

|                                     |
|-------------------------------------|
| AGREEMENT NUMBER<br><b>04YS0025</b> |
| REGISTRATION NUMBER                 |

1. This Agreement is entered into between the State Agency and the Buyer named below:

STATE AGENCY'S NAME

**CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS**

BUYER'S NAME

**TOWN OF YOUNTVILLE**

2. The term of this Agreement is: **July 1, 2004** through **June 30, 2024**

3. The maximum amount of this Agreement is: **Not applicable**

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

Exhibit A – Scope of Work 6 pages

Exhibit B – Budget Detail and Payment Provisions 1 page

Exhibit C\* – General Terms and Conditions GTC 304

Check mark one item below as Exhibit D:

- Exhibit - D Special Terms and Conditions (Attached hereto as part of this agreement) 2 pages
- Exhibit - D\* Special Terms and Conditions

Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

**IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.**

**BUYER**

BUYER'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

**TOWN OF YOUNTVILLE**

BY (Authorized Signature)

*[Signature]*

DATE SIGNED (Do not type)

**7/7/2004**

PRINTED NAME AND TITLE OF PERSON SIGNING

**Todd Carlson, Mayor**

ADDRESS

**6550 Yount Street  
 Yountville, CA 94599**

**STATE OF CALIFORNIA**

AGENCY NAME

**CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS**

BY (Authorized Signature)

*[Signature]*

DATE SIGNED (Do not type)

**7/7/2004**

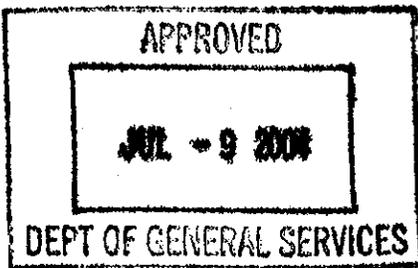
PRINTED NAME AND TITLE OF PERSON SIGNING

**Roger Brautigan, Undersecretary**

ADDRESS

**1227 O Street, Room 300  
 Sacramento, CA 95814**

California Department of General Services Use Only



Exempt per: MM 03-10 C(2)

*[Signature]*  
 7/9/04

**EXHIBIT A**  
**SCOPE OF WORK**

The parties to this agreement are the Department of Veterans Affairs (hereinafter referred to as "Department") and the Town of Yountville (hereinafter referred to as "Buyer").

**RECITALS**

1. WHEREAS, Department has jurisdiction, control, and possession, of certain real property in the County of Napa, State of California, upon which Rector Dam and Reservoir are located; and
2. WHEREAS, Department impounds water behind Rector Dam in Rector Reservoir and distributes that water through various facilities for various purposes to state and non-state water users; and
3. WHEREAS, Government Code section 14715 provides that the Veterans Home of California—Yountville (VHC-Y), for all purposes, including irrigation and domestic, shall have the first and prior right to all available water stored in Rector Reservoir (hereinafter referred to as "Rector Reservoir water"); and
4. WHEREAS, Government Code Section 14715 provides further that in the event that there is more Rector Reservoir water available than necessary to meet the requirements of the VHC-Y, the Department of General Services may take and conduct from Rector Reservoir such quantity of surplus water for the use of state establishments within the County of Napa, including, but not limited to, the Napa State Hospital and the State Game Farm, if and only if the Department of Water Resources determines that said establishment has a need for Rector Reservoir water; and
5. WHEREAS, the "Water License for Diversion and Use of Water" (License No. 10911) issued to Department by the State Water Resources Control Board on May 7, 1979 authorizes Department to put Rector Reservoir water to beneficial use at the VHC-Y, the State Game Farm, the Napa State Hospital, the Town of Yountville, and specified agricultural properties; and
6. WHEREAS, Department has been selling Rector Reservoir water to Buyer pursuant to various agreements for over 40 years, including an interim agreement entered into by the parties hereto in 2001, which will expire upon execution of this agreement by all parties; and
7. WHEREAS, Department completed the construction of a new water treatment facility at Rector Reservoir at an approximate cost of 4.5 million dollars, and, as a result of the construction and operation of the treatment facility, treated water is available for municipal uses; and
8. WHEREAS, Department intends to recover from users of Rector Reservoir water the pro rata share of the cost of said water, including, but not limited to, the cost of operation, treatment, and maintenance associated with Rector Reservoir and the treatment facility; costs of compliance with regulatory agencies; and the recovery of investment for the treatment facilities and equipment amortized over a twenty year period; and any Rector Reservoir-related studies; and
9. WHEREAS, article X, section 2 of the California Constitution and Water Code section 100 declare that the general welfare requires that California's water resources be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare and these provisions establish state water policy; and
10. WHEREAS, Buyer requires water for beneficial use consistent with article X, section 2 of the California Constitution and Water Code section 100; and

