



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 12/14/2010

Report Type: Consent

Title: California American Water Company Wholesale Water Service

Report ID: 2010-00001

Location: Districts 3, 6, 8

Recommendation: Adopt a Resolution: 1) Adopting a Mitigated Negative Declaration and Mitigation Reporting Plan for the California American Water Company Wholesale Water Supply Agreement; and 2) authorizing the City Manager to execute the Agreement with the California American Water Company.

Contact: Bill Busath, Engineering Manager, (916) 808-1443; Dan Sherry, Supervising Engineer, (916) 808-1419, Department of Utilities.

Presenter: None

Department: Department of Utilities

Division: CIP Engineering

Dept ID: 14001321

<p>Attachments:</p> <ul style="list-style-type: none">1-Description/Analysis2-Background3-Resolution4-Exhibit A - Mitigated Negative Declaration5-Exhibit B-Mitigation Monitoring Plan6-Unexecuted Agreement Cover SheetExhibit C-Wholesale Water Service Agreement	<p>City Attorney Review Approved as to Form</p> <p>Joe Robinson 12/9/2010 5:36:50 PM</p> <p>City Treasurer Review Prior Council Financial Policy Approval or Outside City Treasurer Scope</p> <p>Russell Fehr 12/1/2010 1:51:43 PM</p>

Approvals/Acknowledgements

Eileen Teichert, City Attorney

Shirley Concolino, City Clerk
Gus Vina, Interim City Manager

Russell Fehr, City Treasurer

Department Director: Marty Hanneman 12/9/2010

Assistant City Manager: John Dangberg - 12/9/2010 5:28:27 PM



Description/Analysis

Issue: The California American Water Company (Cal Am) currently receives water from the City for Cal Am's Southgate service area under an existing wholesale water supply agreement. Currently, Cal Am may purchase up to 1.13 millions of gallons of water per day, described as firm capacity. The proposed agreement would increase the amount of firm water supplied to Cal Am on a wholesale basis for use in portions of Cal Am's service areas, by an additional 1.17 million gallons per day (mgd) capacity, to a total of 2.3 mgd firm capacity. A firm water supply is a supply that is routinely available. The proposed agreement includes provisions to supply this additional increment of capacity from groundwater at times when flows in the lower American River fall below the so-called Hodge flow criteria; this condition is included to be consistent with limitations specified for Cal Am and the City in the Water Forum Agreement. Cal Am is currently entitled to purchase additional non-firm (surplus) surface water capacity that is only available during the non-peak season after all other water supply needs are met and only when flows in the river exceed the Hodge flow criteria. Surplus water will continue to be available to Cal Am under this agreement.

Policy Considerations: The City's American River water rights authorize the wholesale supply of City water to other purveyors that provide retail water service to areas outside of the City but within the place of use authorized under the City's water rights. The proposed agreement has been approved by the Water Forum.

Environmental Considerations: The initial study prepared for the project determined that the proposed project is an anticipated subsequent project identified and described in the 2030 General Plan Master EIR, that the proposed project is consistent with the 2030 General Plan land use designation and the permissible densities and intensities of use for the project site, that the discussions of cumulative impacts, growth-inducing impacts, and irreversible significant effects in the Master EIR are adequate for the proposed project, and that the proposed project would have additional significant environmental effects not previously examined in the Master EIR. Mitigation measures were identified to reduce all effects to a less-than-significant level. A Mitigated Negative Declaration was prepared and circulated for public review for a 30-day period.

Staff received several inquiries regarding the project during the public review period. The inquiries related to the project generally, and did not raise issues relevant to the environmental document. Adoption of the Mitigated Negative Declaration and Mitigation Monitoring Program are appropriate actions under the California Environmental Quality Act (CEQA).

Sustainability Considerations: The agreement will allow Cal Am to perform conjunctive use management of its water supply, which benefits the City in maintaining a sustainable groundwater basin.

Commission/Committee Action: Not Applicable

California American Wholesale Water Agreement

Rationale for Recommendation: The wholesale water agreement will result in increased water sales, which allows the City to distribute fixed cost over a larger rate base. Additionally, the sale of wholesale water allows the City to perfect its water rights.

Financial Considerations: Under the Agreement, the Company will pay the City capital facility connection fees of approximately \$2.6 million, and \$1,500,000 for infrastructure improvements to produce groundwater, as well as quantity charges for water delivered.

Emerging Small Business Development (ESBD): Not Applicable

Background

The California American Water Company (Cal Am) is an investor owned utility that serves three separate areas located adjacent to the City. Cal Am and the City have an existing wholesale water supply agreement that allows Cal Am to purchase water, at a maximum firm capacity rate of 1.13 mgd, for use in its Parkway service area. This agreement will supersede and replace that agreement and includes the following provisions:

- Cal Am may purchase up to 2.3 mgd (firm capacity) of wholesale water for use in any one of its service areas (Arden, Rosemont and Parkway).
- Of the 2.3 mgd firm capacity, the first 1.13 mgd is always surface water, and the remaining 1.17 mgd is surface water or groundwater depending on the river flow condition in the American River. If the river flows are below the so-called Hodge Flow criteria, then the additional 1.17 mgd is provided by pumping groundwater – if river flows are above the Hodge Flow criteria, then the additional 1.17 mgd is provided by diverting surface water. These provisions are included in the proposed agreement to be consistent with limitations specified for Cal Am and the City in the Water Forum Agreement.
- Cal Am will pay the City \$1.5 million to construct a well or rehabilitate existing wells to produce groundwater to comply with the foregoing condition.
- Cal Am also will be entitled to purchase additional non-firm (surplus) surface water capacity that is only available during the non-peak season after all other water supply needs are met and only when flows in the river exceed the Hodge flow criteria.
- Cal Am will pay the City approximately \$2.6 million in connection fees for the necessary surface water and transmission main capacity.
- Cal Am will pay the City a monthly service charge plus a volumetric rate per hundred cubic feet supplied that is established annually utilizing a wholesale rate calculation methodology.

This agreement allows Cal Am to utilize conjunctive use management of its water supply, which benefits the City in maintaining a sustainable groundwater basin. Conjunctive use water management is one of the elements of the Water Forum Agreement.



RESOLUTION NO.

Adopted by the Sacramento City Council

ADOPTING THE MITIGATED NEGATIVE DECLARATION AND THE MITIGATION REPORTING PROGRAM AND APPROVING WHOLESALE WATER AGREEMENT WITH CALIFORNIA AMERICAN WATER COMPANY

BACKGROUND

- A. The California American Water Company (Cal Am) currently receives water from the City for Cal Am's Southgate service area under an existing wholesale water supply agreement. City and Cal Am staff have negotiated a new agreement that would increase the amount of water supplied to Cal Am on a wholesale basis for use in portions of Cal Am's service areas, by an additional 1.17 million gallons per day (mgd) of firm capacity, to a total of 2.3 mgd firm capacity.
- B. The proposed agreement (the "Project") includes provisions to supply this additional increment of capacity from groundwater at times when flows in the lower American River fall below the so-called Hodge flow criteria. This condition is included to be consistent with limitations specified for Cal Am and the City in the Water Forum Agreement.
- C. A Mitigated Negative Declaration has been prepared and circulated for the Project and a Mitigation Reporting Program has been prepared.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Council finds as follows:

The City of Sacramento, Community Development Department, has determined that the Project, as proposed, will not have a significant impact to the environment; therefore, a Mitigated Negative Declaration (MND) has been prepared. In compliance with Section 15070(B)1 of the California Environmental Quality Act (CEQA) Guidelines, the City has incorporated mandatory mitigation measures into the project plans to avoid identified impacts or to mitigate such impacts to a point where clearly no significant impacts will occur. These mitigation measures are included in the Mitigation Reporting Program and address impacts to air quality, biological, hazards, and cultural resources. The MND for the Project was completed, noticed and circulated in accordance with the requirements of CEQA, the CEQA Guidelines and the Sacramento Local Environmental Procedures.

- Section 2. The City Council has reviewed and considered the information contained in the MND, including the initial study, the revisions and conditions incorporated into the Project, and the comments received during the public review process and the public meeting for approval of the Project. The City Council has determined that the MND constitutes an adequate, accurate, objective and complete review of the environmental effects of the proposed Project.
- Section 3. Based on its review of the MND and on the basis of the whole record, the City Council finds that the MND reflects the City Council's independent judgment and analysis and that there is no substantial evidence that the Project will have a significant effect on the environment.
- Section 4. The City Council adopts the MND for the Project.
- Section 5. Pursuant to CEQA section 21081.6 and CEQA Guidelines section 15074, and in support of its approval of the Project, the City Council adopts the Mitigation Reporting Program to require all reasonably feasible mitigation measures be implemented by means of Project conditions, agreements, or other measures, as set forth in the Mitigation Reporting Program.
- Section 6. Upon approval of the Project, the City's Environmental Planning Services shall file or cause to be filed a Notice of Determination with the Sacramento County Clerk and, if the project requires a discretionary approval from any state agency, with the State Office of Planning and Research, pursuant to section 21152(a) of the Public Resources Code and section 15075 of the CEQA Guidelines.
- Section 7. Pursuant to CEQA Guidelines section 15091(e), the documents and other materials that constitute the record of proceedings upon which the City Council has based its decision are located in and may be obtained from, the Office of the City Clerk at 915 I Street, Sacramento, California. The City Clerk is the custodian of records for all matters before the City Council.
- Section 8. The City Manager is authorized to execute the "Wholesale Water Service Agreement between the City of Sacramento and California American Water Company."
- Section 9. Exhibits A, B and C are part of this Resolution.

Table of Contents:

- Exhibit A: Mitigated Negative Declaration
Exhibit B: Mitigation Reporting Program
Exhibit C: Wholesale Water Service Agreement



COMMUNITY DEVELOPMENT
DEPARTMENT

ENVIRONMENTAL PLANNING
SERVICES
916-808-7931

MITIGATED NEGATIVE DECLARATION

California American Wholesale Water Service Agreement

The City of Sacramento, California, a municipal corporation, does hereby prepare, declare, and publish this Mitigated Negative Declaration for the following described project:

California American Wholesale Water Service Agreement: The proposed project would implement proposed revisions to the Wholesale Water Service Agreement between the City and California American Water Company (CAW). The City of Sacramento (City), Department of Utilities (DOU), proposes to construct a new groundwater production well, construct new metering pipeline facilities, and increase delivery volumes to CAW.

