Wide MSA:</b>							







AGENDA NO.  
MEETING DATE

9.

February 25, 2020

**TITLE      AMEND THE WESTERN AREA POWER ADMINISTRATION SCHEDULING  
COORDINATOR SERVICES AGREEMENT**

☒ MOTION      ☐ RESOLUTION      ☐ ORDINANCE

**RECOMMENDED ACTION**



Authorize a third amendment to the agreement awarded under Board Motion No. 133-15 with Western Area Power Administration (WAPA) to extend the termination date from September 30, 2020 to December 31, 2024 for electricity purchases at District facilities under the Custom Product Contract for Scheduling Coordinator Services Agreement (SC Agreement).

**SUMMARY**

The District purchases approximately 20,000 megawatt hours (MWh) annually from WAPA for the Main Wastewater Treatment Plant and four water facilities. These purchases account for approximately 17 percent of the District's total electricity purchases and provide an estimated annual savings of \$2 million. To receive WAPA power, the District entered into a number of agreements with WAPA, including the SC Agreement.

**DISCUSSION**

Since 1982, the District has received lower cost federal power from the Central Valley Project through agreements with WAPA, one of four power marketing administrators within the U.S. Department of Energy. Historically, WAPA electricity was provided to the District at approximately half the cost of PG&E's electricity. The delivery of this electricity to the District is facilitated through four separate WAPA agreements including the SC Agreement. This agreement was last amended in 2015, extending the termination date to September 30, 2020 and adding \$450,000. By extending the SC agreement, the revised termination date will coincide with the termination dates of the other WAPA agreements. The extension helps the District manage its finances to provide fair and reasonable water rates and supports the District's Long-Term Financial Stability Strategic Plan goal.

Funds Available: FY20/21		Budget Code: WSO/776/778/913/5331/5374	
DEPARTMENT SUBMITTING  Water Operations	DEPARTMENT MANAGER or DIRECTOR   David A. Briggs		APPROVED   General Manager

## **SUSTAINABILITY**

### **Economic**

WAPA electricity lowers the District's operating costs approximately \$2 million annually.

### **Social**

Lower operating costs associated with the use of WAPA electricity benefits all District customers.

### **Environmental**

WAPA power will have progressively lower emissions as the State moves toward an emissions-free grid by 2045.

## **ALTERNATIVE**

**Do not extend the WAPA SC Agreement.** This alternative is not recommended because the District would not be able to continue to purchase lower cost WAPA power beyond 2020.





AGENDA NO.  
MEETING DATE

10.

February 25, 2020

TITLE **MONTHLY INVESTMENT TRANSACTIONS REPORTS**

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Approve the January 2020 Monthly Investment Transactions Report.

### SUMMARY

In accordance with Board Resolution No. 32877-94 and Policy 4.07 – Investment Policy, staff presents a monthly transactions report for the Finance/Administration Committee to review and for the Board to consider each month. The January 2020 report is being submitted for Board consideration. This item was reviewed with the Finance/Administration Committee on February 25, 2020.

### DISCUSSION



Pursuant to Policy 4.07 – Investment Policy, staff produces a monthly report of investment transactions generated by Treasury staff (buys, sales, deposits, withdrawals) as well as transactions that occur as a feature of the securities held (interest, calls, maturities). Information on portfolio performance, balances, and other factors are presented in the quarterly investment report.

In January 2020, the portfolio increased from \$845.5 million to \$866.6 million. Net transactions increased the total by \$19.9 million. Interest received added \$1.2 million to the portfolio. Deposits into short-term liquidity funds totaled \$32.2 million and \$10.2 million was withdrawn. The District purchased \$92.5 million in securities and \$56.0 million in securities were called. No securities matured and no securities were sold. Net transactions at the District's commercial bank resulted in a decrease of \$38.5 million.

This item supports the District's Long-Term Financial Stability Strategic Plan goal to ensure integrity, accountability and transparency in financial management.

### Attachment

I:\Sec\2020 Board Related Items\022520 Board Agenda Items\FIN - Monthly Investment Transactions Report 022520.docx

Funds Available:		Budget Code:
DEPARTMENT SUBMITTING Finance	DEPARTMENT MANAGER or DIRECTOR  Sophia D. Skoda	APPROVED  General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.



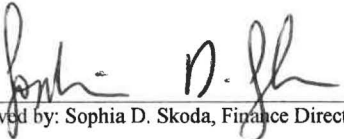


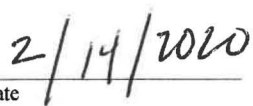
**Monthly Investment Transactions Report**  
**January 2020**

This report is presented to the Board pursuant to Government Code Section 53607 and in accordance with the District's Investment Policy 4.07.

The attached report details transactions in the District's portfolio as follows:

- **Monthly Investment Transactions Summary** **Page 1**
- **Monthly Investment Activity** **Page 2**
  - Buys **Page 3**
  - Deposits **Page 4**
  - Matured **Page 5**
  - Calls **Page 6**
  - Sales **Page 7**
  - Withdrawals **Page 8**
- **Monthly Interest Activity** **Page 9**
  - Interest Received (Transferred to Wells Fargo) **Page 10**
  - Interest Received (Reinvested) **Page 11**

  
Approved by: Sophia D. Skoda, Finance Director

  
Date

SDS:DSK:AW




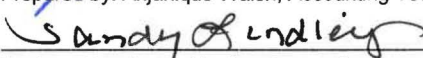
**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Investment Transactions Summary**  
**January 2020**

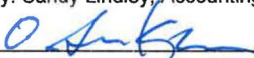
Portfolio	Beginning Balance*	Monthly Net Transaction Activity	Monthly Interest Activity	Ending Balance
001 - Water System Consolidated	648,928,134.44	36,764,000.00	309,122.51	686,001,256.95
007 - Wastewater Consolidated	87,984,620.12	23,700,000.00	77,892.28	111,762,512.40
049 - Ferc Partnership	2,000,000.00	-	-	2,000,000.00
009 - BACWA	2,262,600.00	-	-	2,262,600.00
015 - DERWA	1,000,000.00	-	-	1,000,000.00
002 - FRWA	1,000,000.00	-	-	1,000,000.00
014 - IICP	150,500.00	-	-	150,500.00
010 - UMRWA	64,000.00	-	-	64,000.00
003 - Employees Retirement	12,345,211.00	(2,036,000.00)	107,295.67	10,416,506.67
065 - Water S2008A DSRF	3,397,811.39	-	3,411.60	3,401,222.99
068 - Water 2010A DSRF	352,580.74	-	354.00	352,934.74
099 - Wells Fargo**	85,981,788.25	(38,500,002.61)	741,935.46	48,223,721.10
<b>Total</b>	<b>845,467,245.94</b>	<b>19,927,997.39</b>	<b>1,240,011.52</b>	<b>866,635,254.85</b>

\* Portfolio balance presented at face value.

\*\*Wells Fargo's month-end available balance per bank statement. Gross amount; not allocated by fund and not included in balances above.

  
Prepared by: Anjanique Walsh, Accounting Technician

  
Reviewed by: Sandy Lindley, Accounting Supervisor

  
Approved by: D. Scott Klein, Controller

2-11-20  
Date

2-11-2020  
Date

2-11  
Date



**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**Monthly Investment Activity**  
**January 2020**

Portfolio	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Non-Investment Transactions*	Net Transaction Activity
001 - Water System Consolidated	68,764,000.00	24,000,000.00	-	(56,000,000.00)	-	-	-	36,764,000.00
007 - Wastewater Consolidated	23,700,000.00	-	-	-	-	-	-	23,700,000.00
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	-	-	-	-	-	-	-
015 - DERWA	-	-	-	-	-	-	-	-
002 - FRWA	-	-	-	-	-	-	-	-
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	8,187,000.00	-	-	-	(10,223,000.00)	-	(2,036,000.00)
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	-	-	-	-	-	-
<b>Investment Activity Total</b>	<b>92,464,000.00</b>	<b>32,187,000.00</b>	<b>-</b>	<b>(56,000,000.00)</b>	<b>-</b>	<b>(10,223,000.00)</b>	<b>-</b>	<b>58,428,000.00</b>
<b>099 - Wells Fargo</b>	<b>(92,464,000.00)</b>	<b>(32,187,000.00)</b>	<b>-</b>	<b>56,000,000.00</b>	<b>-</b>	<b>10,223,000.00</b>	<b>19,927,997.39</b>	<b>(38,500,002.61)</b>
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>19,927,997.39</b>	<b>19,927,997.39</b>

\*Non-investment transactions are net receipts and expenditures in Wells Fargo resulting from activities other than investment and interest transactions detailed in this report.

Reviewed by: Damien Charléty, Principal Mgmt Analyst

Approved by: Robert L. Hannay, Treasury Manager

02/18/20  
Date  
2/13/20  
Date



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Buys</b>										
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 1.3 4/27/2020-17	3134G9DZ7	01/03/2020	01/06/2020	04/27/2020	7,000,000.00	6,993,840.00	17,441.67	7,011,281.67
001 - Water System Consolidated	US Treasuries	T-Note 1.5 5/31/2020	912828XE5	01/14/2020	01/15/2020	05/31/2020	8,000,000.00	7,998,125.00	15,081.97	8,013,206.97
001 - Water System Consolidated	US Treasuries	T-Note 1.5 5/31/2020	912828XE5	01/14/2020	01/15/2020	05/31/2020	30,000,000.00	29,992,968.75	56,557.38	30,049,526.13
001 - Water System Consolidated	None	FFCB 1.62 10/13/2021-20	3133ELGJ7	01/22/2020	01/23/2020	10/13/2021	14,000,000.00	13,991,600.00	6,300.00	13,997,900.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA 1.8 10/26/2021-15	3136G0Z87	01/22/2020	01/23/2020	10/26/2021	9,764,000.00	9,766,831.56	42,473.40	9,809,304.96
<b>Subtotal</b>							<b>68,764,000.00</b>			
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 1.7 5/15/2020-19	3130ACN83	01/03/2020	01/06/2020	05/15/2020	3,300,000.00	3,301,419.00	7,947.50	3,309,366.50
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 2.625 5/28/2020	3130AECJ7	01/03/2020	01/06/2020	05/28/2020	2,500,000.00	2,510,325.00	6,927.08	2,517,252.08
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 2.625 5/28/2020	3130AECJ7	01/03/2020	01/06/2020	05/28/2020	4,200,000.00	4,217,304.00	11,637.50	4,228,941.50
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 2.625 5/28/2020	3130AECJ7	01/06/2020	01/07/2020	05/28/2020	1,500,000.00	1,506,120.00	4,265.63	1,510,385.63
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 2.15 5/8/2020	3133EJCA5	01/07/2020	01/08/2020	05/08/2020	4,000,000.00	4,007,440.00	14,333.33	4,021,773.33
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 2.25 5/20/2020	3130AGGF6	01/07/2020	01/08/2020	05/20/2020	3,000,000.00	3,007,380.00	9,000.00	3,016,380.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.58 4/27/2020-18	3134GBHX3	01/07/2020	01/08/2020	04/27/2020	1,000,000.00	1,000,015.00	3,116.11	1,003,131.11
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.875 11/17/2020	3137EAEK1	01/13/2020	01/14/2020	11/17/2020	1,540,000.00	1,543,511.20	4,571.88	1,548,083.08
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLMC 1.875 11/17/2020	3137EAEK1	01/13/2020	01/14/2020	11/17/2020	1,845,000.00	1,849,169.70	5,477.34	1,854,647.04
007 - Wastewater Consolidated	Medium Term Notes	Apple Inc 2.85 5/6/2021	037833AR1	01/14/2020	01/16/2020	05/06/2021	125,000.00	126,832.50	692.71	127,525.21
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 1.73 11/16/2021-16	3133EGAP0	01/22/2020	01/23/2020	11/16/2021	690,000.00	689,924.10	2,221.61	692,145.71
<b>Subtotal</b>							<b>23,700,000.00</b>			
							<b>92,464,000.00</b>	<b>92,502,805.81</b>	<b>208,045.11</b>	<b>92,710,850.92</b>



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Deposits</b>										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	01/22/2020	01/22/2020	N/A	14,000,000.00	14,000,000.00	0.00	14,000,000.00
001 - Water System Consolidated	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	10,000,000.00	10,000,000.00	0.00	10,000,000.00
					<b>Subtotal</b>		<b>24,000,000.00</b>			
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	01/09/2020	01/09/2020	N/A	4,097,000.00	4,097,000.00	0.00	4,097,000.00
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	01/23/2020	01/23/2020	N/A	4,090,000.00	4,090,000.00	0.00	4,090,000.00
					<b>Subtotal</b>		<b>8,187,000.00</b>			
							<b>32,187,000.00</b>	<b>32,187,000.00</b>	<b>0.00</b>	<b>32,187,000.00</b>