11. WHEREAS, Department is a member of the Town of Yountville's community and is in a unique position to provide Rector Reservoir water to that community, thereby contributing to the community's general well-being.

NOW THEREFORE, the parties mutually agree as follows:

12. Department agrees to provide Rector Reservoir water to Buyer for its reasonable and beneficial use in the amount of 500 acre-feet per year. However, should there be surplus water in excess of such amount, Department may, at its option, deliver additional water to Buyer on the same terms and conditions as set forth in this agreement provided. The peak flow rate shall not exceed 1500 gallons per minute for 15 minutes, and the average flow rate is not to exceed 750 gallons per minute.
13. On April 1 of each year, the Department shall notify Buyer of the amount of Rector Reservoir water available for delivery to Buyer under this agreement. The Department's determination of the amount available to Buyer shall be based on an adopted water operations plan, which may be amended from time to time with notice to Buyer. By May 1 of each year, Buyer shall provide a schedule of monthly deliveries for such water as is made available, and Department shall endeavor to make Rector Reservoir water available consistent with such schedule.
14. Except as provided in paragraph 15, Buyer shall pay only for treated water delivered to Buyer. By the tenth of each month beginning in August of 2004, the Department will invoice Buyer for the greater of (a) all Rector Reservoir water delivered to Buyer during the preceding month or (b) ten percent of the minimum amount Buyer is required to purchase for the fiscal year pursuant to paragraph 15. Said invoice shall include the total quantity of Rector Reservoir water delivered to the Buyer and the initial charge as determined pursuant to paragraph 16. Buyer agrees to pay the Department the invoice amount within 30 days of receipt thereof.
15. Buyer agrees to purchase a minimum of 250 acre feet each year to offset Department's cost of operating Rector Reservoir and water treatment facility. However, if for any reason outside of the control of Buyer, less than 250 acre feet of water is available for delivery to Buyer, Buyer shall have no obligation to purchase more than the maximum amount available for delivery to Buyer.
16. The initial charge for the first fiscal year in which this agreement is effective will be determined by Department no later than July 15, 2004, in accordance with the cost recovery model attached hereto as Exhibit A. The term "fiscal year" as used herein means from July 1 through June 30. In subsequent fiscal years, the initial charge shall be the greater of (a) the initial charge for the preceding fiscal year or (b) the actual per-acre-foot cost (as calculated pursuant to paragraph 17) for the preceding fiscal year. The charge shall not exceed \$550 per Acre/foot for the first two years of this agreement. This will allow the Buyer to resolve sand issues in the system.
17. By September 1st of each year, beginning September 1, 2005, the Department shall determine the total actual cost of all Rector Reservoir water delivered to all users, including the VHC-Y, during the preceding fiscal year. The total actual cost shall include the cost of all items set forth in the cost recovery model attached hereto as Attachment A. The total actual cost shall then be divided by the number of acre-feet of Rector Reservoir water delivered to all users, including the VHC-Y, to determine the actual per-acre-foot cost. The actual charges payable by Buyer for any fiscal year shall be the actual per-acre-foot cost multiplied by the greater of (a) the number of acre feet of Rector Reservoir water delivered to Buyer pursuant to this agreement or (b) the number of acre feet Buyer is obligated to purchase pursuant to paragraph 15.
18. Within 30 days of the calculation of the total actual cost and the actual per-acre-foot cost as described above, Department shall provide a statement to Buyer indicating the allocation of said cost in accordance with the cost recovery model contained in Exhibit A, along with a report showing

the number of acre feet of Rector Reservoir water supplied to each entity, including the VHC-Y, receiving deliveries thereof during the preceding fiscal year.