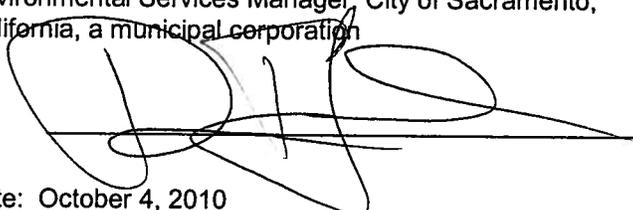
The project includes installation of a new groundwater well at the northwest corner of Bell Avenue and Rio Linda Road (APN 237-0070-013) and construction of pipelines and appurtenant facilities that would be located in public rights-of-way. The City would install a metering vault at an existing 12-inch turnout off Ethan Way near Alta Arden to be used for a future connection to be constructed by CAW. The turnout is located just east of the Cal Expo grounds and City limits, as shown in Initial Study, Figure 2.

The Lead Agency is the City of Sacramento. The City of Sacramento, Community Development Department, reviewed the proposed project and, on the basis of the whole record before it, determined that the proposed project is consistent with the 2030 General Plan. The project includes activities that were anticipated in the 2030 General Plan as part of the City's commitment to upgrade and improve utility systems in the City to satisfy demand and to protect resources in the community. (2030 General Plan, Utilities Policy 1.1.1)

The City prepared the attached Initial Study that identifies potentially new or additional significant environmental effects (project-specific effects) that were not analyzed in the 2030 General Plan Master EIR. The City will incorporate all feasible mitigation measures or feasible alternatives appropriate to the project as set forth in the Master EIR, and adopt project-specific mitigation measures in order to avoid or mitigate the identified effects to a level of insignificance. (CEQA Guidelines Sections 15177(d), 15178(b)(2)). This Mitigated Negative Declaration reflects the lead agency's independent judgment and analysis. An Environmental Impact Report is not required pursuant to the Environmental Quality Act of 1970 (Sections 21000, et seq., Public Resources Code of the State of California).

This Mitigated Negative Declaration was prepared pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.), CEQA Guidelines (Title 14, Sections 15000 et seq. of the California Code of Regulations), the Sacramento Local Environmental Regulations (Resolution 91-892) adopted by the City of Sacramento, and the Sacramento City Code. A copy of this document and all supportive documentation may be reviewed or obtained at the City of Sacramento, Community Development Department, 300 Richards Boulevard, 3rd Floor, Sacramento, CA 95811.

Environmental Services Manager, City of Sacramento,
California, a municipal corporation

By: 

Date: October 4, 2010

Attachment: Initial Study



California American Wholesale Water Service Agreement Mitigation Monitoring Program

In January 1989, Assembly Bill 3180 went into effect requiring the City to monitor all mitigation measures applicable to this project and included in the Mitigated Negative Declaration. For this project, mitigation reporting will be performed by the City of Sacramento Department of Utilities in accordance with the monitoring and reporting program developed by the City to implement AB 3180.

This Mitigation Reporting Program is being prepared for the Community Development Department, Environmental Planning Services, 300 Richards Boulevard, 3rd Floor, Sacramento, CA 95811, pursuant to the California Environmental Quality Guidelines, Section 21081.

Project Number: Z14004200

Project Name: California American Wholesale Water Service Agreement

Project Location: The project consists of construction at 4 separate locations within the City of Sacramento: 1) Production well site on City owned property on the northwest corner of Bell Avenue and Rio Linda Blvd (APN 237-0070-013); 2) City of Sacramento-California American intertie site at an existing 12-inch turnout off Ethan Way near Alta Arden just east of the Cal Expo grounds and City limits; 3) Along Folsom Blvd and north of the Southern Pacific Railroad line 1,200 west of Watt Ave for approximately 3,800 linear feet; 4) California American Parkway Service Area which will receive additional water but no construction would be required.

Project Description: The project implements proposed revisions to the Wholesale Water Service Agreement between the City and California American Water Company (CAW). Under the proposed agreement, the City would increase total annual deliveries of water from a maximum of 2,580 acre-feet to 4,831 acre-feet. CAW would receive the water in any of three service areas that it designates. The City of Sacramento Department of Utilities will construct a new groundwater production well, and construct new metering and pipeline facilities to facilitate delivery.

**MITIGATION MONITORING PROGRAM CHECKLIST FOR THE
 CALIFORNIA AMERICAN WHOLESALE WATER SERVICE AGREEMENT PROJECT (Project Z14004200)**

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
CULTURAL RESOURCES				
<p>CR-1a In the event that any prehistoric subsurface archeological features or deposits, including locally darkened soil ("midden"), that could conceal cultural deposits, animal bone, obsidian and/or mortars are discovered during construction-related earth-moving activities, all work shall be halted, and the City shall consult with a qualified archeologist to assess the significance of the find. Archeological test excavations shall be conducted by a qualified archeologist to aid in determining the nature and integrity of the find. If the find is determined to be significant by the qualified archeologist, representatives of the City and the qualified archeologist shall coordinate to determine the appropriate course of action. All significant cultural materials recovered shall be subject to scientific analysis and professional museum curation. In addition, a report shall be prepared by the qualified archeologist according to current professional standards.</p>	<p>Prior to and during construction –</p> <p>Mitigation measures shall be included in all construction documents for implementation during construction.</p>	<p>City of Sacramento Department of Utilities</p>		
<p>CR-1a If a Native American site is discovered, the evaluation process shall include consultation with the appropriate Native American representatives. If Native American archaeological, ethnographic, or spiritual resources are involved, all identification and treatment shall be conducted by qualified archaeologists, who are certified by the Society of Professional Archaeologists (SOPA) and/or meet the federal standards as stated in the Code of Federal Regulations (36 CFR 61), and Native American representatives, who are approved by the local native American community as scholars of the cultural traditions. In the event that no such Native American is available, persons who represent tribal governments and/or organizations in the locale in which resources could be affected shall be consulted. If historic archaeological sites are involved, all identified treatment is to be carried out by qualified historical archaeologists, who shall meet either Register of Professional Archaeologists (RPA), or 36 CFR 61 requirements.</p>				
<p>CR-2 If a human bone or bone of unknown origin is found during construction, all work shall stop in the vicinity of the find and the County Coroner shall be contacted immediately. If the remains are determined to be Native American, the coroner shall notify the Native American Heritage Commission, who shall notify the person most likely believed to be a descendant. The most likely descendant shall</p>				

Mitigation Measure	Reporting Milestone	Reporting / Responsible Party	VERIFICATION OF COMPLIANCE	
			Initials	Date
work with the contractor to develop a program for reinterment of the human remains and any associated artifacts. No additional work is to take place within the immediate vicinity of the find until the identified appropriate actions have taken place.				
<p>HAZARDOUS MATERIALS</p> <p>Haz-1 Prior to commencement of any work on the Production Well project site, the City shall obtain a Site Assessment for the project site that includes a complete historical and records search and soil sampling and, if required, the installation of a monitoring well at the proposed Production Well site to ensure groundwater quality meets Title 22 requirements for public drinking water supply.</p>	<p>Prior to construction of Production Well, a Site Assessment will be completed. Compliance with Title 22 requirements will be reported to City of Sacramento Department of Utilities in coordination with the CA State Department of Health Services.</p>	<p>City of Sacramento Department of Utilities</p>		



Requires Council Approval: No YES Meeting: 12/14/10

Real Estate Other Party Signature Needed Recording Requested

General Information

Form with fields: Type: Outside Agency, PO Type: Select PO Type, Attachment: Original No., Original Doc Number, \$ Not to Exceed: \$, Other Party: California American Water Company, Certified Copies of Document::, Project Name: Wholesale Water Service Agreement, Deed: [] None [] Included [] Separate, Project Number, Bid Transaction #, E/SBE-DBE-M/WBE:

Department Information

Department: Utilities Division: Engineering
Project Mgr: Jim Peifer Supervisor: Dan Sherry
Contract Services: Date:12/9/2010 Division Mgr: Bill Busath
Phone Number: 808-1416 Org Number: 14001321
Comment:

Review and Signature Routing

Table for signature routing with columns: Department, Signature or Initial, Date. Includes Project Mgr, Accounting, Contract Services, Supervisor, Division Manager, and City Attorney.

[] Send Interoffice Mail [] Notify for Pick Up

Authorization section with fields for Choose Director, Department Director, and City Mgr (yes [] No []).

Contract Cover/Routing Form: Must Accompany ALL Contracts; however, is not part of the contract. (01-01-09)

For City Clerk Processing box containing fields for Finalized: Initial, Date, Imaged: Initial, Date, and Received: (City Clerk Stamp Here).

**WHOLESALE WATER SERVICE AGREEMENT BETWEEN THE
CITY OF SACRAMENTO AND CALIFORNIA AMERICAN WATER COMPANY**

THIS AGREEMENT is made and entered into this ____ day of _____, 2010, by the CITY OF SACRAMENTO, a charter municipal corporation (“City”), and the CALIFORNIA-AMERICAN WATER COMPANY, a California corporation (“California American Water”). City and California American Water may be referred to jointly as the “Parties,” or individually as a “party.”

RECITALS

- A. City owns and operates public water systems and provides public water service to its customers in and adjacent to the City.
- B. California American Water owns and operates public utility water systems and provides water service to customers in various portions of Sacramento County.
- C. City has been granted permits from the State Water Resources Control Board to divert surface water, including surface water from the American River, for municipal uses. City also pumps groundwater to serve municipal uses.
- D. California American Water pumps groundwater to serve its Parkway, Arden, and Suburban-Rosemont service areas. Collectively, California American Water’s Parkway, Arden, and Suburban-Rosemont Service areas are referred to herein as the “Wholesale Service Areas.”
- E. As the successor-in-interest to Citizens Utilities Company of California (hereafter referred to as “CUCC”), California American Water currently receives wholesale water service from City pursuant to the provisions of a Wholesale Water Supply Agreement to provide wholesale water service to CUCC’s Southgate System, executed by the City and CUCC on November 18, 1997, and identified as City Agreement No. 97-178 (hereafter referred to as the “Southgate Agreement”).
- F. California American Water desires to continue receiving wholesale water service for the portion of its Parkway Service Area provided wholesale water service under the Southgate Agreement, and also desires to obtain wholesale water service from City for use in other portions of California American Water’s service area that are located within the place of use authorized to receive surface water diverted under the City’s American River water right permits.
- G. The City is willing to provide a wholesale supply of treated surface water and groundwater to serve the Wholesale Service Areas in accordance with the terms and conditions set forth in this Agreement.