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Matured										

\*No Transactions this Period\*

0.00 0.00 0.00 0.00





EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Calls</b>										
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 2 10/17/2022-20	3134GUJM3	01/17/2020	01/17/2020	10/17/2022	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 2 10/17/2022-20	3134GUJM3	01/17/2020	01/17/2020	10/17/2022	10,000,000.00	10,000,000.00	0.00	10,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 2.1 10/17/2022-20	3134GUJN1	01/17/2020	01/17/2020	10/17/2022	20,000,000.00	20,000,000.00	0.00	20,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 7/19/2021-17	3134G9N52	01/19/2020	01/19/2020	07/19/2021	3,000,000.00	3,000,000.00	0.00	3,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 7/19/2021-17	3134G9N52	01/19/2020	01/19/2020	07/19/2021	5,000,000.00	5,000,000.00	0.00	5,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA Step 7/19/2021-17	3136G3ZZ1	01/19/2020	01/19/2020	07/19/2021	3,000,000.00	3,000,000.00	0.00	3,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 2 5/16/2023-17	3133EGAD7	01/24/2020	01/24/2020	05/16/2023	1,000,000.00	1,000,000.00	0.00	1,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 2 5/16/2023-17	3133EGAD7	01/24/2020	01/24/2020	05/16/2023	1,000,000.00	1,000,000.00	0.00	1,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 7/27/2021-17	3134G9L47	01/27/2020	01/27/2020	07/27/2021	5,000,000.00	5,000,000.00	0.00	5,000,000.00
<b>Subtotal</b>							<b>56,000,000.00</b>			

56,000,000.00	56,000,000.00	0.00	56,000,000.00
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EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Sales										

\*No Transactions this Period\*

0.00	0.00	0.00	0.00
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EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Investment Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Withdrawals</b>										
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	01/30/2020	01/30/2020	N/A	10,223,000.00	10,223,000.00	0.00	10,223,000.00
<b>Subtotal</b>							<b>10,223,000.00</b>			

10,223,000.00	10,223,000.00	0.00	0.00
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EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Interest Activity  
January 2020

Portfolio	Total Interest Received	Interest Transferred to Wells Fargo*	Net Interest Activity (Reinvested)**
001 - Water System Consolidated	908,576.12	(599,453.61)	309,122.51
007 - Wastewater Consolidated	188,881.04	(110,988.76)	77,892.28
049 - Ferc Partnership	11,501.99	(11,501.99)	-
009 - BACWA	13,012.16	(13,012.16)	-
015 - DERWA	-	-	-
002 - FRWA	5,749.12	(5,749.12)	-
014 - IICP	863.49	(863.49)	-
010 - UMRWA	366.33	(366.33)	-
003 - Employees Retirement	107,295.67	-	107,295.67
065 - Water S2008A DSRF	3,411.60	-	3,411.60
068 - Water 2010A DSRF	354.00	-	354.00
Interest Transactions Total	1,240,011.52	(741,935.46)	498,076.06
099 - Wells Fargo	-	741,935.46	741,935.46
Total	1,240,011.52	-	1,240,011.52

\*Coupon and other interest received; reinvestment unavailable.

\*\*Coupon and other interest payments reinvested in specific portfolio.

Prepared by: Anjanique Walsh, Accounting Technician

Reviewed by: Sandy Lindley, Accounting Supervisor

Approved by: D. Scott Klein, Controller

Date

2-11-2020

Date

2-11

Date



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Interest Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Interest Received (Transferred to Wells Fargo)</b>										
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 2 10/17/2022-20	3134GUJM3	01/17/2020	01/17/2020	10/17/2022	0.00	0.00	90,000.00	90,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC 2.1 10/17/2022-20	3134GUJN1	01/17/2020	01/17/2020	10/17/2022	0.00	0.00	105,000.00	105,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 7/19/2021-17	3134G9N52	01/19/2020	01/19/2020	07/19/2021	0.00	0.00	80,000.00	80,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FNMA Step 7/19/2021-17	3136G3ZZ1	01/19/2020	01/19/2020	07/19/2021	0.00	0.00	30,000.00	30,000.00
001 - Water System Consolidated	LAIF Local Government Investment   LAIF LGIP	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	0.00	0.00	233,714.25	233,714.25
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 2 5/16/2023-17	3133EGAD7	01/24/2020	01/24/2020	05/16/2023	0.00	0.00	7,555.56	7,555.56
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLMC Step 7/27/2021-17	3134G9L47	01/27/2020	01/27/2020	07/27/2021	0.00	0.00	21,250.00	21,250.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	01/31/2020	01/31/2020	N/A	0.00	0.00	31,933.80	31,933.80
								<b>Subtotal</b>		<b>599,453.61</b>
002 - FRWA	LAIF Local Government Investment   LAIF LGIP	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	0.00	0.00	5,749.12	5,749.12
								<b>Subtotal</b>		<b>5,749.12</b>
007 - Wastewater Consolidated	LAIF Local Government Investment   LAIF LGIP	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	0.00	0.00	102,848.77	102,848.77
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	01/31/2020	01/31/2020	N/A	0.00	0.00	8,139.99	8,139.99
								<b>Subtotal</b>		<b>110,988.76</b>
009 - BACWA	LAIF Local Government Investment   LAIF LGIP	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	0.00	0.00	13,012.16	13,012.16
								<b>Subtotal</b>		<b>13,012.16</b>
010 - UMRWA	LAIF Local Government Investment   LAIF LGIP	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	0.00	0.00	366.33	366.33
								<b>Subtotal</b>		<b>366.33</b>
014 - IICP	LAIF Local Government Investment   LAIF LGIP	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	0.00	0.00	863.49	863.49
								<b>Subtotal</b>		<b>863.49</b>
049 - Ferc Partnership	LAIF Local Government Investment   LAIF LGIP	LAIF LGIP	LGIP1001	01/22/2020	01/22/2020	N/A	0.00	0.00	11,501.99	11,501.99
								<b>Subtotal</b>		<b>11,501.99</b>
								<b>0.00</b>	<b>0.00</b>	<b>741,935.46</b>
										<b>741,935.46</b>



EAST BAY MUNICIPAL UTILITY DISTRICT  
Monthly Interest Activity  
January 2020

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
<b>Interest Received (Reinvested)</b>										
001 - Water System Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	01/31/2020	01/31/2020	N/A	0.00	0.00	178,651.07	178,651.07
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	01/31/2020	01/31/2020	N/A	0.00	0.00	65,589.52	65,589.52
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley	MM0852	01/31/2020	01/31/2020	N/A	0.00	0.00	64,881.92	64,881.92
								<b>Subtotal</b>		<b>309,122.51</b>
003 - Employees Retirement	LAIF Local Government Investment Pool	LAIF LGIP	LGIP1005	01/15/2020	01/15/2020	N/A	0.00	0.00	107,295.67	107,295.67
								<b>Subtotal</b>		<b>107,295.67</b>
007 - Wastewater Consolidated	CAMP CA Asset Mgmt Program	CAMP MM	CAMP6035	01/31/2020	01/31/2020	N/A	0.00	0.00	61,226.12	61,226.12
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	01/31/2020	01/31/2020	N/A	0.00	0.00	8,390.91	8,390.91
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley	MM0852	01/31/2020	01/31/2020	N/A	0.00	0.00	8,275.25	8,275.25
								<b>Subtotal</b>		<b>77,892.28</b>
065 - Water S2008A DSRF	Money Market Mutual Funds	Dreyfus MM	MM6999	01/03/2020	01/03/2020	N/A	0.00	0.00	3,411.60	3,411.60
								<b>Subtotal</b>		<b>3,411.60</b>
068 - Water 2010A DSRF	Money Market Mutual Funds	Dreyfus MM	MM2642	01/03/2020	01/03/2020	N/A	0.00	0.00	354.00	354.00
								<b>Subtotal</b>		<b>354.00</b>
							<b>0.00</b>	<b>0.00</b>	<b>498,076.06</b>	<b>498,076.06</b>



AGENDA NO.  
MEETING DATE

11.1-11.3  
February 25, 2020



TITLE **CENTRAL VALLEY PROJECT REPAYMENT CONTRACT**

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTIONS

Take the following actions related to the amendment of the District's existing Long Term Renewal Contract with the United States Bureau of Reclamation (Reclamation) for Central Valley Project (CVP) water service to convert the Long Term Renewal Contract to a permanent Repayment Contract:

1. Make the following determinations regarding California Environmental Quality Act (CEQA) compliance:
  - a. The Freeport Regional Water Project Environmental Impact Report/Environmental Impact Statement (Freeport Project EIR/EIS) fully analyzed the potential effects of diverting water under the District's Long Term Renewal Contract and under that contract as amended by conversion to a permanent Repayment Contract.
  - b. None of the conditions exist requiring preparation of subsequent or supplemental CEQA review pursuant to Public Resources Code section 21166 or CEQA Guidelines section 15162.
  - c. The District's Long Term Renewal Contract as amended by conversion to a Repayment Contract falls within the scope of the project analyzed in the Freeport Project EIR/EIS.
  - d. No further CEQA review is required.
2. Make additional findings and determinations regarding the conversion of the District's Long Term Renewal Contract to a permanent Repayment Contract, approve the conversion, and direct the General Manager to execute a converted contract in substantially the same form attached to the enclosed Resolution.
3. Authorize District staff to make an accelerated repayment of the District's outstanding share of the costs of construction of CVP facilities, as calculated in accordance with the Repayment Contract's terms, applicable law, and duly-adopted Reclamation policies. The accelerated payments will include an initial payment of approximately \$72,969 upon execution of the amended contract and additional payments currently estimated at approximately \$800,000 between now and 2030.

Funds Available: FY		Budget Code:	
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR		APPROVED
Water and Natural Resources	 Michael T. Tognolini		 General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.



## **SUMMARY**

In 1970, the District executed a contract with Reclamation for delivery of CVP water from the American River to meet an identified need for additional water during droughts. In 2001, the District executed an Amendatory Contract for CVP water which authorized the District to take delivery of CVP water from a point on the Sacramento River near Freeport and incorporated provisions of the Central Valley Project Improvement Act of 1992. In 2006, the District executed a Long Term Renewal Contract containing substantially the same terms and conditions as the Amendatory Contract except that it provided for water deliveries during an initial term of 40 years ending in 2046, and authorized renewal for subsequent 40-year periods on mutually agreeable terms. The Long Term Renewal Contract remains in effect.

In 2016, Congress enacted the Water Infrastructure Improvements for the Nation (WIIN) Act, which directed Reclamation to convert each existing CVP water service contract to a type of contract known as a “repayment contract” on the request of the contractor. In a repayment contract, the contractor agrees to prepay its outstanding share of the capital costs of the Reclamation facilities, and in return receives a contract which remains in effect so long as the contractor pays all rates, charges, and fees due under the contract. District staff requested to enter negotiations towards a repayment contract in 2018.

District staff has now completed negotiations with Reclamation on the terms of an amendment to the Long Term Renewal Contract which will convert it to a repayment contract in accordance with the WIIN Act. The proposed repayment contract contains substantially the same terms and conditions as the Long Term Renewal Contract, with the primary differences being (1) the removal of the 2046 expiration date found in the District’s Long Term Renewal Contract, and (2) terms requiring the District to pay its outstanding share of capital costs of the CVP facilities it uses and benefits from. Those costs are estimated at \$72,969 due upon execution of the amendment, plus additional payments totaling approximately \$800,000 to be paid through the year 2030. These sums are already payable under the Long Term Renewal Contract; the repayment contract simply accelerates the payment date.

## **DISCUSSION**

Currently, the District holds a Long Term Renewal Contract with Reclamation for delivery of CVP water. The initial contract term of 40 years ends in 2046, and may be renewed for additional periods of up to 40 years.

Pursuant to Section 4011 of the WIIN Act, the District requested the conversion of its Long Term Renewal Contract to a permanent repayment contract in May 2018. Since then, the District and Reclamation initiated formal public negotiations to amend the terms and conditions consistent with the WIIN Act, and successfully concluded the negotiations on December 13, 2019. On December 16, 2019, Reclamation formally posted the draft amended contract for a 60-day public comment period, which has concluded. The WIIN Act authority and direction for water service contract conversions to repayment contracts sunsets December 16, 2021, which means Reclamation and its contractors must have the repayment contracts negotiated and executed prior to December 16, 2021.

The repayment contract will remove the contract expiration date, and will not be subject to future renewal processes. Conversion to a permanent repayment contract will not change the quantity of CVP water available to the District, the circumstances under which that water may be made available to the

District, or any other terms of the existing contract related to the District's ability to request and receive CVP water. The key material difference is that the initial term of the Long Term Renewal Contract is 40 years, expiring in 2046, while the proposed repayment contract will remove that expiration date such that the District's CVP contract would remain in effect so long as all rates, charges, and fees are paid, and will no longer be subject to future renewal processes.

To convert to a repayment contract, the WIIN Act requires prepayment of the allocated construction cost remaining at the time of execution of the new contract. On March 28, 2019, District staff made an initial payment of \$2,984,450 towards its existing construction cost obligation. The existing Long Term Renewal Contract requires the District to repay this sum over time between now and 2030, while the proposed repayment contract would require accelerated prepayment. If the District executes the repayment contract, it will have 60 days after execution to pay off its remaining share of CVP capital costs, which is currently estimated at \$72,969. District staff would pay that sum upon execution of the repayment contract.