19. If the actual charges payable by Buyer for any fiscal year exceed the amount paid by Buyer pursuant to the terms of this agreement during said year, the Buyer shall remit the difference to Department within 30 days of receipt of the information described in paragraph 18. If the actual charges payable by Buyer for any fiscal year are less than the amount paid by Buyer pursuant to the terms of this agreement during said year, the Department shall credit the difference to the Buyer for Rector Reservoir water delivered (or which Buyer is obligated to purchase pursuant to Paragraph 15) during the year in which said difference is discovered.
20. Department shall maintain accurate, complete, and current records associated with the operation and maintenance of Rector Reservoir and the treatment facility and equipment, the treatment and delivery to Buyer of Rector Reservoir water, and the recovery of Department's investment in the treatment facility and equipment, and shall make such records available for inspection by Buyer at all reasonable times during regular business hours.
21. The quality of Rector Reservoir water delivered by Department to Buyer at its point of connection with Department's water pipeline under this agreement shall be the same as that provided to the VHC-Y. Department shall notify Buyer verbally or in writing of any significant change in water quality within twenty-four hours of discovering the change or any earlier period of time which is required by the operating permit with the Department of Health Services.
22. Rector Reservoir water delivered to Buyer under this agreement shall be delivered through Department's facilities to a delivery point or points consisting of one or more mains of Buyer mutually acceptable to Department and Buyer.
23. Buyer agrees to provide accurate metering of Rector Reservoir water at any point of delivery specified in paragraph 22. Buyer agrees that Department shall have the right at any and all reasonable times to inspect any of Buyer's metering equipment and records thereof. Buyer agrees to have its meters checked every two years by the meter manufacturer or the manufacturer's designated representative. The Buyer shall notify Department 72 hours in advance of any testing to be done. The cost of meter checks shall be borne by Buyer, and the results thereof shall be reported to Department within 14 days of receipt by Buyer. If Department requests meter checks on a more frequent basis than every two years, then the Department shall pay for the additional checks if any of the meters being checked are accurate to within ten percent. Buyer shall pay the cost of the additional meter checks if any of the meters being checked are ten percent or more out of calibration.
24. The design, construction, and maintenance of any connections between Department's and Buyer's pipelines shall be subject to the approval of Department, but at no cost to Department.
25. Department shall not be under any obligation whatever to change, or in any manner modify, its present water distribution system or to accommodate it to the Buyer's water system. Department makes no warranty as to the pressure under which Rector Reservoir water will be delivered to Buyer. Department and Buyer agree to cooperate regarding any water quality issues that arise during the term of this agreement.
26. Any rights of Buyer under this agreement shall be subject to the provisions of Government Code section 14715, it being expressly understood that any commitment by Department under this agreement to provide Buyer Rector Reservoir water shall be inferior to the senior prior rights of the VHC-Y. It is also understood that, to the extent the Department of Fish and Game, the Department of Mental Health and other state establishments located in the County of Napa (hereinafter, collectively with VHC-Y, referred to as "State Users") are determined by the Department of Water

Resources to have need of Rector Reservoir water and the Department of General Services has consented to conduct said water, as set forth in Government Code section 14715, Buyer shall have no claim to the delivery of Rector Reservoir water under this agreement, except as to such water which is at all times during this agreement is surplus to the needs of the State Users. Department in consultation with the Department of Water Resources and the Department of General Services shall be the sole judge of whether surplus Rector Reservoir is available for delivery to Buyer. To the maximum extent reasonably practicable, Department will notify Buyer as soon as possible of any potential limitations in the supply of water available for delivery to Buyer due to the needs of the State Users demands of Priority Users, to provide Buyer with the opportunity to arrange for alternate water supplies.