- H. The City and California American Water are both signatories to the Sacramento Water Forum Agreement, and this Agreement is consistent with that agreement.
- I. The City's American River water rights permits contain conditions that limit the City's use of surface water diversion capacity during certain flow conditions. This Agreement includes provisions that will enable the City to supply water during those flow conditions using groundwater.

In consideration of the foregoing and of the mutual covenants herein contained, the Parties agree as follows:

1. **Purpose; Termination of Southgate Agreement:**

The purpose of this Agreement is to establish the terms and conditions under which the City will pump, divert, treat, convey and sell surface water and groundwater to California American Water on a wholesale basis for use within the Wholesale Service Areas. On the Effective Date of this Agreement, this Agreement will supersede the Southgate Agreement and the Southgate Agreement shall be terminated in its entirety. It is also the intent of the parties that (1) the amount of the connection fee (referred to herein as the "Southgate Connection Fee") charged to California American Water for 1.13 million gallons per day (mgd) of Firm Capacity to provide wholesale water service to the Southgate Service Area shall remain the amount originally specified in the Southgate Agreement; and (2) California American Water shall receive credit against the Southgate Connection Fee remaining due equal to the total amount of annual connection fee installments already paid to City under the Southgate Agreement as of the Effective Date, as provided in Section 8b(3), below.

2. **Definitions:** The following terms, when used in this Agreement, shall have the definitions given in this Section.

California American Water: California American Water Company.

California American Water Facilities: All facilities, including transmission mains, storage facilities and all appurtenances, that are owned and operated by California American Water to supply water, as they exist today and as they may be modified and expanded in the future.

Capital Costs: Costs incurred by the City to design and construct diversion, pumping, treatment and transmission facilities used to provide treated surface water to California American Water under this Agreement, including the reasonable administrative costs associated with such design and construction.

Capital Improvement Charge: A monthly fee for a prorated allocation of capital

improvement costs projected for the applicable Fiscal Year billed to California American Water as part of the Monthly Water Charge, as provided in Section 8a, below.

City: The City of Sacramento.

City Transmission Facilities: All facilities, including transmission mains and all appurtenances that are owned and operated by the City to supply water from the City Treatment Facilities, as they exist today and as they may be constructed, modified and expanded in the future.

City Treatment Facilities: All facilities that are owned and operated by the City to supply potable water to the City Transmission Facilities, including but not limited to the Fairbairn Plant, the Sacramento Plant and the City's groundwater wells, as they exist today and as they may be constructed, modified and expanded in the future.

City Water: Potable surface water that the City conveys to its retail and wholesale customers from the City's municipal water supply, consisting of surface water diverted by City pursuant to the City's Water Rights and Entitlements or groundwater.

City Water Rights and Entitlements: The City's surface water rights and entitlements, including pre-1914 rights, water right permits issued by the State Water Resources Control Board and a water rights settlement contract entered into in 1957 with the United States Bureau of Reclamation.

Connection Fee: The fee(s) paid by California American Water for its share of the Capital Costs associated with the Firm Capacity that will be used to provide potable water to California American Water under this Agreement, as provided in Section 8b, below.

CPUC: The California Public Utilities Commission.

Delivery Criteria: The operating guidelines and criteria governing the wholesale delivery of City Water to the Wholesale Service Areas under this Agreement, as set forth in Section 3, below.

Effective Date: The date when this Agreement becomes effective as provided in Section 10 of this Agreement.

Fairbairn Plant: The City's E.A. Fairbairn Water Treatment Plant located on the south bank of the Lower American River downstream of Howe Avenue.

Firm Capacity: Capacity in the City Treatment and Transmission Facilities to pump, divert, treat and deliver surface water or groundwater to California American Water on an equal priority to the use of such capacity to meet the demands of the City's retail water

supply customers, except as provided otherwise in this Agreement.

Monthly Water Charge: The sum of the Wholesale Use Charge, Service Charge, Capital Improvement Charge, and City general tax billed by the City to California American Water, as provided in Section 8a(1), below.

Non-Firm Capacity: Surplus capacity in the City Treatment and Transmission Facilities that is available only during the Non-Peak Period and as provided in this Agreement, to divert, treat and deliver potable water to California American Water after the demands of the City's prior wholesale and wheeling service customers and present and future retail water service customers are met. Non-Firm Capacity is not guaranteed and no Connection Fee shall be charged for Non-Firm Capacity.

Non-Peak Period: The period of consecutive months, defined in the Delivery Criteria, when per capita water demand is less than during the Peak Period.

Peak Period: The period of consecutive months, defined in the Delivery Criteria, when per capita water demand is greater than during the Non-Peak Period.

Potable water: Water that is treated to meet the standards established for drinking water by the California Department of Public Health (DPH) and/or the United States Environmental Protection Agency (USEPA).

POU: The Place of Use where the City is authorized to use surface water pursuant to the City's American River water right permits issued by the State Water Resources Control Board.

Sacramento Plant: The City's Sacramento River Water Treatment Plant, located on the east bank of the Sacramento River downstream of the confluence of the American and Sacramento Rivers.

Service Charge: A monthly fee for fixed administrative costs billed to California American Water as part of the Monthly Water Charge, as provided in Section 8a, below.

Service Connection: A point of connection for delivery of potable water from the City Transmission Facilities to California American Water Facilities pursuant to this Agreement.

Southgate Connection Fee: The connection fee agreed to between City and CUCC pursuant to the Southgate Agreement, as further specified in Paragraph 8b(3) and Exhibit G.

Southgate Service Area: The area served by City Water previously delivered to

California American Water on a wholesale basis under the Southgate Agreement, as shown on **Exhibit A** to this Agreement.

Water Forum Agreement: The Sacramento Water Forum Agreement dated January 2000 and any subsequent amendments or supplements thereto.

Wholesale Service Areas: Those lands located within California American Water's service area and also located within the POU, consisting of the areas shown on **Exhibit B** to this Agreement.

Wholesale Unit Rate: The cost per unit quantity of potable water delivered by City to California American Water under this Agreement, as provided in Section 8a, below.

Wholesale Use Charge: The cost billed by the City to California American Water for a measured volume of water delivered to California American Water using both Firm Capacity and Non-Firm Capacity, at the Wholesale Unit Rate, as provided in Section 8a, below.

Wholesale Water Service: The City's delivery of potable water from the City Transmission Facilities to the Service Connection(s) in accordance with the provisions of this Agreement.

3. Delivery Criteria:

The delivery of City Water to the Wholesale Service Areas under this Agreement will be governed by the operating guidelines, service connection points and criteria set forth for each of those areas in the Delivery Criteria attached hereto as **Exhibit C**. These Delivery Criteria may be modified from time to time by the mutual written agreement of the City's Director of Utilities and California American Water's Northern California General Manager, provided that such modifications are consistent with the provisions of this Agreement.

4. Maximum Deliveries:

- a. The maximum rate of water delivery to California American Water's Wholesale Service Areas under this Agreement utilizing Firm Capacity shall be limited to 2.3 million gallons per day (mgd). Water deliveries at a rate exceeding this maximum aggregate rate may only be made during the Non-Peak Period utilizing Non-Firm Capacity. During the Non-Peak Period, the maximum rate of water delivery to California American Water's Wholesale Service Areas under this Agreement utilizing Non-Firm Capacity shall be limited to 3.46 million gallons per day (mgd), for a total maximum delivery rate of 5.76 mgd utilizing Firm Capacity and Non-Firm Capacity. Non-Firm Capacity shall only be used to deliver water to California American Water at times when the City already is utilizing Firm Capacity at the maximum Firm Capacity rate specified above to

deliver water to California American Water. The delivery of water up to the foregoing maximum rates shall be subject to any conditions or limitations specified elsewhere in this Agreement, including without limitation satisfaction of California American Water's payment obligations as specified in Section 8, below, and the completion of any required Service Connection(s) as specified in Section 9, below.

- b. Notwithstanding any other provision of this Agreement to the contrary, consistent with the provisions of the Water Forum Agreement, when the City's diversions at the Fairbairn Plant are restricted or limited, or the diversion of water for California American Water would cause the City's diversions to be restricted or limited, by the Water Forum diversion restrictions incorporated in the City's American River water right permits, surface water diversions for delivery to California American Water's Wholesale Service Areas under this Agreement shall not exceed the rate of 1.13 mgd. These Water Forum diversion restrictions are shown on **Exhibit D** to this Agreement.
- c. Notwithstanding any other provision of this Agreement to the contrary, at any time when surface water diversions for delivery to California American Water's Wholesale Service Areas are limited to a maximum rate of 1.13 mgd as specified in Section 4b, above: (1) Non-Firm Capacity shall not be available to deliver City water to California American Water; and (2) deliveries of City water to California American Water in excess of 1.13 mgd (up to the maximum rate specified for Firm Capacity in Section 4a, above) shall be groundwater, and City shall have no obligation to make such deliveries in excess of 1.13 mgd unless and until California American Water has paid the Groundwater Capacity Charge specified in Section 8b(2) of this Agreement and the City has installed the additional groundwater capacity described in Section 8b(2).
- d. Deliveries of City water using Firm Capacity may be reduced or suspended when the occurrence of an unforeseen or emergency condition requires shutting down or reducing the use of any City facility(ies) used to provide such deliveries, provided that the City does not have facilities remaining in operation with capacity available to fully supply potable water to the City's other water service customers, and to California American Water in accordance with the provisions of this Agreement. Except as provided otherwise in this Agreement, the percentage reduction in Firm Capacity water deliveries to California American Water during such condition will not exceed the percentage reduction in deliveries to other City water customers affected by the same condition, excluding: (1) customers that may reasonably be classified by City as receiving water service essential to maintain public health or safety, such as a hospital; and (2) the maintenance of adequate capacity or water pressure for fire protection purposes.
- e. Notwithstanding any other provision of this Agreement to the contrary, the City

will not be required to divert, treat or deliver any water to California American Water under this Agreement if any City facility(ies) necessary to do so are shut down for maintenance or repair, provided that such shut down also prevents the use of such facilities for the City's retail water customers.