However, that payment will not fully discharge the District's obligation to repay capital costs. Regardless of whether the District executes the repayment contract, the District's share of outstanding CVP capital costs will be recalculated and is expected to increase. The increase will result from the application of existing Reclamation policies including (1) the Final CVP Cost Allocation Study completed by Reclamation last month, which increased the share of CVP capital costs attributable to municipal and industrial contractors by 16 percent, relative to irrigation contractors, and (2) the final construction cost "true-up" in 2030 under Reclamation's existing ratesetting policy, which typically results in adjustments to the District's capital cost share due to normal fluctuations in the District's relative share of usage of CVP facilities. Reclamation will implement the Cost Allocation Study results in its ratesetting in 2021, and when that change is made, staff expects the District will be responsible to pay approximately \$800,000 in addition to the \$72,969 that will be paid immediately. The District will have up to 10 years to pay for the additional allocated construction costs, through annual payments of CVP rates and charges.

Seventy-seven CVP contractors requested conversion to a repayment contract under the WIIN Act. CVP contractors in the American River Division that requested conversion include Sacramento Municipal Utility District, Sacramento County Water Agency, Placer County Water Agency, and others. As of today, Reclamation has completed negotiations of 17 proposed repayment contracts and posted them for public comment on its website.

## **SUSTAINABILITY**

### **Economic**

Funding for the initial \$72,969 payment is included in the FY21 budget for the CVP construction cost repayment. Future payment obligations do not change as compared with the existing CVP contract, but the payment date may be accelerated.

### **Social**

This contract provides access to CVP supplies for District customers beyond the current 2046 expiration date.

### **Environmental**

District staff concluded that the District's CVP contract as amended by contract conversion falls within the scope of the project analyzed in the Freeport Regional Water Project EIR/EIS prepared by the Freeport Regional Water Authority and Reclamation (Freeport Project EIR/EIS), and that no further CEQA analysis is required. Accordingly, as reflected in the Recommended Action section of this BD-1 and described in more detail in Attachment 1 to the enclosed Resolution, District staff has recommended that the Board make several CEQA-related determinations.

### **ALTERNATIVE**

**Do not adopt and execute the proposed repayment contract.** This alternative is not recommended as it may adversely affect the District's ability to plan for long term water supply during times of shortage if the contract is subject to future 40-year renewals.

Attachment

RESOLUTION NO. \_\_\_\_\_

APPROVING THE CONVERSION OF THE EXISTING LONG TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES BUREAU OF RECLAMATION AND THE EAST BAY MUNICIPAL UTILITY DISTRICT FOR WATER SERVICE FROM THE CENTRAL VALLEY PROJECT TO A REPAYMENT CONTRACT PURSUANT TO THE WATER INFRASTRUCTURE IMPROVEMENTS FOR THE NATION ACT OF 2016, AND MAKING DETERMINATIONS AND AUTHORIZING CERTAIN ACTIONS AND EXPENDITURES RELATED THERETO

Introduced by Director

; Seconded by Director

WHEREAS, on December 22, 1970, the East Bay Municipal Utility District (District) entered into a contract with the United States Bureau of Reclamation (Reclamation) for a water supply from Reclamation's Central Valley Project; and

WHEREAS, on July 20, 2001, the District and Reclamation amended the aforementioned contract to provide for the delivery of Central Valley Project water to the District at a point of delivery on the Sacramento River near Freeport, California (Amendatory Contract); and

WHEREAS, on February 14, 2002 the District and Sacramento County Water Agency formed a joint powers authority, the Freeport Regional Water Authority (Freeport Authority), to develop a water supply reliability project known as the Freeport Regional Water Project (Freeport Project); and

WHEREAS, the Freeport Project included the following: (1) construction and operation of new facilities to enable the District to obtain a water supply from the Central Valley Project under the District's contract with Reclamation from the point of delivery near Freeport, California specified in that contract, and (2) the long-term renewal of the Central Valley Project water supply contract between the District and Reclamation; and

WHEREAS, the Freeport Authority prepared an Environmental Impact Report/Environmental Impact Statement for the Freeport Project analyzing the environmental effects of the Freeport Project (Freeport Project EIR/EIS), which was certified by the Freeport Authority's Board of Directors on April 15, 2004; and

WHEREAS, on April 25, 2004, the District's Board of Directors, acting as a responsible agency under the California Environmental Quality Act (CEQA), reviewed and considered the environmental effects described in the Freeport Project EIR/EIS and adopted findings and a Mitigation Monitoring and Reporting Program in approving those components of the Freeport Project to be undertaken by the District; and

WHEREAS, on March 14, 2006, the District's Board of Directors again reviewed and considered the environmental effects described in the Freeport Project EIR/EIS, adopted related findings,



and authorized execution of a renewed contract (Long Term Renewal Contract) which superseded the Amendatory Contract while substantially retaining its terms, except that it extended the effective period through February 28, 2046; and

WHEREAS, on April 10, 2006, the Long Term Renewal Contract was executed by the District and Reclamation and remains in effect; and

WHEREAS, on December 16, 2016, the United States Congress enacted the Water Infrastructure Improvements for the Nation Act (WIIN Act) which directs Reclamation to convert any existing Central Valley Project water service contract, upon the contractor's request, into a contract which (1) provides for the contractor to make a lump sum repayment of its remaining share of the Central Valley Project's construction costs as determined by applicable law and Reclamation policy, (2) continues in effect so long as the contractor pays applicable charges, and (3) does not otherwise modify water service, repayment, exchange and transfer contractual rights between the contractor and Reclamation (Repayment Contract); and

WHEREAS, District staff has requested to convert its Long Term Renewal Contract to a Repayment Contract, and Reclamation is willing to enter into a converted Repayment Contract on substantially the terms and conditions attached hereto; and

WHEREAS, in accordance with the WIIN Act, the proposed Repayment Contract would not substantively modify the terms and conditions of the Long Term Renewal Contract, except the Repayment Contract (1) would continue in effect so long as the District pays all required charges, and (2) provides for early repayment of the District's remaining outstanding share of the capital cost of Central Valley Project facilities; and

WHEREAS, on March 28, 2019, the District paid Reclamation \$2,984,450, which sum equaled the District's estimated outstanding share of the construction cost of Central Valley Project facilities, as calculated based on Reclamation's rates and charges in effect in August 2018; and

WHEREAS, as of the date of this Resolution, the District's remaining outstanding share of Central Valley Project facility construction costs is \$72,969, which sum is attributable to rate adjustments made by Reclamation after August 2018 resulting from changes in the District's use of Reclamation's facilities relative to other contractors, plus accrued interest; and

WHEREAS, the District's outstanding share of construction costs for Central Valley Project facilities is expected to further increase after the Repayment Contract is executed through the year 2030 due to anticipated rate adjustments arising from (1) Reclamation's forthcoming incorporation into its ratesetting process of the conclusions of its January 2020 Final Central Valley Project Cost Allocation Study, (2) changes in the District's usage of Reclamation's facilities relative to other Central Valley Project contractors, and (3) associated interest charges; and

WHEREAS, the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, div. 35, § 85000 et seq.) (Delta Reform Act) specifies certain requirements applicable to any action which constitutes a "covered action" under that statute;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District as follows:

1. The District's Board of Directors has reviewed and considered the Freeport Project EIR/EIS and hereby finds and determines as follows:

a. The Freeport Project EIR/EIS fully analyzed the potential effects of diverting water under the District's Long Term Renewal Contract and under that contract as amended by conversion to a permanent Repayment Contract.

b. The District's Board of Directors hereby adopts the findings and determinations set forth in Attachment 1 to this Resolution entitled "CEQA Compliance for Central Valley Project Contract Conversion."

c. None of the conditions exist requiring the preparation of subsequent or supplemental CEQA review pursuant to Public Resources Code section 21166 or CEQA Guidelines section 15162.

d. The District's Long Term Renewal Contract as amended by conversion to a Repayment Contract falls within the scope of the project analyzed in the Freeport Project EIR/EIS.

e. No further CEQA review is required.

2. The District's Board of Directors hereby finds and determines that the conversion of the District's Long Term Renewal Contract to a permanent repayment contract (i) is not a "covered action" within the meaning of the Delta Reform Act pursuant to California Water Code section 85057.5, and (ii) will not result in adverse impacts to public trust resources.

3. The District's Board of Directors hereby approves the conversion of the District's Long Term Renewal Contract to a permanent Repayment Contract and directs the General Manager to execute a converted contract on behalf of the District in substantially the form enclosed as Attachment 2 to this Resolution.

4. The General Manager and his designee(s) are hereby authorized to pay all rates, charges, and fees which are or may become due under the Repayment Contract, and to take all other actions reasonably necessary to maintain compliance with said contract. Without limiting the foregoing, the General Manager or his designee is authorized to make immediate repayment to Reclamation in the amount of \$72,969, which sum equals the District's remaining outstanding share of Central Valley Project facility construction costs based on rates and charges in effect as of the date of this Resolution, and to repay any additional remaining share of construction costs which may be calculated as properly allocable to the District in accordance with the terms of the Repayment Contract and applicable law and duly-adopted Reclamation policies.

5. The Secretary of the District is directed to file a Notice of Determination in compliance with CEQA in the Counties of Alameda, Contra Costa, Sacramento, and San Joaquin.

ADOPTED this 25th day of February, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

President

ATTEST:

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

---

General Counsel

{00045928}



# **ATTACHMENT 1**

CEQA Compliance for Central Valley Project Contract Conversion

**CEQA COMPLIANCE FOR**  
**CENTRAL VALLEY PROJECT**  
**CONTRACT CONVERSION**

By adoption of the Resolution to which this memorandum is attached, the East Bay Municipal Utility District (District) has approved amendments to its existing Long Term Renewal Contract for water service from the Central Valley Project (CVP). The amendments would not change the quantity of CVP water available to the District, the circumstances under which that water may be made available to the District, or any other terms of the existing contract related to the District's ability to request and receive CVP water. Instead, the amendments would primarily result in changes in the contract's payment structure and make the contract's term perpetual such that contract renewal would not be required in the future. As a result, the District's existing Long Term Renewal Contract will be converted into a permanent repayment contract. Under the provisions of the contract, in its original form and as amended, when the District's total system storage remains below a specified threshold, the District may receive up to 133,000 acre-feet of CVP water per year, but not to exceed a total of 165,000 acre-feet during any period of three consecutive years.<sup>1</sup>

The environmental impacts of construction and operation of the facilities necessary to deliver CVP water to the District's service area were analyzed in the Freeport Regional Water Project EIR/EIS (Freeport Project EIR/EIS), discussed in more detail below. As discussed herein, the District's CVP contract, as amended by conversion to a permanent repayment contract, falls within the scope of the project analyzed in the Freeport Project EIR/EIS, and no further environmental review is required under the California Environmental Quality Act (CEQA) beyond that found in the Freeport Project EIR/EIS.

**PRIOR CEQA ANALYSIS OF THE DISTRICT'S CVP DIVERSIONS**

The District is a municipal utility district that serves water to approximately 1.4 million people in the East Bay Area of California. The District's water comes from a variety of sources, including diversions from the Sacramento River pursuant to its CVP contract with the United States Bureau of Reclamation. The District uses the Freeport Regional Water Project diversion facility on the Sacramento River and associated pipelines and other conveyance facilities (collectively, "Freeport Facility") to deliver CVP water to its service area in times of shortage. (See Figures 1 and 2.) The Freeport Facility intake has a design diversion and pumping capacity of 286 cubic feet per second (cfs) or 185 million gallons per day (MGD), of which 155 cfs (100 MGD) of capacity is allocated to the District and can be used to supplement extensive water conservation and recycling programs when the District's storage reserves are not adequate to meet the needs of its service area.

As required by CEQA, the Freeport Project EIR/EIS analyzed the full range of potential environmental impacts associated with both construction of the Freeport Facility and operation of the facility to deliver a supplemental water supply to the District, including potential impacts to public trust resources. The only significant impacts identified in the EIR/EIS were associated with project construction; project operation was found to have no potentially significant impacts, and therefore require no mitigation measures. Because construction of the facility and pipeline is complete, all potentially significant impacts have already occurred, and there are no future potentially significant impacts associated with use of the Freeport Facility to deliver water to the District, nor potential for such use to unreasonably harm public trust resources.

---

<sup>1</sup> These contractual quantities are subject to shortage based on the availability of water to the CVP and the terms of the contract and the M&I Water Shortage Policy referenced therein.

The Freeport Project EIR/EIS was prepared prior to approval and construction of the Freeport Facility, and was certified on April 15, 2004 by the Board of Directors for the Freeport Regional Water Authority (FRWA), a joint powers authority consisting of the District and the Sacramento County Water Agency (SCWA). FRWA was the lead agency for the EIR/EIS. Acting as a CEQA responsible agency, the District's Board of Directors considered the Freeport Project EIR/EIS, approved the portions of the project within its jurisdiction, and adopted findings and a mitigation monitoring and reporting plan on April 27, 2004 (including a statement of overriding considerations regarding potentially significant and unavoidable impacts resulting from project construction). Subsequently, in 2006, also acting as a responsible agency, the District approved modifications and adjustments to the District facilities extending the Freeport facilities to the District's Mokelumne Aqueducts, in reliance on an Addendum to the Freeport Facility EIR and an IS/MND addressing the proposed changes and modifications, both of which were prepared by FRWA. At that time, the District also adopted a supplemental mitigation monitoring and reporting plan to address potential impacts associated with those modifications and adjustments.