27. Any rights of Buyer under this agreement shall be subordinate to any prior encumbrance, claims, or rights to Rector Reservoir water including adjudicated rights of State Users. Department shall not have any liability whatever to Buyer for failure to deliver Rector Reservoir water for any other reason beyond the control of the Department, including but not limited to fire, drought, disaster, other emergency, or acts of God. Department shall not have any liability whatever to Buyer for failure to deliver Rector Reservoir water due to the lack of availability thereof resulting from deliveries of water to State Users.
28. Buyer shall indemnify, defend, and hold harmless the Department and its officers, employees, and agents from and against any and all claims, demands, liability, costs, and expenses of whatever nature, including court costs and counsel fees arising from the injury or death of any person or persons or the loss of or damage to any property arising in any manner from supplying or not supplying Rector Reservoir water to Buyer except as such is solely the result of gross negligence on the part of the Department.
29. The parties to this agreement agree that Buyer, and any of its officers, employees, agents, and representatives, in the performance of this agreement, shall act in an independent capacity and not as officers, employees, agents, or representatives of the State of California, the Department, or any other state agency.
30. Buyer may not assign or transfer this agreement either in whole or in part.
31. The term of this agreement (hereinafter referred to as the "initial term") shall be twenty (20) years commencing on the date this agreement is executed or July 1, 2004, whichever is later. The agreement may be renewed in ten year increments provided the Department and Buyer mutually agree on the renewal, subject to the same subordination to State Users provided in paragraph 26 hereof. Department or Buyer may terminate this agreement at any time upon two-years' written notice to all parties to this agreement. However, either party may terminate this agreement upon 30 days written notice to other for cause. For purposes of this agreement, the phrase "for cause" shall mean the failure of the other party to meet the terms, conditions, and/or responsibilities of the agreement. A termination for cause shall be effective as of the date indicated on the notice provided. Deliveries of Rector Reservoir water to State Users shall not result in termination of this agreement, even if such delivery results in Department's inability to deliver Rector Reservoir water to Buyer hereunder either temporarily or indefinitely, provided, however, that Buyer shall have no obligation to pay for water that is unavailable to it due to such deliveries to State Users.
32. Should any dispute arise out of the interpretation, administration or performance of this agreement, the parties shall make a good faith effort to resolve such dispute. In the event litigation arises between the parties hereto arising out of the interpretation, administration, or performance of this agreement, the following shall apply:
  - a) Attorney's fees and costs incurred in said litigation shall be borne by the respective parties.
  - b) Trial by jury is waived by both parties, and any trial shall be by a judge alone.

- c) The venue of any action between the parties hereto arising out of the interpretation, administration, or performance of this agreement shall be the Superior Court in and for the County of Sacramento.
  - d) Each party shall continue to perform its obligations hereunder while said litigation is pending unless the agreement is terminated pursuant to paragraph 31.
33. This agreement represents and contains the entire and only agreement and understanding among the parties with respect to the subject matter of this agreement. This document supersedes any and all prior and contemporaneous oral and written agreements, understandings, representations, inducements, promises, warranties, and conditions between the Department and the Buyer. No agreement, understanding, representations, inducement, promise, warranty or condition of any kind with respect to the subject matter of this agreement shall be relied upon unless expressly incorporated herein.
34. This agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
35. In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement shall have full force and effect.
36. This agreement will remain in effect unless amended, modified or superseded or unless terminated pursuant to paragraph 31. All amendments, addition, deletions and/or changes shall be made only in writing and signed by the signatories or their designated authorized representatives.
37. The parties acknowledge that prior to entering into or renewing any long-term agreement, they must comply with the California Environmental Quality Act, which could affect the terms and conditions of any long-term agreement. Buyer shall act as lead agency for compliance with the California Environmental Quality Act.
38. As consideration for the Department entering into this agreement, Buyer and Department agree to establish a fair and equitable billing formula for the operation of the wastewater Joint Treatment Plant (JTP) with the goal of ensuring that Department pays no more than its proportionate share of the cost of operations of the JTP. To that end, the parties agree to the following:
- a) Of the four samples taken each month for calculation of influent flow, Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS), Buyer agrees to take one sample per month during the weekend for testing by an independent laboratory. The three other monthly samples will be taken on weekdays, as has been the current practice. The day of the weekend that this sample is taken will be rotated each month to capture loadings on Friday, Saturday and Sundays. The Buyer agrees to this revised sampling plan effective July 1, 2004. It is Buyer's intent to determine the day of the weekend that has the highest loading for the Town of Yountville and, thereafter to sample on that day each month.
  - b) Upon the request of either party, but in no event more often than once each year, Buyer and Department will review billing formula, including, but not limited to the data generated by the sample testing to observe any significant loading patterns to the JTP. Should either party, based on said review, determine that billing formula, for any reason, is not fair and equitable to each party the Buyer will make mutually agreed upon adjustments to the billing formula, including, but not limited to the sampling schedule to ensure said formula accurately reflects Department's share of the loading of the JTP in proportion to all other users. Should the adjustment to the billing formula not be consistent with the existing agreement, both parties shall be committed to amend said JTP agreement.
  - c) If mutual agreement can not be obtained, both parties agree to retain a professional wastewater engineering consultant, mutually agreeable to the parties to make an independent review of the billing formula contained with the original JTP agreement as modified herein who shall recommend any modifications which, in the opinion of the