5. Services Performed by the City:

The City will provide Wholesale Water Service to California American Water in accordance with the terms of this Agreement and the Delivery Criteria. City Water delivered to California American Water under this Agreement will be provided from the City Transmission Facilities to California American Water Facilities at one or more Service Connections. The City will provide California American Water with the City's water quality testing data on an annual basis or on such other schedule as may be agreed to by the Parties, or as may be required by California American Water to meet the requirements of regulatory agencies.

6. Wholesale Water Service:

a. Wholesale Water Procedure:

- (1) California American Water shall notify City annually by March 1 of each year, or at such other time as may be mutually agreed to by City and California American Water staff, and in such form as may be specified by City, that California American Water desires to receive Wholesale Water Service pursuant to this Agreement. Such notification shall include California American Water's desired monthly delivery schedule and estimated amounts of water to be wholesaled for each of the Wholesale Service Areas during the succeeding 12-month period commencing on July 1. Such delivery schedules will be used for advisory purposes only and do not represent a commitment on the part of California American Water to purchase the amount of water scheduled. The City's compliance with such delivery schedules shall be subject to the conditions and limitations specified in this Agreement and the Delivery Criteria. For each year after the first year of this Agreement, if California American Water does not notify City otherwise, the City shall carry forward the prior year's delivery schedule and volume.
- (2) City Water shall be wholesaled to California American Water in accordance with the terms of this Agreement and the Delivery Criteria.
- (3) All City Water delivered to the Service Connection(s) shall meet the drinking water standards established by DPH and/or the USEPA pursuant to applicable laws and regulations. California American Water shall have sole responsibility for compliance with such standards for City Water

wholesaled pursuant to this Agreement after the water is delivered to the Service Connection(s).

b. Water Wholesaling Requirements:

- (1) California American Water shall be solely responsible for obtaining and maintaining any permits or other approvals required for the delivery and use of City Water in the Wholesale Service Areas, including compliance with all applicable laws and regulations, except for: (a) those permits that by law must be obtained by the City, including but not limited to permits for the diversion of surface water; and (b) permits that the City would be required to obtain in the absence of this Agreement.
- (2) California American Water shall be responsible for compliance with any present or future statutory and/or regulatory conditions or requirements that apply to or are imposed on the delivery and use of City Water in the Wholesale Service Areas, including any measures which are imposed to mitigate potential impacts through CEQA, Federal Reclamation Laws, NEPA and the Federal and State Endangered Species Acts to the extent that such requirements or conditions must be implemented within the Wholesale Service Areas or apply directly to the Wholesale Service Areas.
- (3) The City shall not be responsible for any costs associated with obtaining any such permits or other approvals for, or complying with any such conditions or requirements applicable to, the delivery and use of City Water in the Wholesale Service Areas, and California American Water shall pay any and all such costs, except for those costs or obligations that the City would be required to incur in the absence of this Agreement. The City will cooperate, consistent with applicable laws, regulations and ordinances and the provisions of this Agreement, with California American Water and all regulatory agencies, including the CPUC, in connection with California American Water's obtaining of permits or other approvals, or compliance with conditions imposed above, including but not limited to providing public record data required by these regulatory agencies.
- (4) Water treated and delivered to California American Water under this Agreement may only be used by California American Water to provide retail municipal and industrial water service in accordance with its CPUC-approved tariffs within the Wholesale Service Areas, and will not be used by California American Water for any other purpose.
- (5) Wholesale Water Service shall be provided in accordance with all operating, engineering and water supply requirements set forth in this

Agreement and the Delivery Criteria. Notwithstanding any other provision of this Agreement, if the City determines in the exercise of reasonable discretion that a suspension of water service under this Agreement is necessary due to a condition that poses an immediate threat to public health or safety, such service may be suspended by City without notice for the duration of such condition. The City shall notify California American Water as soon as is practicable (as specified in the Delivery Criteria), but in no case more than 2 hours following suspension of service (unless notice within 2 hours is not possible due to the emergency condition), of any suspension of service, the reason for such suspension, and an estimate of when such service will be restored.

- (6) California American Water shall perform all evaluation, monitoring, testing and reporting required of a consecutive water system under applicable federal and/or state regulations, including but not limited to the Stage 2 Disinfectants and Disinfection Byproducts Rule's "Initial Distribution System Evaluation," and shall coordinate California American Water's water monitoring with the monitoring conducted by City. California American Water shall be responsible for the cost of re-sampling and/or re-testing required by any regulation to the extent resulting from California American Water's failure to conduct required monitoring or otherwise fully comply with the regulation.
- (7) If California American Water cannot meet any drinking water standard(s) as a result of the delivery of City Water within California American Water's own water system, upon California American Water's request, City staff shall meet with California American Water staff to determine whether California American Water's inability to meet such standard(s) could be remedied by any feasible capital facility improvement(s) to City facilities used to treat and deliver City Water to the Service Connection(s) and/or by any feasible modifications to the operation of City facilities used to treat such water; provided that even if the City and California American Water agree that such capital improvement(s) or operational modification(s) are possible, the City shall have no responsibility whatsoever to construct any such improvements or undertake any such modifications unless and until the City and California American Water agree in writing upon all relevant terms and conditions, including terms specifying how such improvements and/or modifications will be funded and paid for. Neither the construction of any such capital improvements nor the implementation of any such operational modifications shall relieve California American Water of sole responsibility for compliance with all federal and state drinking water standards applicable to City Water wholesaled pursuant to this Agreement after the water is delivered to the Service Connection(s).

7. **Obligations of California American Water:**

- a. California American Water will take delivery of the potable water made available by the City pursuant to the Delivery Criteria.
- b. California American Water will pay any and all costs associated with pumping, diverting, treating and delivering water to California American Water pursuant to this Agreement, as set forth in Sections 8 and 9 of this Agreement.
- c. Any deliveries of water to California American Water will be subject to any and all applicable requirements and/or conditions contained in or in the future imposed on any of the City Water Rights and Entitlements.
- d. Notwithstanding any provisions in this Agreement to the contrary, California American Water shall have no liability or obligation to pay for any costs incurred by the City to retrofit the City's retail water service connections with water meters.

8. **Cost Allocation and Payment:**

The cost allocations and payment for any City Water delivered pursuant to this Agreement will be governed by this Section.

a. **Monthly Charges**

- (1) California American Water will be charged a Monthly Water Charge for potable water delivered by the City. The Monthly Water Charge shall consist of the sum of: (i) a Wholesale Use Charge calculated on the Wholesale Unit Rate basis (the cost-per-unit quantity) for water actually delivered; (ii) a monthly Service Charge for fixed administrative costs incurred by City in connection with administration of this Agreement; (iii) a monthly Capital Improvement Charge consisting of a prorated allocation of the City's capital improvement costs projected for the applicable Fiscal Year (excluding costs for capital improvements that have no relationship to wholesaling potable water to California American Water, such as unrelated distribution system improvement costs); and (iv) the City's general tax imposed on the foregoing charges pursuant to Sacramento City Code Section 3.20.010, including any amendments thereto. The foregoing components of the Monthly Water Charge are further described below and in **Exhibit E**.

- (A) The Capital Improvement Charge shall be prorated based on the maximum rate for Firm Capacity specified in Section 4a, above,

relative to the total capacity of the City Treatment Facilities, and shall not include any Capital Costs already included in Connection Fees paid under this Agreement.

- (B) The Service Charge and Capital Improvement Charge shall be paid irrespective of the quantity of water delivered. The Wholesale Use Charge shall be paid only for metered deliveries of City Water at the Service Connections.
 - (C) The Wholesale Unit Rate shall include the City's annual operating, maintenance and repair costs projected for the applicable Fiscal Year, and a water loss factor of ten percent (10%) until such time as the City's water supply system is fully metered; at that time the water loss factor shall be equal to the City's actual calculated water loss.
 - (D) Operating, maintenance and repair costs included in the Wholesale Unit Rate will also include any costs attributable to any applicable limitation, requirement, modification or other condition that applies, or that may in the future be applied, to any of the City Water Rights and Entitlements, but will exclude those costs that have no relationship to wholesaling potable water to California American Water, such as unrelated distribution system expenses.
 - (E) The Wholesale Unit Rate, the monthly Service Charge and the monthly Capital Improvement Charge (that corresponds to 1 mgd of Firm Capacity) for the Fiscal Year (FY) 2010-2011 are shown on **Exhibit E** to this Agreement. **Exhibit E** is attached for the sole purpose of showing the rate and charges applicable during FY 2010-2011. In future years the rate and charges will be adjusted on an annual basis using a similar calculation but with current costs.
- (2) City will adjust the Service Charge, Capital Improvement Charge and Wholesale Unit Rate annually. The adjusted charges and rate will be effective for the following 12 month period beginning September 1. City shall support such annual adjustments with a budget and reasonable supporting data.
 - (3) The quantity of water actually delivered pursuant to this Agreement shall be measured by the City at the Service Connection meter(s). Billing procedures and payment for water will be in accordance with the City's standard practice. The above charges will be in addition to the Connection Fees charged for Firm Capacity as specified in subsection b, below.