All facilities necessary to divert water from the Sacramento River and convey that water to the District's service area have been constructed, and the Freeport Facility is fully operational and has been used to convey water to the District and SCWA.

### **SUBSEQUENT/SUPPLEMENTAL CEQA REVIEW DETERMINATION**

Pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162, once an EIR has been certified for a project, supplemental or subsequent environmental review is not required unless:

- Criterion 1: Substantial changes in the project are proposed which would require major revisions to the EIR due to the involvement of new significant environmental impacts or substantial increases in the severity of significant impacts previously identified in the EIR; OR
- Criterion 2: Substantial changes occur regarding the circumstances under which the project is undertaken which will require major revisions to the EIR due to the involvement of new significant environmental impacts or substantial increases in the severity of significant impacts previously identified in the EIR; OR
- Criterion 3: New information, which was not known and could not have been known at the time of EIR certification, has become available and shows the project would cause significant environmental impacts not identified in the EIR or substantial increases in the severity of significant impacts previously identified in the EIR.

The District has reviewed the proposed conversion of its Long Term Renewal Contract to a permanent repayment contract and determined that none of these triggers for the preparation of subsequent or supplemental environmental review have been met.

Contract conversion does not result in any substantial changes to the project analyzed in the Freeport Project EIR/EIS. As discussed above, contract conversion would not change the quantity of CVP water available to the District, the circumstances under which that water may be made available to the District, or any other terms of the existing contract which relate to the District's ability to request and receive CVP water. Under the provisions of the contract, in its original form and as amended, when the District's total system storage remains below a specified threshold, the District may receive up to 133,000 acre-feet of CVP water per year, but not to exceed a total of 165,000 acre-feet during any period of three consecutive years, and subject to CVP shortage provisions. As with CVP water delivered under the District's Long

Term Renewal Contract, CVP water delivered under the permanent repayment contract would use the same existing facilities, would not require the construction of new facilities, and would be subject to the same contractual limits on maximum diversion and CVP shortage provisions. While contract conversion would remove future requirements for contract renewal every 40 years, the length of the contract term was not considered in, and did not affect the Freeport Facility EIR/EIS's analysis of diversion-related impacts. Instead, that analysis was driven by future water demand estimates; since EIR certification, the District's future water demand projections have remained consistent with, and are actually slightly lower than, that analyzed in the Freeport Project EIR/EIS.

District staff also considered relevant facts and issues and determined that (1) there have not been any substantial changes in circumstances under which the proposed project is to be undertaken, and (2) no new information has become available showing that the project will cause new or more severe significant environmental impacts than those identified in the Freeport Project EIR/EIS. The District has therefore determined that the triggers for the preparation of subsequent or supplemental CEQA review as set forth in Public Resources Code section 21166 and CEQA Guidelines section 15162 have not been met.

## **CONCLUSION**

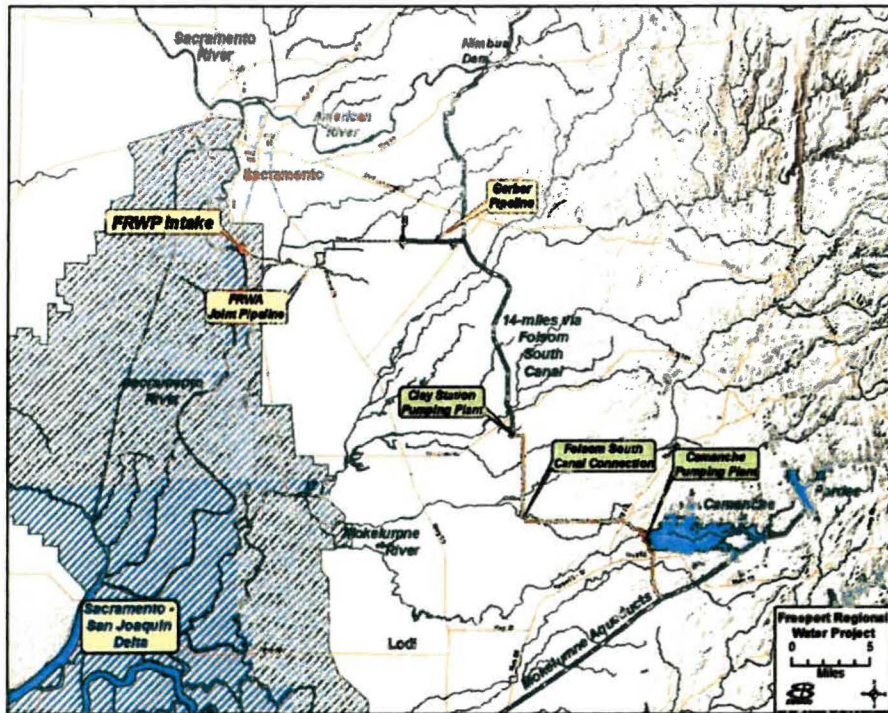
To approve the amendments to its CVP contract, the District is acting as a responsible agency in reliance on the Freeport Project EIR/EIS. The Freeport Project EIR/EIS adequately identifies and analyzes the potential impacts of the delivery of CVP water for diversion at the Freeport Facility under the terms of the proposed revisions to the District's CVP contract. Therefore, none of CEQA's triggers for the completion of subsequent or supplemental environmental review have been met, and subsequent or supplemental environmental review is therefore not required pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162. More specifically:

- The conversion of the District's Long Term Renewal Contract to a permanent repayment contract does not involve substantial changes in the project analyzed in the Freeport Project EIR/EIS that would require major revisions to the EIR due to the involvement of new significant environmental impacts or substantial increases in the severity of significant impacts previously identified in the EIR.
- There have been no substantial changes in circumstances that will require major revisions to the EIR due to the involvement of new significant environmental impacts or substantial increases in the severity of significant impacts previously identified in the EIR.
- No new information, which was not known and could not have been known at the time of EIR certification, has become available showing that the District's CVP contract, as converted to a permanent repayment contract, would cause significant environmental impacts not identified in the EIR or substantial increases in the severity of significant impacts previously identified in the EIR.

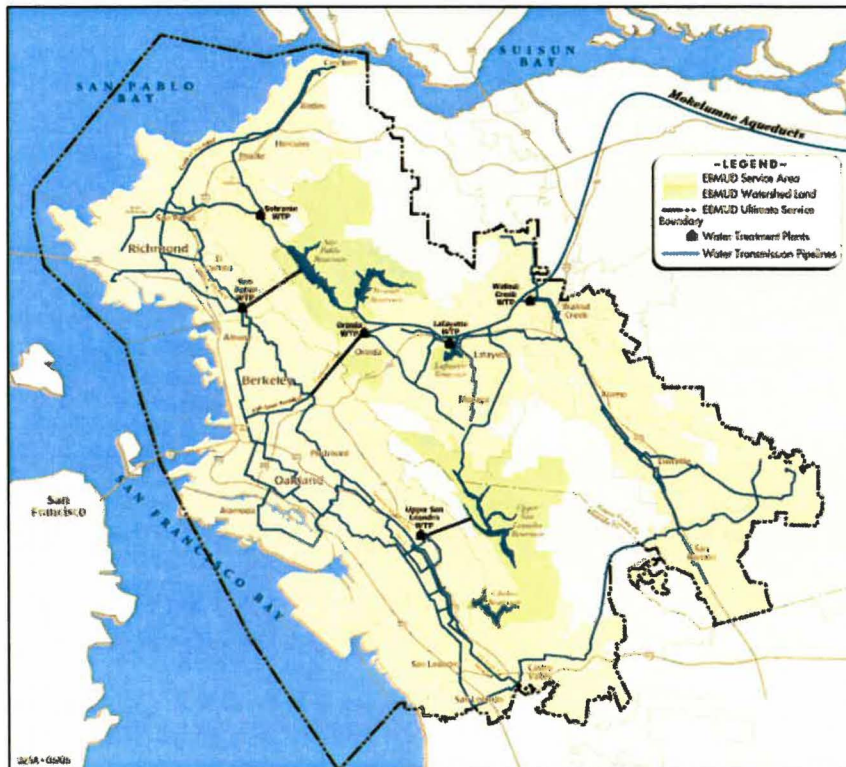
Furthermore, the conversion of the contract will not result in unreasonable harm to public trust resources. This conclusion is separate and distinct from the CEQA analysis and is based on independent consideration of (1) the Long Term Renewal Contract provisions to be altered, or retained without alteration, following conversion into a permanent repayment contract, and (2) the environmental impacts analysis contained in this memorandum, the Freeport Project EIR/EIS, and the remainder of the District's administrative record.



**Figure 1. Map of Freeport Facilities**



**Figure 2. Map of EBMUD Water System**





## **ATTACHMENT 2**

**Contract Between the United States and  
East Bay Municipal Utility District  
Providing for Project Water Service  
and Facilities Repayment**

**[Proposed]**



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

CONTRACT BETWEEN THE UNITED STATES  
AND  
EAST BAY MUNICIPAL UTILITY DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE  
AND FACILITIES REPAYMENT

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

CONTRACT BETWEEN THE UNITED STATES  
AND  
EAST BAY MUNICIPAL UTILITY DISTRICT  
PROVIDING FOR PROJECT WATER SERVICE

AND FACILITIES REPAYMENT

1                   THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
2   in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or  
3   supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),  
4   as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,  
5   July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),  
6   October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992  
7   (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act  
8   (Public Law 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all collectively  
9   hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF  
10   AMERICA, hereinafter referred to as the United States, represented by the officer executing this  
11   Contract, hereinafter referred to as the Contracting Officer, and EAST BAY MUNICIPAL  
12   UTILITY DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of  
13   California, duly organized, existing, and acting pursuant to the laws thereof;

14                   WITNESSETH, That:

EXPLANATORY RECITALS

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

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

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

[4<sup>th</sup>] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-5183A, dated December 22, 1970, hereinafter referred to as the Original Contract, which established terms for the delivery to the Contractor of a supplemental supply of Project Water from the American River Division, of up to 150,000 acre-feet per year of Project Water from a point on the Folsom South Canal at Station 666+50; and

[4.1] WHEREAS, Contract No. 14-06-200-5183A was superseded by Amendatory Contract No. 14-06-200-5183A-1, dated July 20, 2001; and

[4.2] WHEREAS, Amendatory Contract No. 14-06-200-5183A-1 was superseded by

Long Term Renewal Contract No. 14-06-200-5183A-LTR1, dated April 10, 2006, hereinafter referred to as the Existing Contract; and

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

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

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

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

[8.1] WHEREAS, WIIN Act, Section 4011(a)(4)(C) further provides all contracts entered into pursuant to WIIN Act, Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users’ association [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the

water users' association [Contractor] and their landowners as provided under State law.”; and

[8.2] WHEREAS, WIIN Act, Section 4011(d)(3) and (4) provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this section, any obligations under the reclamation law, including the continuation of Restoration Fund charges pursuant to section 3407(d) (Public Law 102-575), of the water service and repayment contractors making prepayments pursuant to this section.”; and

[8.3] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert municipal and industrial (M&I) water service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

[8.4] WHEREAS, the Contracting Officer and the Contractor agree to amend and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal Reclamation law with the execution of this amended Contract on the terms and conditions set forth below; and

[8.5] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with WIIN Act, Section 4011; and

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

[10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer projected future demand for water use such that the Contractor has the

78 capability and expects to utilize fully for reasonable and beneficial use the quantity of Project  
79 Water to be made available to it pursuant to this Contract; and

80 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and  
81 agricultural areas within California for more than 50 years, and is considered by the Contractor as  
82 an essential portion of its water supply; and

83 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the  
84 Contractor's, depend upon the continued availability of water, including water service from the  
85 Project; and

86 [12.1] WHEREAS, in the California Bay-Delta Authority (CALFED) Programmatic  
87 Record of Decision, dated August 28, 2000, the United States and the State of California adopted  
88 a general target of continuously improving Delta water quality for all uses. The CALFED  
89 Agencies' target for providing safe, reliable, and affordable drinking water in a cost-effective  
90 way, is to achieve either: (a) average concentrations at Clifton Court Forebay and other southern  
91 and central Delta drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon,  
92 or (b) an equivalent level of public health protection using a cost-effective combination of  
93 alternative source waters, source control and treatment technologies; and

94 [13<sup>th</sup>] WHEREAS, the Secretary of the Interior (Secretary) intends through coordination,  
95 cooperation, and partnerships to pursue measures to improve water supply, water quality, and  
96 reliability of the Project for all Project purposes; and

97 [13.1] WHEREAS, the Contractor and the water users in its Service Area have improved  
98 and will continue to improve water use efficiency through water conservation, water reclamation,



and other Best Management Practices. Implementation of these measures has reduced and will continue to reduce the ability of the Contractor and the water users in its Service Area to withstand a Condition of Shortage; and

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

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

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

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

[18<sup>th</sup>] WHEREAS, in recognition of dry year considerations, the Contractor is willing to forego deliveries in certain years when the Project system faces operational limits and the Contractor has sufficient carryover storage under its exclusive control; and

[19<sup>th</sup>] WHEREAS, it is the mutual interest of the parties to encourage the development by the Contractor of additional water storage capacity, including conjunctive use and ground-water storage programs; and

[20<sup>th</sup>] WHEREAS, in this instance, "historic use" of Project Water is not an appropriate basis for calculating the supply of Project Water to be made available to the Contractor during

years in which Project Water shortages are being imposed on Project Contractors north of the Sacramento/San Joaquin River Delta (“Delta”), and therefore this Contract must incorporate a different methodology for calculating the amount of Project Water to be made available to the Contractor during water short years; and

[21<sup>st</sup>] WHEREAS, it is understood that this Contract will be the basis of substantial capital investments by the Contractor in new diversion and conveyance facilities, which are intended to reduce the frequency and severity of customer deficiencies within the Contractor’s water service area, and may provide available excess capacity for the use and benefit of the United States, the environment, and other Project Contractors; and

[22<sup>nd</sup>] WHEREAS, the Contractor, in accordance with the terms and conditions of the original contract, has paid substantial sums to the United States, and has not taken any substantial deliveries under its original contract. Said payment has reduced potential deficit obligations to the Contractor and has likely resulted in lower water rates paid by other Project Contractors.

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

#### DEFINITIONS

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

(a) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;

(b) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined

142 annually by the Contracting Officer pursuant to this Contract;

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

146 (d) "Contracting Officer" shall mean the Secretary's duly authorized  
147 representative acting pursuant to this Contract or applicable Federal Reclamation law or  
148 regulation;

149 (e) "Contract Total" shall mean either the maximum amount of  
150 133,000 acre-feet of water to which the Contractor is entitled under subdivision (a)(1) of Article  
151 3 of this Contract; or, the maximum amount of 150,000 acre-feet of water to which the  
152 Contractor is entitled in any given year under subdivision (a)(2) or (a)(3), whichever subdivision  
153 is the then-operative provision, of Article 3 of this Contract;

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

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

160 (h-i) Omitted;

161 (j) "Full Cost Rate" shall mean an annual rate as determined by the  
162 Contracting Officer that shall amortize the expenditures for construction properly allocable to the  
163 Project irrigation or municipal and industrial (M&I) functions, as appropriate, of facilities in

service including all operation and maintenance (O&M) deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions.

Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of October 12, 1982 (RRA). The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the RRA (96 Stat. 1263), as amended;

(k-l) Omitted;

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

(n) Omitted;

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

Water uses established before February 28, 2020 and known to the Contracting Officer and the Contractor are deemed to be authorized uses of M&I Water.

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

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

- 188 (r) Omitted;
- 189 (s) "Project" shall mean the Project owned by the United States and managed  
190 by the Department of the Interior, Bureau of Reclamation;
- 191 (t) "Project Contractors" shall mean all parties who have contracts for water  
192 service for Project Water from the Project with the United States pursuant to Federal  
193 Reclamation law;
- 194 (u) "Project Water" shall mean all water that is developed, diverted, stored, or  
195 delivered by the Secretary in accordance with the statutes authorizing the Project and in  
196 accordance with the terms and conditions of water rights acquired pursuant to California law;
- 197 (v) "Rates" shall mean the payments determined annually by the Contracting  
198 Officer in accordance with the then-current applicable water ratesetting policies for the Project,  
199 as described in subdivision (a) of Article 7 of this Contract;
- 200 (w) "Recent Historic Average" shall mean the most recent five-year average of  
201 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its  
202 preceding contract(s);
- 203 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed  
204 successor, or an authorized representative acting pursuant to any authority of the Secretary and  
205 through any agency of the Department of the Interior;
- 206 (y) "Tiered Pricing Component" shall be the incremental amount to be paid  
207 for each acre-foot of Water Delivered as described in Article 7 of this Contract;
- 208 (z) "Water Delivered" or "Delivered Water" shall mean Project Water

diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

(z.1) "Total System Storage" shall mean the quantity of untreated water stored in Pardee, Camanche, San Pablo, Upper San Leandro, Briones, Lafayette, and Chabot Reservoirs, and any quantity of water that has been moved from said reservoirs to other untreated water storage facilities operated for the benefit of Contractor in the same Year;

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

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

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

(dd) "Additional Capital Obligation" shall mean construction costs or other capitalized costs incurred after February 28, 2020 or not reflected in the Existing Capital Obligation as defined herein and in accordance with WIIN Act, Section 4011, subsection (a)(3)(B).

(ee) "Existing Capital Obligation" shall mean the remaining amount of construction costs or other capitalized costs allocated to the Contractor as described in Section 4011, subsection (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, dated

[DATE], as adjusted to reflect payments not reflected in such schedule. The Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit C, which is incorporated herein by reference.

(ff) "Repayment Obligation" shall mean the amount due and payable to the United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act.

TERM OF CONTRACT

2. (a) This Contract shall be effective February 28, 2020 and shall continue so long as the Contractor pays applicable Rates and Charges under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law;

(1) Provided, That the Contracting Officer shall not seek to terminate this Contract for failure to fully or timely pay applicable Rates and Charges by the Contractor, unless the Contracting Officer has first provided at least sixty (60) calendar days written notice to the Contractor of such failure to pay and Contractor has failed to cure such failure to pay, or to diligently commence and maintain full curative payments satisfactory to the Contracting Officer within the sixty (60) calendar days' notice period;

(2) Provided further, That the Contracting Officer shall not seek to suspend making water available or declaring Water Made Available pursuant to this Contract for non-compliance by the Contractor with the terms of this Contract or Federal law, unless the Contracting Officer has first provided at least thirty (30) calendar days written notice to the Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully



cured within the thirty (30) calendar days' notice period. If the Contracting Officer has suspended making water available pursuant to this paragraph, upon cure of such noncompliance satisfactory to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

(3) Provided further, That this Contract may be terminated at any time by mutual consent of the parties hereto.

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage limitations, reporting, and the Full Cost pricing provisions of the Reclamation Reform Act of 1982 shall no longer be applicable to the Contractor pursuant to this Contract.

(c) Omitted.

(d) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits, under the Act of June 21, 1963 (77.Stat. 68), to the extent allowed by law.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor, Project Water pursuant to either subdivision (1), (2), or (3) below:

(1) At Freeport on the Sacramento River, the Contractor shall be entitled to take delivery of up to a total of 133,000 acre-feet of Project Water for M&I purposes in any Year in which the Contractor's March 1 forecast of its October 1 Total System Storage, as

revised monthly through May 1 is less than 500,000 acre-feet based on a 50 percent exceedance, or any different reasonable exceedance used by the Contractor to declare rationing within the Contractor's Water Service Area, or as otherwise agreed to by the parties (referred to as the TSS forecast). Said entitlement shall not exceed a total of 165,000 acre-feet of Water delivered in any three consecutive Year period that the Contractor's Total System Storage forecast remains below 500,000 acre-feet.

(2) At Site 5 on the lower American River as described in subdivision (a)(2) of Article 5 of this Contract, the Contractor shall be entitled to take delivery of up to a total of 150,000 acre-feet of Project Water for M&I purposes in any Year, provided that conditions in Article 5(a)(2) are satisfied.

(3) At Station 666+50 on the Folsom South Canal, the Contractor shall be entitled to take delivery of up to a total of 150,000 acre-feet of Project Water for M&I purposes in any Year, only under the terms and conditions of Article 5(a)(3). The quantity of Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement (PEIS) required by Section 3409 of the CVPIA,

295 projected that the Contract Total set forth in this Contract will not be available to the Contractor  
296 in many years. During the five years immediately preceding execution of the Amendatory  
297 Contract No. 14-06-200-5183A-1, dated July 20, 2001, the average amount of water made  
298 available under the Original Contract was 75,000 acre-feet based on contract minimum  
299 quantities. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the  
300 parties under any provision of this Contract.

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

303 (d) The Contractor shall make reasonable and beneficial use of all water  
304 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),  
305 ground-water banking programs, surface water storage programs, and other similar programs  
306 utilizing Project Water or other water furnished pursuant to this Contract conducted within the  
307 Contractor's Service Area which are consistent with applicable State law and result in use  
308 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge  
309 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to  
310 Article 25 of this Contract; Provided, further, That such water conservation plan demonstrates  
311 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,  
312 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance  
313 with Federal Reclamation law. Ground-water recharge programs, ground-water banking  
314 programs, surface water storage programs, and other similar programs utilizing Project Water or  
315 other water furnished pursuant to this Contract conducted outside the Contractor's Service Area

may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or other environmental documentation referred to in this Article.

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

water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

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

(h) The Contractor’s right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract.

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

(j) The Contracting Officer shall make reasonable efforts to protect the water

rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting Officer retains the right to object to the substance of the Contractor's position in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

TIME FOR DELIVERY OF WATER

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

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

according to the approved schedule for the Year commencing on such March 1.

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

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

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at one of the following points of delivery; Provided, That any necessary consultation under Section 7 of the ESA, and compliance with NEPA, as applicable, has been completed prior to any diversions:

(1) A point of delivery on the Sacramento River at Freeport (Freeport). It is the intent of the parties to pursue this point of delivery in cooperation with City and County of Sacramento and the Sacramento County Water Agency. The parties acknowledge that the point of delivery identified above, is included as an authorized point of delivery under the water rights for the Project if it is sited consistent with the State Water Resources Control Board (SWRCB) Order of July 29, 1999, pertaining to Permits 11315 and 11316 or other existing appropriate SWRCB permits. If it is not, Project Water will not be delivered to this point of



402 delivery unless and until such point is added to the water rights permits of the Project. Subject to  
403 reimbursement of costs pursuant to Article 24 of this Contract the Contracting Officer will  
404 petition the California SWRCB to include the necessary points of delivery to the water rights for  
405 the Project, and the Contractor shall cooperate with and assist the Contracting Officer in  
406 prosecuting such petition in a timely manner. The Contracting Officer shall bear neither  
407 responsibility nor liability for existing and/or future constructed non-Federal diversion or  
408 delivery facilities or the use thereof.

409 (2) A point of delivery identified as "Site 5" in the Environmental  
410 Impact Statement supporting the Existing Contract published in December 2000, subject to the  
411 following conditions: (i) prior to approval to divert from Site 5, the Contractor must complete  
412 and implement a water storage strategy, satisfactory to the Contracting Officer, which will allow  
413 the Contractor to meet Project purposes within the necessary flow pattern limitations  
414 accompanied by the appropriate environmental documentation; (ii) prior to the approval to divert  
415 from Site 5 the Contractor must comply with all relevant State and Federal laws and regulations  
416 including but not limited to the California Wild and Scenic Rivers Act; (iii) the Contractor will  
417 not divert at a rate higher than 155 cfs, or when the American River flow rates are below those  
418 specified in the decision of Judge Richard Hodge in Alameda Superior Court on January 2, 1990;  
419 (iv) the Contractor will not divert unless the point of delivery is an authorized point of diversion  
420 for the associated Project Water rights.

421 (3) Deliveries of water diverted from Nimbus Dam are hereby  
422 prohibited; Provided, however, if the permitting and necessary agreements for a diversion at

either Freeport or Site 5 are not completed by July 31, 2002, or another date agreed to by the parties, deliveries shall be made, without further amendment of the Contract, at Station 666+50 on the Folsom South Canal provided that the Contractor makes good faith efforts and devotes adequate resources to obtain the necessary permits and agreements.

Such deliveries shall be made in accordance with the decision of Judge Richard Hodge, dated January 2, 1990, in Alameda County Superior Court Action No. 425955. Once a diversion project for delivery of water under this Contract is constructed at Freeport or Site 5 and is fully operational, diversion of water at Nimbus Dam shall no longer be an alternative source for delivery of Project or non-Project water to Contractor under this Contract.

(b) Omitted.

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

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contractor, or any other appropriate entity as designated by the Contracting Officer (hereafter "other appropriate entity") at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor prior to making a final determination of the quantity delivered for that period of time.

444                   (e)     The Contracting Officer shall not be responsible for the control, carriage,  
445 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this  
446 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor  
447 shall indemnify the United States, its officers, employees, agents, and assigns on account of  
448 damage or claim of damage of any nature whatsoever for which there is legal responsibility,  
449 including property damage, personal injury, or death arising out of or connected with the control,  
450 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery  
451 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting  
452 Officer or any of its officers, employees, agents, or assigns with the intent of creating the  
453 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or  
454 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or  
455 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a  
456 malfunction of facilities owned and/or operated by the United States.