- (4) If the rate of water delivery to California American Water exceeds the maximum rate specified in Section 4a, above, (referred to in this subsection (5) as the “Maximum Rate”), California American Water shall pay five (5) times the Wholesale Unit Rate for the amount of City Water received by California American Water in excess of the Maximum Rate. This provision shall not be interpreted to authorize or sanction a repeated practice of water delivery exceedences (as defined below). If a repeated practice of water delivery exceedences develops, as reasonably determined by the City, the City shall notify California American Water of such repeated practice and California American Water shall implement measures to prevent the practice from continuing. If such practice continues after notice from City, the City may in its discretion modify the Service Connection facilities as deemed necessary by City to prevent water deliveries to California American Water from exceeding the Maximum Rate, and the cost incurred by City to make such modifications shall be paid by California American Water within thirty (30) days after City provides a written invoice for such cost to California American Water, unless the City agrees to an alternative payment procedure. For purposes of this subsection (5), a “repeated practice of water delivery exceedences” shall mean reoccurring deliveries of City Water to California American Water in excess of the Maximum Rate, not including excess water deliveries made solely to provide adequate water pressure during a fire emergency.

b. Connection Fees and Groundwater Capacity Charge

- (1) California American Water will pay Connection Fees for its share of Capital Costs for 1.17 mgd of Firm Capacity in the City’s surface water diversion, treatment and transmission facilities that will be used to provide potable water to California American Water under this Agreement, which fees will include reasonable administrative costs. Administrative costs shall include only those costs associated with the administration of City’s water diversion, treatment and transmission facilities. The Connection Fee amount for FY 2010-2011 for the use of 1.17 mgd of Firm Capacity is shown on **Exhibit F** to this Agreement. If all or any portion of this Connection Fee amount is not paid in FY 2010-2011, the City will adjust the Connection Fee amount annually prior to the commencement of each subsequent Fiscal Year, as applicable, to include the Capital Costs to be incurred for that Fiscal Year. City shall support such adjustment with a budget and reasonable supporting data. California American Water’s payment of Connection Fees to City shall be made as follows:
 - (i) California American Water shall pay the sum of two million

dollars (\$2,000,000.00) not later than thirty days after the Effective Date of this Agreement; and

- (ii) California American Water shall pay the balance of the total Connection Fees due for 1.17 mgd of Firm Capacity, based on the Connection Fee amount determined for the applicable Fiscal Year as provided above, not later than thirty days after receiving CPUC approval for such payment. Until this payment is made, the maximum rate of water deliveries to California American Water's Wholesale Service Areas utilizing Firm Capacity that is specified in Section 4a of this Agreement shall be limited to 2.03 mgd.

The parties acknowledge and agree that nothing contained herein shall be interpreted to require the Connection Fees established under this Agreement to be the same as the connection fees charged to any other person or entity receiving water service from the City.

- (2) In order to provide City with the additional groundwater production capacity necessary for City to supply groundwater as specified in Section 4c, above, California American Water shall pay City a Groundwater Capacity Charge in the amount of one million five hundred thousand dollars (\$1,500,000.00), and City will use this payment to fund the City's design and construction of a new groundwater well and/or to rehabilitate the City's existing groundwater production facilities, as determined by City in its sole discretion. California American Water shall make this payment to City not later than thirty days after receiving CPUC approval for such payment.
- (3) In addition to the Connection Fees specified in section 8b(1), above, California American Water shall pay a Connection Fee for 1.13 mgd of Firm Capacity in the City's surface water diversion, treatment and transmission facilities, and the amount of such fee shall remain the amount originally specified in the Southgate Agreement. California American Water's payment of this Connection Fee shall be made as provided in Exhibit G to this Agreement, which reflects a credit that will be given to California American Water for the total amount of annual connection fee installments already paid to City under the Southgate Agreement as of the Effective Date.
- (4) Notwithstanding any contrary provision of this Agreement, California American Water's purchase of Firm Capacity by paying Connection Fees for such Firm Capacity as provided herein shall not grant or convey, nor be interpreted as a grant or conveyance of, any right, title or other interest in any of the City Treatment or Transmission Facilities, other than

entitling California American Water to receive Wholesale Water Service from City as provided in this Agreement, and City shall maintain sole title to, and sole possession and control of, the City Treatment and Transmission Facilities.

9. Service Connections:

- a. Potable water delivered to California American Water under this Agreement will be provided from the City Transmission Facilities to the California American Water Facilities at one or more existing Service Connections and/or at one or more Service Connections to be designed and constructed by the City or California American Water, as shown in the Delivery Criteria or as determined by mutual written agreement of the City's Director of Utilities and California American Water's General Manager, who also shall agree on the location of future Service Connection(s).
- b. Except as otherwise agreed by the Parties for a Service Connection specified in Exhibit C, if a Service Connection is designed and constructed by the City, subject to review and comment by California American Water, California American Water will pay all direct and indirect costs incurred by the City to design, bid and construct the Service Connection, including all reasonable costs of administering design and construction contracts, as well as the cost of preparing all environmental documents and obtaining all permits, property rights or other approvals required for the installation, operation, maintenance and repair of the Service Connection in compliance with all applicable laws and regulations. Such payments will be in addition to the charges, costs and fees set forth in Section 8, above, and will be made in the following manner:
 - (1) After performing a preliminary design of the Service Connection, the City Director of Utilities will estimate all costs described herein, and such preliminary design and estimate will be provided to California American Water for approval. Such approval will not be unreasonably withheld.
 - (2) During the design phase and the construction phase, the City will bill California American Water at regular intervals for reasonable costs incurred by the City during the billing cycle. California American Water will pay each invoice within six weeks.
 - (3) Upon completion of construction of the Service Connection, and the resolution of any claims, disputes or litigation related to its design or construction, including claims or litigation related to the acquisition of permits, property rights or other approvals, claims or litigation related to the preparation or approval of environmental documents, stop notice claims or litigation, and contract claims or litigation, the City will provide

California American Water with a final statement of any and all costs actually incurred by the City. Such statement will include any and all costs reasonably incurred by the City with regard to any of the claims, disputes or litigation described above, including any and all costs related to the settlement of any such claims, disputes or litigation. If such costs exceed the amount of money theretofore paid by California American Water to the City, California American Water will pay to the City the amount by which such actual costs exceed the amount already paid. Any payments made by California American Water pursuant to this provision will be made not later than six weeks after the statement of costs actually incurred by the City is provided to California American Water.

(4) Notwithstanding anything contained herein to the contrary, California American Water will reimburse the City for any and all reasonable preliminary design costs incurred by the City in connection with any proposed Service Connection, even if such preliminary design or any cost estimate based on such design is not accepted or approved by California American Water.

c. If a Service Connection is designed and constructed by California American Water, California American Water will be wholly responsible for designing, bidding and constructing the Service Connection, as well as preparing all environmental documents and obtaining all permits, property rights or other approvals required for the installation, operation, maintenance and repair of the Service Connection in compliance with all applicable laws and regulations. Such activities will be paid for entirely by California American Water, and will be subject to the following requirements:

(1) Prior to the construction of any Service Connection by California American Water, both the preliminary design and the final design must be approved in writing by the City Director of Utilities. Such approval will not be unreasonably withheld. If either or both the preliminary design or final design is not approved by the City Director of Utilities, the City will notify California American Water in writing of the reason or reasons why such design is not acceptable, and California American Water will perform such revisions as may be necessary to obtain the approval of the City.

(2) In addition to paying its own costs, California American Water will reimburse the City for reasonable costs incurred by the City during the design and construction of the Service Connection by California American Water. Upon completion of construction of the Service Connection, and the resolution of any claims, disputes or litigation related to its design or construction, including claims or litigation related to the acquisition of

permits, property rights or other approvals, claims or litigation related to the preparation or approval of environmental documents, stop notice claims or litigation, and contract claims or litigation, the City will provide California American Water with a detailed statement of any and all costs actually incurred by the City to review, inspect or otherwise participate in the design and construction of the Service Connection. Such statement will also include any and all costs reasonably incurred by the City with regard to any of the claims, disputes or litigation described above, including any and all costs related to the settlement of any such claims, disputes or litigation, provided that any such settlement was approved in advance by California American Water staff, and provided further that such approval will not be unreasonably withheld. California American Water will pay the costs identified on such statement no later than six weeks after the City provides such statement to California American Water.

- (3) Notwithstanding anything contained herein to the contrary, California American Water will reimburse the City for any and all reasonable costs incurred by the City in connection with the design of any proposed Service Connection by California American Water, even if the preliminary or final design is not approved or if such Service Connection is not constructed.
- d. The City will operate, maintain and repair all facilities associated with the Service Connection, including flowmeter, flow transmitter, pressure transmitter, valve, S.C.A.D.A. and electrical pedestal. A S.C.A.D.A. connection to the California American Water S.C.A.D.A. system will also be provided for. As part of such operation, maintenance and repair, the City will calibrate instrumentation at reasonable scheduled intervals, at least annually, and will report such calibration as requested by California American Water. The City shall notify California American Water at least 48 hours in advance of calibration activities and California American Water representatives may be present during calibration. If such facilities are constructed by California American Water, upon the completion and City acceptance of such facilities, California American Water will convey to the City (1) clear title to such facilities, and (2) permanent access rights to operate, maintain and repair such facilities, at no cost to the City. All operation, maintenance and repair costs incurred by the City will be reimbursed by California American Water by including such costs in the Wholesale Unit Rate paid by California American Water under Section 8a, above.
- e. California American Water will design, construct, own, operate and maintain all facilities downstream of the Service Connection, including flow control and surge control facilities to mitigate the effects of flow stoppage. California American Water will submit plans for surge control facilities for review and approval of the City prior to construction, which approval will not be unreasonably withheld.

- f. Unless required by the City's Director of Utilities or otherwise required by law, regulation, ordinance or City Council-adopted policy, backflow prevention devices will not be required at the Service Connections provided that (i) California American Water has a backflow prevention program meeting State regulations, and (ii) all California American Water Facilities within the Wholesale Service Areas meet the standards of the California Department of Public Health and USEPA.
- g. Although delivery pressure cannot be guaranteed under all circumstances, delivery pressure at the Service Connection(s) will be maintained above a minimum of 30 pounds per square inch ("psi"), and below a maximum of 80 psi, under normal operating conditions. The City will not be obligated to supply water to any or all Service Connections at a rate exceeding the maximum rate set forth in Section 4a, above.

10. Term of Agreement:

This Agreement will become effective as of the date it is duly approved and signed by both Parties.

11. Failure to Deliver Water:

It is understood and agreed that, while the City will use all reasonable efforts to treat and convey water pursuant to the terms of this Agreement, the City is not warranting or guaranteeing that it will be able to divert, treat, store and/or deliver water when prevented from doing so due to an emergency or other circumstances beyond the City's direct control, nor will the City be liable for any failure to deliver water to California American Water hereunder, provided such failure is caused in whole or in part by an emergency condition or other factors beyond the direct control of the City.

12. The City Water Rights and Entitlements:

This Agreement will not affect or limit in any way the City Water Rights and Entitlements. Notwithstanding anything herein to the contrary, it is understood and agreed that California American Water's rights hereunder will at all times be subject to, and exercised in accordance with, any applicable limitation, requirement, modification or other condition that applies, or that may in the future be applied, to any of the City Water Rights and Entitlements.

13. Groundwater Basin Adjudication or Water Accounting Framework:

If the groundwater basin is adjudicated or if a water accounting framework is developed, the parties agree that: (a) California American Water shall be entitled to include in any claim or accounting relating to groundwater used by California American Water the groundwater

produced for the benefit of California American Water under this Agreement; and (b) after such adjudication or accounting framework is established, the amount of water produced for the benefit of California American Water pursuant to this Agreement will be applied against or come out of California American Water's allocation.

14. Fluoridation:

California American Water acknowledges that potable water delivered to California American Water may contain fluoride, and agrees that California American Water will be solely responsible for: (1) any public notification to all or any portion of the Wholesale Service Area that the water provided hereunder has been treated with fluoride; and (2) for all costs associated with or resulting from the introduction of fluoridated water into the California American Water Facilities, including monitoring and testing costs. California American Water further acknowledges and agrees that the City may in the City's sole discretion suspend or terminate the City's fluoridation of water delivered to California American Water, and that California American Water shall not make any claim against the City for any costs California American Water incurs associated with or resulting from the City delivering non-flouridated water to California American Water under this Agreement.

15. Notices:

Unless indicated otherwise herein, all notices, invoices, payments, statements or other writing authorized or required by this Agreement may be delivered personally, or sent in the United States mail, postage prepaid, or sent by electronic mail if the recipient confirms receipt, and addressed to the respective Parties as follows:

City:

Director, Department of Utilities
City of Sacramento
1395 35th Avenue
Sacramento, CA 95822
Electronic mail: mhanneman@cityofsacramento.org

California American Water:

Northern California General Manager
California American Water
4701 Beloit Drive
Sacramento, CA 95838-2434
Electronic mail: andrew.soule@amwater.com

All notices, invoices, payments or other writings will be deemed served on the day that they are personally served, the day of receipt for United States mail (postage prepaid), or if served electronically, on the day that the recipient acknowledges receipt. A party may change

the above designations by providing notice thereof to the other party.

16. Indemnification and Defense:

- a. By California American Water: California American Water will fully indemnify, hold harmless and defend the City, its officers and employees, from any claims, actions or liability for any damages, any injury to persons or property, or any violation of any law or regulation, occurring by reason of anything done or omitted to be done by California American Water, its officers, employees, contractors or agents under this Agreement. Except as specified in subsection b, below, California American Water will fully indemnify, hold harmless and defend the City, its officers and employees from any claims, actions or liability for any damages, any injury to persons or property, or any violation of any law or regulation, occurring by reason of any action taken by the City, its officers or employees, if such action is required or authorized under this Agreement, except to the extent such damages, injury, or violation resulted from the negligent or wrongful acts of the City.
- b. By City: Notwithstanding anything to the contrary herein, the City will fully indemnify, hold harmless and defend California American Water, its parent, subsidiaries and affiliates, and their respective officers and employees, from any claims, actions or liability for any damages, any injury to persons or property, or any violation of any law or regulation, occurring by reason of anything done or omitted to be done by the City, its officers, employees, contractors or agents in connection with the processing, treating or conveyance of water by the City Treatment and Transmission Facilities. Such duty to indemnify, hold harmless and defend will include all claims, actions or liability occurring by reason of anything done or omitted to be done by the City in connection with any delivery by the City to the Service Connection(s) of water that fails to comply with the definition of potable water contained herein.

17. Dispute Resolution:

- a. Disputes: If a dispute arises concerning any controversy or claim arising out of or relating to this Agreement or the breach thereof, or relating to its application or interpretation, the aggrieved party will notify the other party(ies) of the dispute in writing within twenty days after such dispute arises. If the Parties fail to resolve the dispute within sixty days after delivery of such notice, each party will promptly nominate a senior officer of its organization to meet at any mutually-agreed time and location to resolve the dispute. The Parties shall use their best efforts to reach a just and equitable solution satisfactory to all Parties. Should the Parties be unable to resolve the dispute to their mutual satisfaction within sixty days thereafter, the dispute will be subject to mediation, pursuant to subsection b., below. The time periods set forth in this section are subject to extension as agreed

to by the Parties.

- b. Mandatory Non-binding Mediation. If a dispute is not resolved pursuant to subsection a, above, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory non-binding mediation initiated and conducted under the applicable rules of the American Arbitration Association, before having recourse in a court of law. Each party shall bear their own legal expenses, and the expenses of witnesses for either side shall be paid by the party producing such witnesses. All expenses of the mediator, including required travel, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise. Any resultant agreements from mediation shall be documented in writing. All mediation proceedings, results, and documentation, including without limitation any materials prepared or submitted or any positions taken by or on behalf of either party, shall be inadmissible for any purpose in any legal proceeding (pursuant to California Evidence Codes sections 1115 through 1128), unless such admission is otherwise agreed upon in writing by both parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery. The mediation shall be completed within sixty days after selection of the mediator, unless the Parties agree to extend the mediation period,

18. Records Inspection:

Each party will be entitled to inspect and photocopy the records of the other party that pertain to this Agreement, upon providing reasonable notice to such other party of its intent to do so. Each party may also appoint an auditor or auditors to examine the financial records of the other party to determine the adequacy of cost accumulation and billing information maintained by each party. After reasonable notice, each party will make available to the other party's auditor or auditors all requested records, and will assist and cooperate with such auditors. Each party will keep its accounting and financial records in accordance with generally-accepted accounting principles and any applicable laws or regulations.

19. Amendments:

No amendment or modification to this Agreement will be valid unless executed in writing and duly approved by the Parties.

20. No Third-Party Beneficiary:

This Agreement is not intended to, and will not be interpreted as conferring, any benefit or right whatsoever upon any person or entity that is not a party hereto.

21. Exhibits Incorporated:

All Exhibits referred to herein and attached hereto are fully incorporated into this Agreement as if such Exhibits were set forth in their entirety at this place.

22. Termination for Non-Performance:

Either party may terminate this Agreement if the other party fails to perform a material provision of this Agreement as required herein, provided that the party seeking termination shall provide written notice of its intention to terminate to the other party, which notice shall fully describe how the other party failed to perform a material provision of this Agreement, and provided further that the dispute has not been resolved without termination by following the procedures set forth in Section 17 above. Should the Parties be unable to resolve the dispute following the procedures set forth in Section 17, the party seeking termination may provide a written notification of termination to the other party, and such termination shall become effective sixty days after the other party receives such written notification.

23. General Provisions:

- a. This Agreement will be construed in accordance with, and governed by, the laws of the State of California without reference to conflicts of laws principles. The place where this Agreement is to be performed and its situs or forum will at all times be in the County of Sacramento.
- b. The headings of the sections and paragraphs in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and will not be used in its construction.
- c. This Agreement is the result of the joint efforts and negotiations of both Parties, and this Agreement will be interpreted as though each of the Parties participated equally in the drafting and composition of this Agreement and each and every part hereof.
- d. This Agreement may be freely assigned in connection with a transfer of all or part of one or more of the Wholesale Service Areas by California American Water to another water purveyor, subject to CPUC approval, if such approval is required. Otherwise, this Agreement may not be assigned by either party without the written consent of the non-assigning party, not to be unreasonably withheld, and any purported assignment without such consent will be void.
- e. The provisions of this Agreement shall bind the Parties' successor entities and authorized assigns.
- f. Neither City nor California American Water, nor their respective agents, consultants or contractors are or shall be considered to be agents of the other party

in connection with the performance of this Agreement. Nothing in this Agreement shall be construed to create a joint venture, partnership or other relationship between the Parties, other than the City acting in its municipal capacity with respect to the provision of wholesale water service to California American Water.

- g. The waiver by a party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of the Agreement.

Date: _____, 2010

CITY OF SACRAMENTO

Attest:

By: _____

By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

Date: 12/8, 2010

CALIFORNIA AMERICAN WATER COMPANY

Attest:

By: Robert G. Maclean

By: 
Secretary

Robert G. Maclean
President

Carrie L. Gleason, Secretary

List of Exhibits:

- Exhibit A: Southgate Service Area
- Exhibit B: Wholesale Service Areas
- Exhibit C: Delivery Criteria
- Exhibit D: Water Forum Diversion Restrictions in City's American River Water Right Permits
- Exhibit E: 2010-2011 Wholesale Unit Rate, Service Charge, Capital Improvement Charge
- Exhibit F: 2010-2011 Connection Fee
- Exhibit G: Connection Fee Payment for Southgate Firm Capacity (1.13 mgd)