457                   (f)     The parties agree that for the purposes of taking delivery of water under  
458 this Contract, at Freeport on the Sacramento River or at Site 5 on the Lower American River, the  
459 Contractor shall have the right to construct a facility which connects to and extends from or near  
460 the existing terminus of the Folsom South Canal or at any other points of delivery set forth in  
461 Article 5(a) to the Mokelumne Aqueducts. The Contractor shall also have the right to use the  
462 Folsom South Canal as a conveyance facility for Project Water that may be delivered to the  
463 Contractor at any location and pumped back to the Folsom South Canal through a pipeline to be  
464 constructed and operated by the Contractor at its expense and which will connect to the Folsom

465 South Canal at a point located northerly of Grant Line Road at Station 522+81 to accommodate  
466 the Site 5 option, or at a location in the vicinity of Grant Line Road at approximately Station  
467 666+50 to accommodate the Freeport East option or other location as mutually agreed to, in  
468 writing, by the parties. Prior to the construction of connection facilities to the Folsom South  
469 Canal, or from the Folsom South Canal to the Mokelumne Aqueducts for any project different  
470 than the project described in the Record of Decision, the Contractor shall submit any necessary  
471 further plans, specifications and environmental documentation for making such connections to  
472 the Contracting Officer for review and written approval. The Contracting Officer shall cooperate  
473 with the Contractor in the development of such further plans, specifications and environmental  
474 documentation. All such design and construction costs shall be at the Contractor's expense. The  
475 Contracting Officer's approval of such further plans, specifications, and environmental  
476 documentation shall not be unreasonably withheld. The Contractor shall pay all reasonable costs,  
477 including overhead, incurred by the Contracting Officer in (1) the development, review, and  
478 approval of any further plans, specifications, and environmental documentation and (2)  
479 inspection and oversight costs related to any construction. The United States shall hold the  
480 Contractor harmless from any liability arising from the negligence or willful misconduct of the  
481 United States, or any of its officers, employees, agents, or assigns, in the conveyance of Project  
482 Water through the Folsom South Canal; Provided, That such liability has not arisen from  
483 performance or lack thereof of the Contractor under terms and conditions of any approvals  
484 related to the Contractor's connection facilities, this Contract or any subsequent amendment or  
485 renewal thereof.

MEASUREMENT OF WATER WITHIN THE SERVICE AREA

6. (a) The parties acknowledge that the Contractor has equipped all surface water delivery systems within its boundaries with water measuring devices at each M&I water service connection of a type acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 25 of this Contract.

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

507 schedule for implementation at such locations. The Contracting Officer shall advise the  
508 Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any,  
509 of the measuring devices or water measuring methods identified in the Contractor's report and if  
510 the Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
511 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,  
512 the parties shall within 60 days following the Contracting Officer's response, negotiate in good  
513 faith the earliest practicable date by which the Contractor shall modify said measuring devices  
514 and/or measuring methods as required by the Contracting Officer to ensure compliance with  
515 subdivision (a) of this Article.

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

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

522 (e) The Contractor shall inform the Contracting Officer on or before the 20th  
523 calendar day of each month of the quantity of M&I Water taken during the preceding month.

524

RATES, METHOD OF PAYMENT FOR WATER AND  
ACCELERATED REPAYMENT OF FACILITIES

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to Section 4011, subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit C, and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other cost obligations shall be determined in accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for all Delivered Water at Rates, Charges, and Tiered Pricing Component determined in accordance with policies for M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable costs included in the operation & maintenance component of the Rate and amounts established to recover deficits and other charges, if any,



including construction costs as identified in the following subdivisions.

(2) In accordance with the WIIN Act, the Contractor's allocable share of Project construction costs will be repaid pursuant to the provisions of this Contract.

(A) The amount due and payable to the United States, pursuant to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth as a lump sum payment as set forth in Exhibit C. The Repayment Obligation is due in lump sum within 60 days of the effective date of this Contract as provided by the WIIN Act.

Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

(B) Additional Capital Obligations that are not reflected in the schedules referenced in Exhibit C and are properly assignable to the Contractor shall be repaid as prescribed by the WIIN Act without interest except as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of the Additional Capital Obligation assigned to each Project Contractor by the Secretary shall not be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B), however, such increases or decreases will be considered under subdivision (b) of this Article. A separate agreement shall be established by the Contractor and the Contracting Officer to

566 accomplish repayment of the Additional Capital Obligation assigned to the Contractor within the  
567 timeframe prescribed by the WIIN Act, subject to the following:

568 (1) If the collective Additional Capital  
569 Obligation properly assignable to the contractors exercising conversion under Section 4011 of the  
570 WIIN Act is less than five million dollars (\$5,000,000), then the portion of such costs properly  
571 assignable to the Contractor shall be repaid not more than five (5) years after the Contracting  
572 Officer notifies the Contractor of the Additional Capital Obligation; Provided, That the reference  
573 to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

574 (2) If the collective Additional Capital  
575 Obligation properly assignable to the contractors exercising conversion under Section 4011 of the  
576 WIIN Act is equal to or greater than five million dollars (\$5,000,000), then the portion of such  
577 costs properly assignable to the Contractor shall be repaid as provided by applicable Federal  
578 Reclamation law and Project ratesetting policy; Provided, That the reference to the amount of  
579 five million dollars (\$5,000,000) shall not be a precedent in any other context.

580 (b) In the event that the final cost allocation referenced in Section 4011(b) of  
581 the WIIN Act determines that the costs properly assignable to the Contractor are greater than  
582 what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining  
583 allocated costs. The term of such additional repayment contract shall be not less than one (1)  
584 year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate  
585 of repayment of such amount may be developed by the Contractor and Contracting Officer. In  
586 the event that the final cost allocation indicates that the costs properly assignable to the

Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such overpayment as an offset against any outstanding or future obligations of the Contractor, with the exception of Restoration Fund charges pursuant to Section 3407(d) of Public Law 102-575.

(c) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Component as follows:

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

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

(d) At the time the Contractor submits the initial schedule for the delivery of

608 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the  
609 Contractor shall make an advance payment to the United States equal to the total amount payable  
610 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water  
611 scheduled to be delivered pursuant to this Contract during the first two calendar months of the  
612 Year. Before the end of the first month and before the end of each calendar month thereafter, the  
613 Contractor shall make an advance payment to the United States, at the Rate(s) set under  
614 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract  
615 during the second month immediately following. Adjustments between advance payments for  
616 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of  
617 the following month; Provided, That any revised schedule submitted by the Contractor pursuant  
618 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this  
619 Contract during any month shall be accompanied with appropriate advance payment, at the Rates  
620 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such  
621 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to  
622 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no  
623 additional Project Water shall be delivered to the Contractor unless and until an advance payment  
624 at the Rates then in effect for such additional Project Water is made. Final adjustment between  
625 the advance payments for the Water Scheduled and payments for the quantities of Water  
626 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no  
627 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried  
628 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last

629 day of February.

630 (e) The Contractor shall also make a payment in addition to the Rate(s) in  
631 subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the  
632 appropriate Tiered Pricing Component then in effect, before the end of the month following the  
633 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered  
634 as shown in the water delivery report for the subject month prepared by the Contracting Officer.  
635 The water delivery report shall be deemed a bill for the payment of Charges and the applicable  
636 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment  
637 of Charges shall be made through the adjustment of payments due to the United States for  
638 Charges for the next month. Any amount to be paid for past due payment of Charges and the  
639 Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

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

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

648 (h) All revenues received by the United States from the Contractor relating to  
649 the delivery of Project Water or the delivery of non-Project water through Project facilities shall

be allocated and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the then-current Project ratesetting policies for M&I Water.

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

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

(k) 1. Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of delivery the Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water

671 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
672 Contract Total, shall equal one-half of the difference between the Rate established under  
673 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing  
674 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total  
675 shall equal the difference between (i) the Rate established under subdivision (a) of this Article  
676 and (ii) the M&I Full Cost Water Rate.

677 (2) Omitted.

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

683 (l) Rates under the M&I ratesetting policy will be established to recover only  
684 reimbursable O&M (including any deficits) and capital costs of the Project, as those terms are  
685 used in the then-current Project M&I ratesetting policy, and interest, where appropriate, except in  
686 instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting  
687 policy. Changes of significance in practices which implement the Contracting Officer's  
688 ratesetting policies will not be implemented until the Contracting Officer has provided the  
689 Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

690 (m) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the  
691 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates



adjusted upward or downward to reflect the changed costs (if any) incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in accordance with the then-applicable Project ratesetting policy.

(n) Omitted.

(o) With respect to the Rates for M&I Water, the Contractor asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies which it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or imposition of any deficit charges accruing during the term of the Original and the Existing Contracts; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Original and the Existing Contracts; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I Contractor on any of these issues, and credits for payments heretofore made; Provided, That the basis for such ruling is applicable to the Contractor.

NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

8. Omitted.

SALES, TRANSFERS, OR EXCHANGES OF WATER

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

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation including, but not limited to, documents prepared pursuant to NEPA and ESA analyzing annual transfers within such geographical areas, and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation

and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five-year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, ground-water recharge, water banking, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, ground-water basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

(c) Nothing in this Contract shall be construed to require or prohibit the Contractor from making voluntary payments for retiring or avoiding any O&M deficit. Such voluntary payments would be the same as, or similar to, participation in the existing Contracting Officer's Voluntary Payment Program.

TEMPORARY REDUCTIONS--RETURN FLOWS

11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the requirements of Federal law; and (ii) the obligations of the United States under existing contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this Contract.

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

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right as seepage or return flow being put to reasonable and beneficial use

pursuant to this Contract within the Contractor's Service Area by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of Project Water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

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

(c) Omitted.

(d) In any Year in which there may occur a shortage for any of the reasons specified in subdivision (b) above, the Contracting Officer shall apportion the available Project Water supply among the Contractor and others entitled, under existing contracts and future contracts (to the extent such future contracts are permitted under subsections (a) and (b) of Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the contractual obligations of the United States and consistent with the then-current M&I Water Shortage Policy for the Project or any modifications or replacement thereof; Provided, That the 133,000 acre-feet of Project Water referenced in Article 3(a) shall be used as the base amount (equivalent to the term "historic use" applied in the M&I Water Shortage Policy for the Project, dated February 17, 1994) for the purpose of calculating Project Water shortages applicable to the Contractor. Such Policy shall be amended, modified, or superseded only through a public notice

817 and comment procedure.

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

825 UNAVOIDABLE GROUNDWATER PERCOLATION

826 13. Omitted.

827 RULES, REGULATIONS, AND DETERMINATIONS

828 14. (a) The parties agree that the delivery of Project Water or the use of Federal  
829 facilities pursuant to this Contract is subject to Federal Reclamation law, as amended and  
830 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under  
831 Federal Reclamation law.

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

836 PROTECTION OF WATER AND AIR QUALITY

837 15. (a) The United States will care for, operate and maintain reserved works in a  
838 manner that preserves the quality of the water at the highest level possible as determined by the  
839 Contracting Officer. The United States does not warrant the quality of the water delivered to the  
840 Contractor and is under no obligation to furnish or construct water treatment facilities to maintain  
841 or improve the quality of water delivered to the Contractor.

842 (b) The Contractor will comply with all applicable water and air pollution  
843 laws and regulations of the United States and the State of California; and will obtain all required  
844 permits or licenses from the appropriate Federal, State, or local authorities necessary for the



delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within its Project Water Service Area.

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

16. (a) Omitted.

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

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water within the Contractor's Service Area, subject to payment to the United States of an appropriate rate as determined by the applicable Project ratesetting policy and the Project use power policy, if such Project use power policy is applicable, each as amended, modified or superseded from time to time.

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

(3) The United States shall not be responsible for control, care, or distribution of the non-Project water before it is introduced into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United States, and its officers, agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting from the acts of the Contractor, its officers', employees', agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water into Project facilities.

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

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

(6) The provisions of this Article 16 shall not apply to water conveyed through the Folsom South Canal consistent with Article 5.

#### OPINIONS AND DETERMINATIONS

17. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of Article 17 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

#### COORDINATION AND COOPERATION

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

(b) Within 120 days following the effective date of this Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide process, which may be amended as necessary separate and apart from this Contract. The goal of

911 this process shall be to provide, to the extent practicable, the means of mutual communication  
912 and interaction regarding significant decisions concerning Project O&M on a real-time basis.

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

916 (1) The Contracting Officer will, at the request of the Contractor, assist  
917 in the development of integrated resource management plans for the Contractor. Further, the  
918 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships  
919 to improve water supply, water quality, and reliability.

920 (2) The Secretary will, as appropriate, pursue program and project  
921 implementation and authorization in coordination with Project Contractors to improve the water  
922 supply, water quality, and reliability of the Project for all Project purposes.

923 (3) The Secretary will coordinate with Project Contractors and the  
924 State of California to seek improved water resource management.

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

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

930 (d) Without limiting the contractual obligations of the Contracting Officer  
931 under the other Articles of this Contract, nothing in this Article shall be construed to limit or

constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of structures or facilities.

#### CHARGES FOR DELINQUENT PAYMENTS

19. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

#### EQUAL EMPLOYMENT OPPORTUNITY

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

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

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(c) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicant as part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

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

(e) The Contractor will comply with all provisions of Executive Order 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(f) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(g) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September

24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as amended), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

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



1037 documents.

1038 (c) The Contractor makes this Contract in consideration of and for the purpose of  
1039 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial  
1040 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including  
1041 installment payments after such date on account of arrangements for Federal financial assistance  
1042 which were approved before such date. The Contractor recognizes and agrees that such Federal  
1043 assistance will be extended in reliance on the representations and agreements made in this article,  
1044 and that the United States reserves the right to seek judicial enforcement thereof.

1045 (d) Complaints of discrimination against the Contractor shall be investigated by  
1046 the Contracting Officer's Office of Civil Rights.