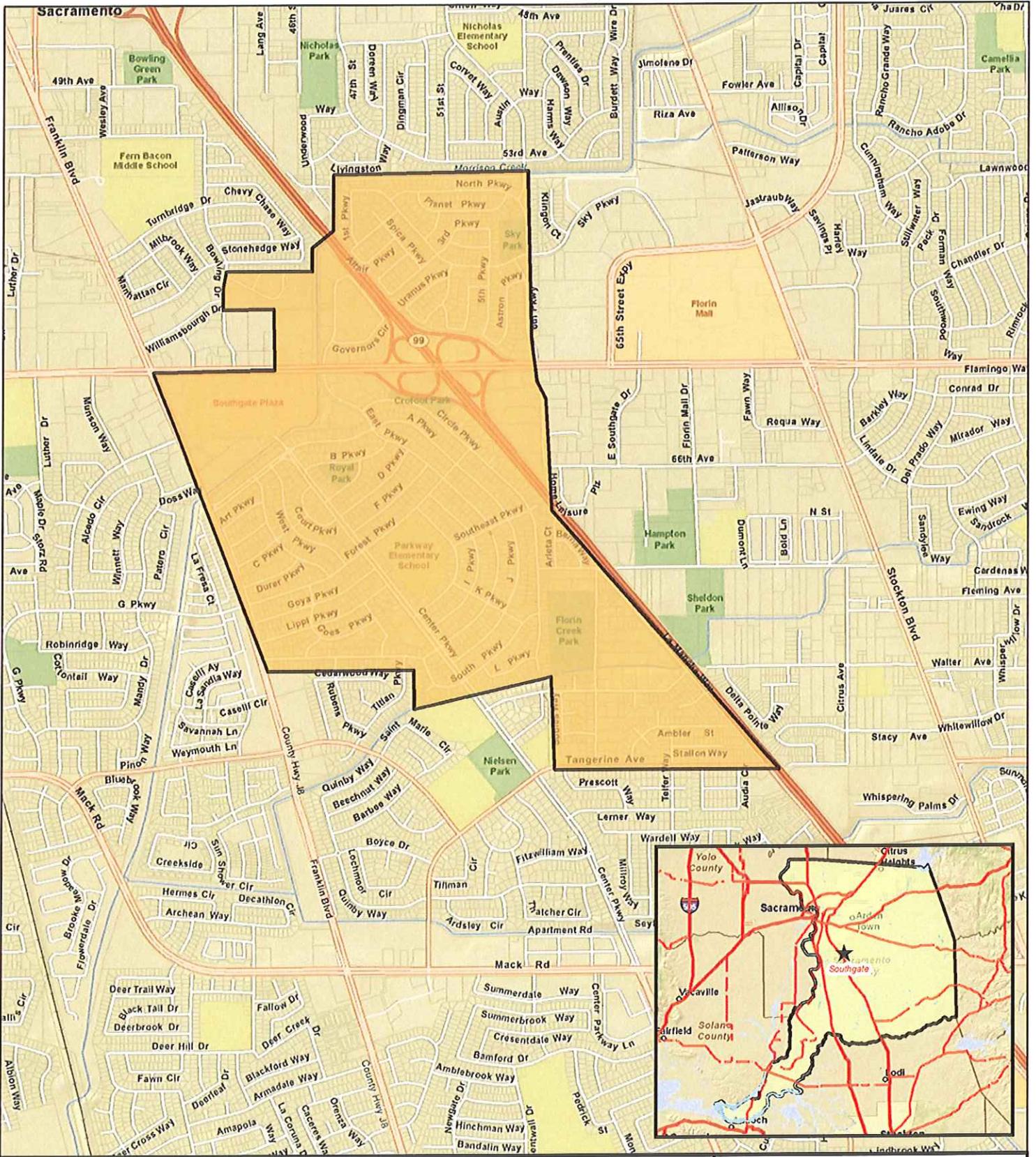


Exhibit A
Southgate Service Area
Sacramento District



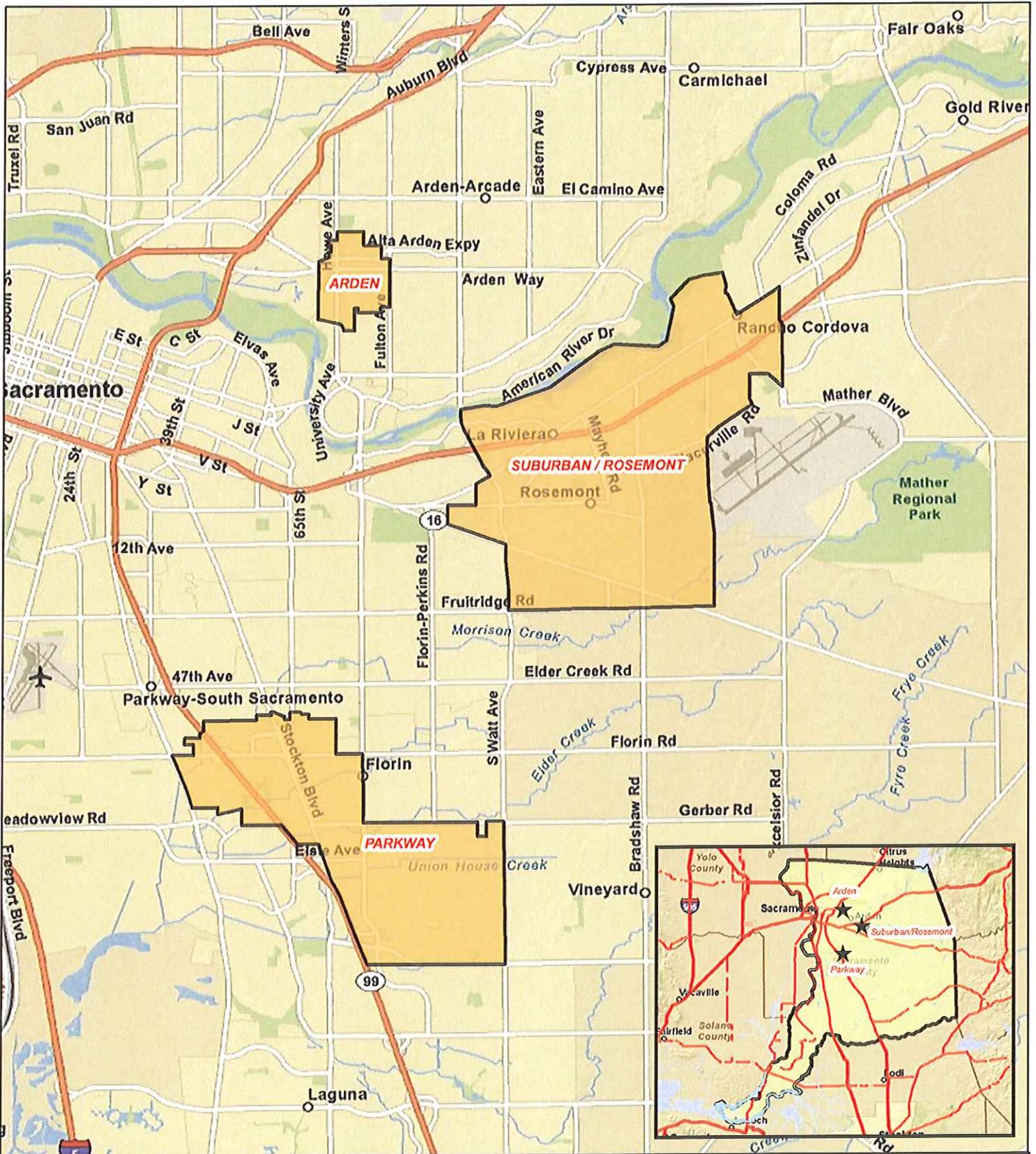


Exhibit B
Wholesale Service Area
Sacramento District



Exhibit C

CITY OF SACRAMENTO / CALIFORNIA AMERICAN WATER
WHOLESALE WATER SERVICE AGREEMENT

DELIVERY CRITERIA

This document specifies delivery criteria and other requirements for wholesale water service to California American Water from the City of Sacramento (City), pursuant to the above-referenced Agreement.

LIST OF CONTACTS:

California American Water:

Grady Stevens, Operations Manager	(916) 568-4269
Yitzhak Gilon, Production Supervisor	(916) 568-4239
Jared Bell, Production Foreman	(916) 568-4224
Supervisor on Call (after hours)	(916) 869-8602
Production on Call (after hours)	(916) 869-8165

City of Sacramento:

E. A. Fairbairn WTP Control Room	(916) 808-3120
E. A. Fairbairn WTP Hotline	(916) 383-1516
Mary Krizanosky, Plant Operator Supervisor	(916) 808-1311
Steve Willey, Plant Operator Supervisor	(916) 808-7407
Dave Phillips, Water Superintendent	(916) 808-5652
Roland Pang, Water Superintendent	(916) 808-1309
Mike Yee, Plant Services Division Manager	(916) 808-5583

OPERATIONAL PROCEDURES AND PARAMETERS:

1. For initial start-up, and any significant flow reduction or shut-down periods, California American Water will call the E. A. Fairbairn Water Treatment Plant (FWTP) Control Room to communicate delivery status.
2. The City shall be responsible for reading and recording the time and flow quantities.
3. When California American Water first starts the take of water, or when water deliveries resume after any significant flow reduction or shut down, California American Water will coordinate with the City so as not to cause a major pressure drop or surge in the City or California American Water systems.
4. City and California American Water Operations staff shall work cooperatively to maintain pressure at the Service Connections at or above 30 psig, under normal

- operating conditions.
5. If pressure at the service connections cannot be maintained at or above 30 psig for any period of sixty (60) seconds, the City Operations staff will contact California American Water's Operations or dispatch staff to reduce water flow at the Service Connection as necessary to restore a minimum pressure of 30 psig.
 6. Flushing of stagnant water in pipelines, if required shall be the responsibility of California American Water.

DEFINITION OF PEAK AND NON-PEAK PERIODS:

Peak Period: May15 through October 14
Non-Peak Period: October 15 through May14

SERVICE CONNECTIONS:

Upon payment of connection fees and satisfaction of all other conditions specified in this Agreement, City will deliver water under this Agreement for transmission into the various California American Water service areas as specified below:

1. Arden: From the City's existing 12 inch turnout in the vicinity of Ethan Way near Alta Arden to a future Service Connection to be constructed by California American Water, or at an alternative location as mutually agreed.
2. Suburban /Rosemont : From a City transmission main in Folsom Boulevard to an existing California American Water water line located approximately 1,200 feet west of the centerline of South Watt. It is anticipated that the necessary extension of the City's existing transmission main and the Service Connection will be constructed by the City with the Connection Fees paid pursuant to Section 8(b)(1) of this Agreement and grant funds otherwise provided to the City.
3. Parkway: The existing Service Connection at "A" Parkway.

Exhibit D

Water Forum Diversion Restrictions in City's American River Water Right Permits

The City of Sacramento's American River water right permits contain the following condition:

"At such time as the additional water treatment capacity to be provided by the City's Water Facility Expansion project (as described in the final Environmental Impact Report, SCH # 1998032046) is available for use by the City, the following terms shall go into effect.

In extremely dry years (i.e., years in which the State of California Department of Water Resources [DWR] annual projected unimpaired inflow into Folsom Reservoir would be 550,000 acre-feet annually [afa] or less; also referenced as the March through November projected unimpaired flow into Folsom Reservoir being less than 400,000 acre feet [af]) the City would limit its diversions of City water (i.e., water diverted pursuant to the City's water rights and entitlements) at the Fairbairn Water Treatment Plant (FWTP) to not greater than 155 cubic feet per second (cfs) and not greater than 50,000 afa. Any additional water needs would be met by diversions at other locations and/or other sources.