1047 PRIVACY ACT COMPLIANCE

1048 23. Omitted.

1049 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1050 24. In addition to all other payments to be made by the Contractor pursuant to this  
1051 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
1052 detailed statement submitted by the Contracting Officer to the Contractor for such specific items  
1053 of direct cost incurred by the United States for work requested by the Contractor associated with  
1054 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies  
1055 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed  
1056 to in writing in advance by the Contractor. This Article shall not apply to costs for routine  
1057 Contract administration.

1058 WATER CONSERVATION

1059 25. (a) Prior to the delivery of water provided from or conveyed through federally  
1060 constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop  
1061 a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of  
1062 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

1063 Additionally, an effective water conservation and efficiency program shall be based on the  
1064 Contractor's water conservation plan that has been determined by the Contracting Officer to meet  
1065 the conservation and efficiency criteria for evaluating water conservation plans established under  
1066 Federal law. The water conservation and efficiency program contains certain definite water  
1067 conservation objectives, appropriate economically feasible water conservation measures, and  
1068 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this  
1069 Contract shall be contingent upon the Contractor's continued implementation of such water  
1070 conservation program. In the event the Contractor's water conservation plan or any revised water  
1071 conservation plan completed pursuant to subdivision (d) of Article 25 of this Contract have not  
1072 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which  
1073 the Contracting Officer determines are beyond the control of the Contractor, water deliveries  
1074 shall be made under this Contract so long as the Contractor diligently works with the Contracting  
1075 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor  
1076 immediately begins implementing its water conservation and efficiency program in accordance  
1077 with the time schedules therein.

1078 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1079 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor  
1080 shall implement the Best Management Practices identified by the time frames issued by the Mid-  
1081 Pacific Region's then-existing conservation and efficiency criteria for such M&I Water unless  
1082 any such practice is determined by the Contracting Officer to be inappropriate for the Contractor.

1083 (c) The Contractor shall submit to the Contracting Officer a report on the status

of its implementation of the water conservation plan on the reporting dates specified in the then-existing conservation and efficiency criteria established under Federal law.

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

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

#### EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

#### OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

27. Omitted.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

BOOKS, RECORDS, AND REPORTS

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

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

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

SEVERABILITY

31. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court decision identify by mutual agreement the provisions in this Contract which must be revised and (ii) within three months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the parties. Pending the completion of the actions designated above, to the extent it can do so without violating any applicable provisions of law, the United States shall continue to make the quantities of Project Water specified in this Contract available to the Contractor pursuant to the provisions of this Contract which were not found to be legally invalid or unenforceable in the final court decision.

RESOLUTION OF DISPUTES

32. Should any dispute arise concerning any provisions of this Contract, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to

1154 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting  
1155 Officer referring any matter to Department of Justice, the party shall provide to the other party 30  
1156 days' written notice of the intent to take such action; Provided, That such notice shall not be  
1157 required where a delay in commencing an action would prejudice the interests of the party that  
1158 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer  
1159 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,  
1160 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the  
1161 United States may have.

1162 OFFICIALS NOT TO BENEFIT

1163 33. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
1164 the Contractor shall benefit from this Contract other than as a water user or landowner in the  
1165 same manner as other water users or landowners.

1166 CHANGES IN CONTRACTOR'S SERVICE AREA OR ORGANIZATION

1167 34. (a) While this Contract is in effect, no change may be made in the  
1168 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other  
1169 changes which may affect the respective rights, obligations, privileges, and duties of either the  
1170 United States or the Contractor under this Contract including, but not limited to, dissolution,  
1171 consolidation, or merger, except upon the Contracting Officer's written consent.

1172 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1173 Officer will notify the Contractor of any additional information required by the Contracting  
1174 Officer for processing said request, and both parties will meet to establish a mutually agreeable  
1175 schedule for timely completion of the process. Such process will analyze whether the proposed  
1176 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;  
1177 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or  
1178 to pay for any Federally-constructed facilities for which the Contractor is responsible; and  
1179

(iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with NEPA and ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 24 of this Contract.

#### FEDERAL LAWS

35. By entering into this Contract, the Contractor does not waive its rights to contest the validity or application in connection with the performance of the terms and conditions of this Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and conditions of this Contract unless and until relief from application of such Federal law or regulation to the implementing provision of the Contract is granted by a court of competent jurisdiction.

#### NOTICES

36. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to Area Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Rd., Folsom, CA 95630-1799, and on behalf of the United States, when mailed, postage prepaid, to Board of Directors, East Bay Municipal Utility District, P.O. Box 24055, Oakland, California 94623-1055, or delivered to Board of Directors, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article for other notices.

#### CERTIFICATION OF NONSEGREGATED FACILITIES

37. Omitted

#### MEDIUM FOR TRANSMITTING PAYMENTS

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



1207

1208                   (b)     Upon execution of the Amendatory Contract, the Contractor shall furnish  
1209 the Contracting Officer with the Contractor's taxpayer's identification number (TIN). The  
1210 purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts  
1211 arising out of the Contractor's relationship with the United States.

1212

CONTRACT DRAFTING CONSIDERATIONS

1213           39.     This amended Contract has been negotiated and reviewed by the parties hereto,  
1214 each of whom is sophisticated in the matters to which this amended Contract pertains. The  
1215 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by  
1216 the parties, and no one party shall be considered to have drafted the stated articles. Single-spaced  
1217 articles are standard articles pursuant to Reclamation policy.

1218

CONFIRMATION OF CONTRACT

1219           40.     Omitted

1220

1221                   IN WITNESS WHEREOF, the parties hereto have executed this Contract as of  
1222   the day and year first above written.

1223                   THE UNITED STATES OF AMERICA

1224                   By: \_\_\_\_\_  
1225                         Regional Director, Mid-Pacific Region  
1226                         Bureau of Reclamation

1227

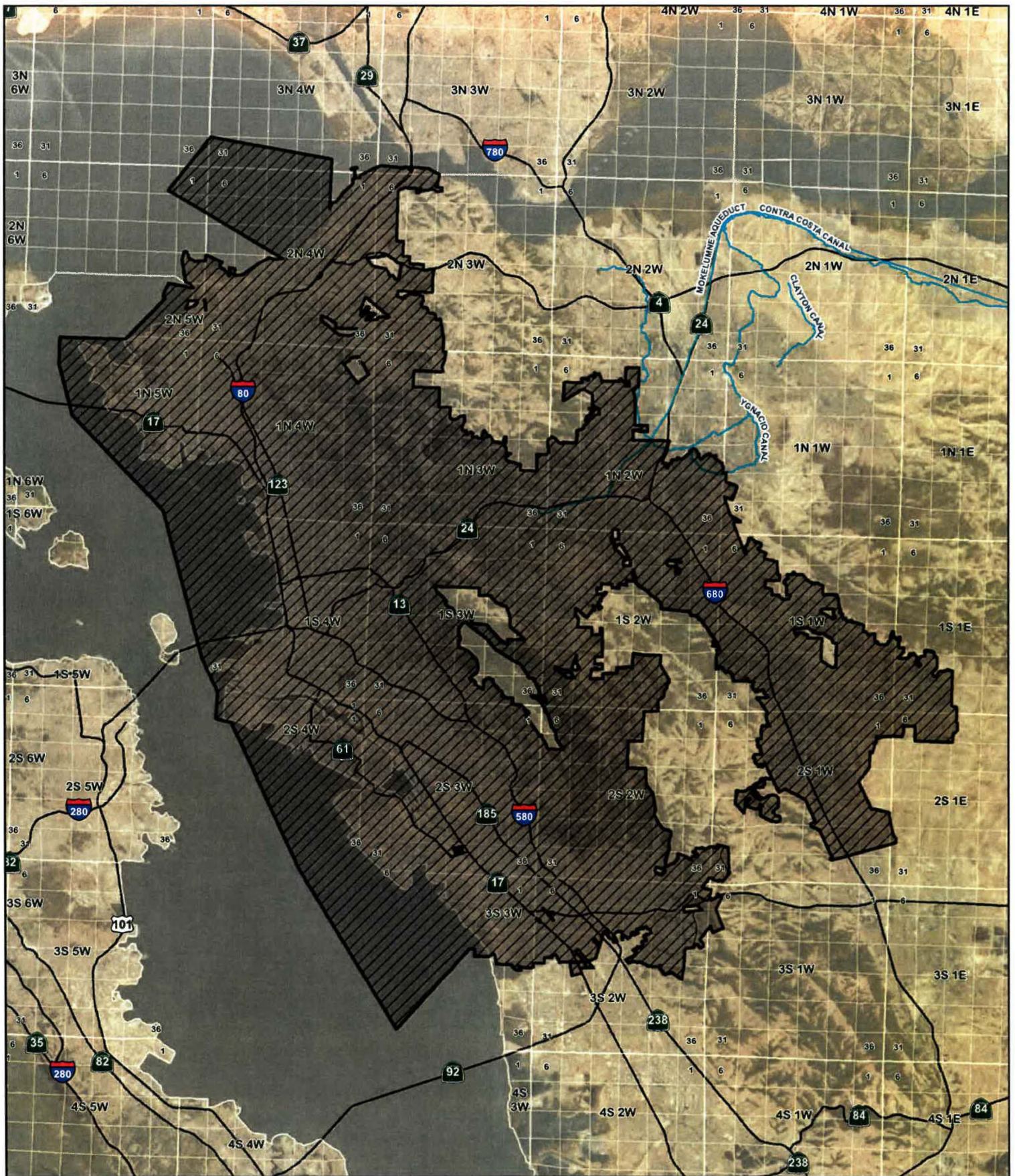
1228                   EAST BAY MUNICIPAL UTILITY DISTRICT



1229                   By: \_\_\_\_\_  
1230                         General Manager

1231   Approved As To Form:

1232   By: \_\_\_\_\_  
1233         For the Office of General Counsel





-  District Boundary
-  Contractor's Service Area

**East Bay M.U.D.**  
 Contract No. 14-06-200-5183A-LTR1  
 Exhibit A

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

Date: 7/27/2017  
 File Name: N:\Districts\Contract\eastbay\_mud\eastbay\_mud\_20170727.mxd

0 2.5 5 10 Miles

N  
  
 353-202-40



**Exhibit B**  
**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**2019 Rates and Charges**  
**(Per Acre-Foot)**

	M&I Water
<b>COST-OF-SERVICE (COS) RATE</b>	
Construction Component	\$30.95
O&M Component	
Water Marketing	\$7.34
Storage	\$15.90
Conveyance	\$2.55
Deficit Cost Component	\$60.88
ARRA	\$0.00
<b>TOTAL COS RATE (Tier 1 Rate)</b>	<b>\$117.62</b>
<b>M&amp;I FULL COST RATE</b>	<b>\$127.62</b>
<b>TIERED PRICING COMPONENTS (In Addition to Total COS Rate Above)</b>	
<b>M&amp;I</b>	
Tier 2 Rate : >80% <=90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)	\$5.00
Tier 3 Rate : >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to Be Added to Tier 1 Rate)	\$10.00
<b>CHARGES AND ASSESSMENTS (Payments in Addition to Rates)</b>	
P.L. 102-575 Surcharges (Restoration Fund Payments) [Section 3407(d)(2)(A)]	\$21.26
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.30

**EXPLANATORY NOTES**

- 1 The surcharges were determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are determined on a fiscal year basis (10/1-9/30).
- 2 The Trinity Public Utilities District Assessment is applicable to each acre-foot of water delivered from 3/1/2019-2/28/2020 and is adjusted annually.

The Historical Use, as defined in the CVP M&I Water Shortage Policy, is  
133,000 acre-feet.

This Exhibit template is unchanged from existing Contract and is updated annually. Rate Schedules may be found at:  
<https://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

# Exhibit C

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

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

Contractor: East Bay MUD  
Facility: Folsom-South Canal  
Contract: 14-06-200-5183L

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

M&I Construction Cost (2020 M&I Ratebook, Sch A-2Ba)	
	Unpaid Cost
Construction Cost****:	\$ 72,969
2019 Repayment (Estimate) **	\$ -
Adjusted Construction Cost****:	\$ 72,969

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

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

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

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

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

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

\*\*\*\* As adjusted by a Construction payment in the amount of \$2,984,450 made on 3/28/2019 (See Footnotes of Schedule A-2Ba).



AGENDA NO.  
MEETING DATE

12.

February 25, 2020

**TITLE FISCAL YEAR 2020 WATER AND WASTEWATER SYSTEMS' BUDGET  
AMENDMENT FOR COMMERCIAL PAPER PAY DOWN**

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

**RECOMMENDED ACTION**



Amend the Fiscal Year 2020 (FY20) Water System budget in the amount of \$24,000,000 and the Wastewater System budget in the amount of \$5,000,000 to pay down a portion of each system's outstanding commercial paper.

**SUMMARY**

In Fiscal Year 2019 (FY19), higher-than-budgeted revenues and lower-than-budgeted expenses led to available funds for both the Water and Wastewater Systems at year-end. At the Finance/Administration Committee on October 22, 2019, staff proposed utilizing available funds to pay down a portion of the District's outstanding commercial paper in support of long-term financial stability. This action will amend the FY20 budget to enable the commercial paper pay down to be made in the current fiscal year. Paying down commercial paper reduces future interest cost and provides capacity for future borrowing. This item was discussed at the February 25, 2020 Finance/Administration Committee meeting.