In all other years (i.e. when the DWR annual projected unimpaired runoff into Folsom Reservoir is greater than 550,000 af, or the March through November projected unimpaired inflow into Folsom Reservoir is greater than 400,000 af) the City may divert City water at the FWTP in accordance with the following criteria:

- (1) Diversion up to 310 cfs (200 million gallons per day [mgd]) as long as the flow bypassing the diversion at the FWTP is greater than the Hodge Flow Criteria. (The Hodge Flow Criteria refers to the following minimum Lower American River flows established by Judge Hodge in the *EDF v. EBMUD* case: October 15 through February - 2,000 cfs; March through June - 3,000 cfs; July through October 15 - 1,750 cfs.)
- (2) Whenever flow bypassing the diversion at the FWTP is less than the Hodge Flow Criteria, City of Sacramento diversions at the FWTP may not be greater than the following: January through May - 120 cfs; June through August - 155 cfs; September - 120 cfs; October through December - 100 cfs."

EXHIBIT E
CALIFORNIA AMERICAN WATER COMPANY
WHOLESALE - UNIT COST CALCULATION
FISCAL YEAR 2010-2011

FY 2011 Operating/CIP Budget: \$82,590,436

FY 2010 Water Production (AF):
FY 2010 Water Delivery (AF):

117,847.0
106,062.3

OPERATING	BUDGET	UNIT COST ELEMENTS	
LABOR			
Employee Services	\$24,327,336		\$229.37
Cost Reimb-Credit	(\$8,615,934)		(\$82.38)
Cost Reimb-Charge	\$5,196,956		\$49.00
CIP Reimbursement	(\$514,000)		(\$4.85)
LABOR TOTAL	\$22,394,368		\$211.14
OPERATIONS			
Utilities	\$5,054,500		\$47.66
Operations Equipment	\$939,309		\$8.86
Direct Operations Supplies	\$8,546,449		\$61.72
Chem & Gases	\$2,207,177		\$20.81
TOTAL OPERATIONS	\$14,747,435		\$139.05
ADMINISTRATION/OVERHEAD			
Office/Admin	\$4,411,305		\$41.59
Interdepartmental Allocation	\$3,068,524		\$28.93
Comp Liability Exp	\$1,169,778		\$11.03
Water Rights/Supply	\$396,000		\$3.73
Professional Services	\$2,240,805		\$21.13
TOTAL ADMIN/OVERHEAD	\$11,286,412		\$106.41
General Fund Tax	\$8,564,900		\$80.75
TOTAL OPERATING	\$68,993,105		\$537.35
CAPITAL IMPROVEMENT PROGRAM			
CIP/MYOP	\$14,420,000		\$135.98
Debt Service	\$11,177,331		\$105.38
TOTAL CIP	\$25,607,331		\$241.34
TOTAL OPERATING/CIP COSTS	\$82,590,436		\$776.70
EXCLUDED COSTS			
Unrelated Distribution Overhead	(\$4,125,658)		(\$38.90)
Unrelated Distribution Labor & Oper	(\$13,576,885)		(\$128.01)
General Fund Tax	(\$8,564,900)		(\$80.75)
CIP/MYOP	(\$14,420,000)		(\$135.98)
Unrelated Debt Service	(\$11,177,331)		(\$105.38)
TOTAL EXCLUDED COSTS	(\$51,864,773)		(\$489.00)
WHOLESALE COST	\$30,725,663	UNIT RATE	\$269.69
11% General Fund Tax	\$3,797,554	UNIT RATE	\$35.80
TOTAL COST	\$34,523,216	UNIT RATE	\$325.50
			\$0.7472
		WHOLESALE COST/AF	
		GF TAX/AF	
		TOTAL COST/AF	
		TOTAL COST/CCF	
		CAPITAL IMPROVEMENT CHARGE ***	\$982.72
		SERVICE CHARGE	\$256.91
		SUBTOTAL	\$1,239.63
		11% General Fund Tax	\$153.21
		TOTAL MONTHLY CHARGE	\$1,392.85

*** Capital Improvement Charge Calculation	
Contract Sec 8 (a)1:	
Max daily mgd commitment to Cal Am per contract sec 5a	2.3
Permitted Treatment Capacity: SRWTP (160 mgd) and FWTP (160 mgd)	320
% available to Cal Am	0.72%
CIP Program attributable to Wholesale	\$1,640,719
Annual CIP Charge	\$11,793
Monthly CIP Charge	\$982.72

CALIFORNIA AMERICAN WATER COMPANY

Wholesale - Unit Cost Calculation
 Fiscal Year 2010-2011

CIP PROGRAM ATTRIBUTABLE TO WHOLESAL

PROJECT	FY11 BUDGET
I14010301 - SAC RIVER KOWC PROGRAM	30,000.00
I14010400 - AMERICAN RVR SOURCE WTR PRTT	21,000.00
I14010401 - AMERICAN RVR KOWC PROGRAM	25,900.00
Z14000500 - WATER SUPPLY MASTER PLANNING PROJECTS	150,000.00
Z14001500 - DRINKING WATER QUALITY	78,000.00
Z14005000 - T-MAIN JIBBOOM ST STEEL MN3351	1,000,000.00
Z14006800 - UNPLANNED CORRECTIVE MAINTENANCE	250,000.00
Z14110300 - LEAK DETECTION PROGRAM*	9,719.23
Z14110400 - WATER SYSTEM SECURITY	25,000.00
Z14110700 - FWTP FILTER STOP LOGS	20,000.00
	\$1,640,719.23

EXHIBIT F
CALIFORNIA AMERICAN WATER COMPANY
SURFACE WATER CONNECTION FEE
1.17 ADDITIONAL MGD FIRM CAPACITY

TABLE 1 - CURRENT CITY WATER SYSTEM COSTS

DESCRIPTION	REPLACEMENT COST	CAPACITY (mgd)	UNIT COST (\$/mgd)
Distribution	74,747,056	295	n/a
TransmissionMain	184,767,839	295	626,332
Hydrants	1,225,210	295	n/a
Storage	39,327,621	295	n/a
Wells*	9,555,721	295	n/a
Treatment	371,369,983	295	1,258,881
Intakes/Pumping	75,175,612	295	254,833
General	25,521,309	295	86,513
TOTAL	781,690,351		\$ 2,226,558

*Well cost removed for this contract only.

TABLE -2 SURFACE WATER CONNECTION FEE

UNIT COST	MGD	TOTAL FEE*
\$ 2,226,558	1.17	\$ 2,605,073

*This amount is for the Surface Water Connection Fee only. Additional costs for a Groundwater Well and Meter Stations are not included in this exhibit.

Exhibit G

Connection Fee Payment for Southgate Firm Capacity (1.13 mgd)

The connection fee and repayment schedule established by the Southgate Agreement shall remain unchanged and shall be as follows:

The Connection Fee is \$1,640,751.79, amortized over 20 years at 6.5% interest, resulting in the amount of \$146,799.00 due annually to the City in twenty payments. The first annual payment was made in 1997, and the final annual payment will be due in 2017 as shown in the attached accounting detail. Each annual payment must be made to City not later than 30 days after California American Water receives the City's invoice therefor.

EXHIBIT G
CALIFORNIA AMERICAN WATER COMPANY
SURFACE WATER CONNECTION FEE

ORIGINAL SOUTHGATE AGREEMENT

Credit for payments previously remitted

Fiscal							
Year	Due Date	Balance	Principle	Interest	Debt Service	Net Interest	Accrued
		1,640,751.79			53,036.29		
1998	12/21/1997	1,597,665.69	43,086.10	103,712.90	146,799.00	155,087.48	51,374.58
1999	12/21/1998	1,551,856.10	45,809.59	100,989.41	146,799.00	99,516.36	49,901.53
2000	12/21/1999	1,503,150.85	48,705.25	98,093.75	146,799.00	96,527.58	48,335.36
2001	12/21/2000	1,451,366.92	51,783.93	95,015.07	146,799.00	93,349.90	46,670.19
2002	12/21/2001	1,396,309.69	55,057.23	91,741.77	146,799.00	89,971.35	44,899.77
2003	12/21/2002	1,337,772.26	58,537.43	88,261.57	146,799.00	86,379.24	43,017.44
2004	12/21/2003	1,275,534.65	62,237.61	84,561.39	146,799.00	82,560.08	41,016.13
2005	12/21/2004	1,209,362.96	66,171.69	80,627.31	146,799.00	78,499.49	38,888.31
2006	12/21/2005	1,139,008.52	70,354.44	76,444.56	146,799.00	74,182.24	36,625.99
2007	12/21/2006	1,064,206.93	74,801.59	71,997.41	146,799.00	69,592.09	34,220.37
2008	12/21/2007	984,677.09	79,529.84	67,269.16	146,799.00	64,711.80	31,663.30
2009	12/21/2008	900,120.12	84,556.97	62,242.03	146,799.00	59,523.01	28,944.29
2010	12/21/2009	810,218.25	89,901.87	56,897.13	146,799.00	54,006.24	26,053.40
Subtotal			830,533.54	1,077,853.46	1,908,387.00		

Payments remaining

Fiscal							
Year	Due Date	Balance	Principle	Interest	Debt Service	Net Interest	Accrued
2011	12/21/2010	714,633.63	95,584.62	51,214.38	146,799.00	48,140.78	22,979.78
2012	12/21/2011	613,007.05	101,626.58	45,172.42	146,799.00	41,904.51	19,711.87
2013	12/21/2012	504,956.59	108,050.46	38,748.54	146,799.00	35,274.07	16,237.40
2014	12/21/2013	390,076.20	114,880.39	31,918.61	146,799.00	28,224.51	12,543.30
2015	12/21/2014	267,934.15	122,142.05	24,656.95	146,799.00	20,729.35	8,615.70
2016	12/21/2015	138,071.43	129,862.72	16,936.28	146,799.00	12,760.41	4,439.83
2017	12/21/2016	-	138,071.43	8,727.58	146,799.01	4,287.75	0.00
Subtotal			810,218.25	217,374.76	1,027,593.01		
Grand Total			1,640,751.79	1,295,228.22	2,935,980.01		



Unexecuted Contract/Agreements

- X The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.
- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.