**DISCUSSION**

In FY19, Water System revenues were \$73.6 million greater than budget and operating expenses were \$55.4 million less than budget, leading to \$129.0 million in available funds at year-end. Similarly, in FY19 Wastewater System revenues were \$17.0 million greater than budget and operating expenses were \$6.7 million less than budget, leading to \$23.8 million in available wastewater funds at year-end. At the Finance/Administration Committee on October 22, 2019, staff proposed several strategies for the use of these FY19 year-end funds. These strategies included: (1) using a significant portion of available funds to lower the rate increases in FY20 and FY21, (2) paying down a portion of outstanding variable rate commercial paper, and (3) retaining a portion as savings in fund balances. This action supports using a portion of the FY19 year-end funds to pay down outstanding commercial paper.

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING Finance	DEPARTMENT MANAGER or DIRECTOR  Sophia D. Skoda	APPROVED  General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

Commercial paper is a form of variable rate debt issued as short-term notes. The Water and Wastewater Systems each have a separate commercial paper program. The Water System commercial paper program is a traditional program with liquidity support provided by a bank. The Wastewater System commercial paper program is an extendable commercial paper program without liquidity support where maturities extend 150 days in the case of a failed remarketing. Currently, the Water System has \$359.8 million in commercial paper outstanding and the Wastewater System has \$15.0 million in extendable commercial paper outstanding. The costs associated with carrying commercial paper balances include the interest on the commercial paper and support costs such as remarketing fees and, in the case of the traditional commercial paper, liquidity fees.

Staff is proposing paying down \$24 million in commercial paper for the Water System and \$5 million in commercial paper for the Wastewater System in FY20. This budget amendment provides the appropriation in FY20 to implement these commercial paper principal payments. In future years, the Finance Director will review the feasibility of additional commercial paper principal payments based on financial performance and the financial outlook at that time. If the District continues with future commercial paper annual pay downs of \$24 million for the Water System and \$5 million for the Wastewater System, full repayment would be achieved in 15 years and 3 years, respectively. This item supports the District's Long-Term Financial Stability Strategic Plan goal.

## **SUSTAINABILITY**

### **Economic**

This action increases the FY20 budget but utilizes positive year-end funds from FY19 that were the result of higher-than-budgeted revenues and lower-than budgeted expenses. Additionally, the use of funds to pay down commercial paper reduces the District's overall debt burden, reduces interest costs, and provides future borrowing capacity if needed.

## **ALTERNATIVE**

**Do not amend the FY20 budget to fund commercial paper pay down.** This alternative is not recommended because it will not allow the District to benefit from the reduction in commercial paper outstanding through reduced interest cost and greater future borrowing capacity.



RESOLUTION NO. \_\_\_\_\_

AMEND RESOLUTION NO. 35144-19 TO AMEND FISCAL YEAR 2020 WATER  
AND WASTEWATER SYSTEMS' BUDGET FOR COMMERCIAL PAPER PAY DOWN

Introduced by Director

; Seconded by Director

WHEREAS, the Board of Directors of the East Bay Municipal Utility District approved and adopted a Biennial Budget for Fiscal Year 2020 and Fiscal Year 2021 on June 11, 2019 by adoption of Resolution No. 35144-19; and

WHEREAS, in Fiscal Year 2019, Water System revenues were approximately \$73.6 million greater than budget and operating expenses were approximately \$55.4 million less than budget, leading to approximately \$129.0 million in available water funds at year-end; and

WHEREAS, in Fiscal Year 2019 Wastewater System revenues were approximately \$17.0 million greater than budget and operating expenses were approximately \$6.7 million less than budget, leading to approximately \$23.8 million in available wastewater funds at year-end; and

WHEREAS, the Board of Directors of the East Bay Municipal Utility District has determined to pay down \$24.0 million in commercial paper for the Water System and \$5.0 million in commercial paper for the Wastewater System in Fiscal Year 2020; and

WHEREAS, an amendment to the Fiscal Year 2020 budget is required to support this action;

THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District as follows:

1. That Resolution No. 35144-19 is hereby amended to amend the Fiscal Year 2020 Water System budget in the amount of \$24,000,000 and the Wastewater System budget in the amount of \$5,000,000 to provide for the pay down of a portion of each system's outstanding commercial paper.
2. That the adopted budget for Fiscal Year 2020 shall be adjusted as necessary in accordance with this Resolution.

3. That any Resolution in conflict herewith is hereby superseded and canceled.

ADOPTED this 25th day of February, 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

President

ATTEST:

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

---

General Counsel

{00046289;1}

ITEM 13

WATER SUPPLY UPDATE

WILL BE PROVIDED  
AS AN ORAL REPORT



## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: February 20, 2020

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *AMC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Planning Committee Minutes – February 11, 2020

Chair Doug Linney called to order the Planning Committee meeting at 9:30 a.m. in the Training Resource Center. Directors Lesa R. McIntosh and Frank Mellon were present at roll call. EBMUD staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Manager of Maintenance and Construction/Water Operations David A. Briggs, Director of Wastewater Eileen M. White, Senior Civil Engineer David V. Beyer, Senior Civil Engineer Donald M. Gray, Senior Civil Engineer John M. Hake, Special Assistant to the General Manager Kelly A. Zito, and Secretary of the District Rischa S. Cole.

**Public Comment.** Addressing the Committee was Eric Larsen, President, AFSCME Local 444 who commented on succession planning and current staffing levels at the Main Wastewater Treatment Plant. Director Mellon requested a copy of Mr. Larsen's speaker notes.

**Duffel Photovoltaic (PV) Renewable Energy Project Update and Final Mitigated Negative Declaration (MND).** Senior Civil Engineer David V. Beyer presented a project update and an overview of the public outreach and comments received on the project's final MND. If approved, the project will construct a 5 megawatt (MW) PV system under a Power Purchase Agreement (PPA) using approximately 20 acres of available San Pablo watershed property in Orinda. The system would generate an estimated 12,000 MW hours of renewable energy per year under PG&E's Renewable Energy Self-Generation Bill Credit Transfer Program and would initially offset approximately 2,200 metric tons of greenhouse gas emissions annually. Mr. Beyer said the project MND was circulated for a 31-day public comment period which ended September 30, 2019. Staff also presented project information to City of Orinda staff, the City Council, and Planning Commission at various meetings in 2019. Comments received focused on permitting, site drainage, oak tree retention and restoration, zoning and land use and are addressed in the final MND. He noted the MND determined project-related construction could potentially generate environmental impacts to agricultural and forestry resources, biological resources, and land use and planning, and described the planned mitigation measures that would reduce these impacts to less than significant. Mr. Beyer described upcoming project milestones and said the Board will consider adopting the final MND and approving the project at its meeting in the afternoon. PPA proposals are due to the District on February 24, 2020 and in April, the Board will consider approving the PPA and a PG&E agreement to construct the necessary electrical interconnection. He responded to Committee questions regarding the planned mitigation measures for oak woodland and wetlands restoration and measures to protect newly planted oak trees from sudden oak death. It was moved by Director Mellon, seconded by Director McIntosh, and carried (3-0) to support the staff recommendation.

**Main Wastewater Treatment Plant (MWWTP) Power Generation Station Engine Generators and Auxiliary Equipment Assessment.** Senior Civil Engineer Donald M. Gray presented information on the need to perform a comprehensive assessment of three engine generators and a turbine generator that produce renewable electricity from biogas at the MWWTP. The three engine generators were installed

in 1985 and the turbine in 2012. The original engine manufacturer, Enterprise is no longer in business. The engines and auxiliary equipment are operated and maintained by staff, but are rebuilt every 5 to 10 years by outside third-party mechanical contractors. To maximize the useful life of the engine generators and auxiliary equipment by as much as 15 years, staff recommends having an expert assess the equipment to evaluate safety conditions, and provide a plan for short- and long-term upgrades. The expert would also review current operations and maintenance (O&M) practices and recommend updates to O&M manuals to incorporate improvements identified during this review. Finally, the expert would conduct staff training and provide on-call technical consulting for three years. The Board will be asked to consider approving an agreement with Enterprise engine expert, Advanced Engines Technologies Corporation at its meeting in the afternoon. Mr. Gray responded to Committee questions on whether long-term plans include seeking replacement engines. Director Mellon asked staff to explore 3D printing for manufacturing engine parts and to meet other needs as part of the fiscal year 2022/2023 budget process. It was moved by Director McIntosh, seconded by Director Mellon, and carried (3-0) to support the staff recommendation.

**Resource Recovery Program Update.** Senior Civil Engineer John M. Hake presented an update on new program developments including a food waste pilot, an application for new environmental credits, and increased interest in hydrogen vehicle fueling. The District is working with the South Bayside Waste Management Authority (SBWMA) on a pilot project to evaluate the effectiveness of preprocessing equipment to extract organics and produce high-quality feedstock from municipal solid waste. Staff will present an agreement for Board consideration at a future meeting that would allow SBWMA to deliver a specified number of loads of clean liquid feedstock within a limited time period to the MWWTP at no cost. Next, Mr. Hake reported staff is exploring using electricity from biogas produced at the MWWTP to fuel electric vehicles (EV) and is pursuing the creation and sale of Low Carbon Fuel Standard (LCFS) credits to generate additional revenue. LCFS credits would be generated by charging District-owned EVs at the MWWTP. He described the scoring process for the LCFS program which establishes goals for statewide reduction in the carbon intensity of California's transportation fuels by 2030 and clarified the difference between carbon intensity and greenhouse gas emissions. Staff has submitted preliminary data to California Air Resources Board (CARB) to develop and certify an LCFS pathway for food waste digestion to produce renewable electricity for EV charging at the MWWTP. Staff is also exploring producing renewable hydrogen for vehicle fuel as another means to increase biogas utilization and reduce flaring. He discussed the potential benefits and challenges of producing renewable hydrogen at the MWWTP and said to further efforts in this area, staff has begun discussions with a range of entities, including technology providers, potential users, non-governmental organizations, and state agencies. Mr. Hake responded to Committee questions regarding the current level of competition for food waste, the feasibility of having AC Transit truck hydrogen from the MWWTP to their facilities to fuel their vehicles, and whether District equipment can be fueled with hydrogen produced at the MWWTP. It was moved by Director McIntosh, seconded by Director Mellon, and carried (3-0) to support the staff recommendation for the pilot project with SBWMA.

**Adjournment.** Chair Linney adjourned the meeting at 10:22 a.m.

ARC/RSC



DATE: February 20, 2020

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *ARC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Legislative/Human Resources Committee Minutes – February 11, 2020

Chair John A. Coleman called to order the Legislative/Human Resources Committee meeting at 10:30 a.m. in the Training Resource Center. Directors Lesa R. McIntosh and William B. Patterson were present at roll call. EBMUD staff present included General Manager Alexander R. Coate, General Counsel Craig S. Spencer, Manager of Legislative Affairs Marlaigne K. Dumaine, Manager of Human Resources Laura A. Acosta, Manager of Employee and Organizational Development Derry L. Moten, Special Assistant to the General Manager Kelly A. Zito, and Secretary of the District Rischa S. Cole.

**Public Comment.** None.

**Legislative Update.** Manager of Legislative Affairs Marlaigne K. Dumaine reviewed the bills in Legislative Report No. 01-20. She provided information on legislative discussions regarding public safety power shutoffs; AB 1839 (Bonta) which among other things seeks to establish a policy framework of principles and goals to address negative climate change; and climate resilience/water bonds and said staff is asking the Board to consider supporting two bills – SCR 77 (Glazer) and H.R. (TBD) (Huffman), known as the FUTURE Act. SCR 77 is a resolution that seeks to name the fourth bore of the Caldecott Tunnel for former Representative Ellen O’Kane Tauscher and the FUTURE Act is a bill under development that includes provisions for infrastructure development, technology and data improvements, ecosystem protection and restoration, and water workforce development. She responded to Committee questions regarding the potential costs of AB 1839 and said staff would keep the Board updated on the bill’s development. Director Coleman requested speaking points on the Huffman bill for his upcoming meetings during the ACWA conference in Washington D.C. It was moved by Director McIntosh, seconded by Director Patterson, and carried (3-0) to support the staff recommendation.

**Semi-Annual Update on District Values and Organizational Improvements Program.**

Manager of Employee and Organizational Development Derry L. Moten presented a program update and progress since the August 2019 update. He reported the Advocates are developing an employee engagement survey to be implemented in summer 2020 and highlighted three pilot projects in place to identify methods and best practices to develop a District-specific change management process – the Rebuild innovation cycle; the Financial Information System/Materials Management Information System Replacement Project; and the Operations and Maintenance Living the Values Project. Staff has begun implementing new training curriculum for managers and supervisors which focuses on cultural skills and continues the development of values-based leadership. He advised next steps for the program include continuing work on the change management pilots; working with the Advocates on various District values initiatives; and continued employee engagement efforts through leadership development. The Committee raised no questions.

**Adjournment.** Chair Coleman adjourned the meeting at 10:49 a.m.

ARC/RSC