consultant, will make the billing formula fair and equitable. The parties agree to be mutually bound by the recommendation of any consultant retained pursuant to this paragraph. The cost of any such consultant shall be considered an operating cost of the JTP to be allocated to the parties according to the billing formula.

- d) The total actual operating cost of the JTP shall include the cost of all items set forth in the cost recovery model attached hereto as Attachment B. Department shall pay the proportion of the total actual operating cost of the JTP as its loading thereon bears to the loading from all users of the JTP.

39. The project representatives during the term of this Agreement will be:

| <b>The Department</b>                                 | <b>Town of Yountville</b>                          |
|---|--|
| Name: Andrew Ellicock                                 | Name: Kevin Plett                                  |
| Chief, Plant Operations                               |  |
| Address: 100 California Drive<br>Yountville, CA 94599 | Address: 6550 Yount Street<br>Yountville, CA 94599 |
| Phone: (707) 944-4800                                 | Phone: (707) 944-8851                              |
| Fax: (707) 944-4819                                   | Fax: (707) 944-9619                                |

**EXHIBIT B**  
**BUDGET DETAIL AND PAYMENT PROVISIONS**

1. The charges for water and payment therefor shall be in accordance with paragraphs 16 through 19, of Exhibit A.
2. Invoices to and payments from Buyer shall include the Agreement Number 04YS0003. Payments from Buyer shall be submitted as provided in paragraph 14 of Exhibit A, to

California Department of Veterans Affairs  
VHC-Accounting Office, Room 620  
P.O. Box 942895  
Sacramento, CA 94295-0001  
Fax: (916) 653-6189

**EXHIBIT C**  
**GENERAL TERMS AND CONDITIONS**

NOTE: "EXHIBIT C" IS NOT INCLUDED AS A PAPER COPY IN THE STANDARD AGREEMENT PACKAGE. AS INDICATED ON THE STD. 213 FACE SHEET, A COPY OF "EXHIBIT C" CAN BE FOUND ON THE INTERNET UNDER WEB PAGE ADDRESS:

<http://www.ols.dgs.ca.gov/Standard+Language/default.htm>

Select GTC-304.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 304 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. UNION ACTIVITIES For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS**

1. **EXCISE TAX:** The State of California is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on employees' wages. The Department will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Contract. California may pay any applicable sales or use tax imposed by another state.
  
2. Any provision of this Contract in conflict with the applicable laws and regulations is hereby amended to conform to the provisions of those laws and regulations. Such amendment of the Contract shall be effective on the effective date of the statutes or regulations necessitating it, and shall be binding on the parties even though the amendment may not have been reduced to writing and formally agreed upon and executed by the parties. If, due to amendment in laws or regulations, Buyer is unable or unwilling to comply with the provisions of the amendment(s), Department or Buyer may terminate this Contract in accordance with the Termination provision of this Contract.
  
3. The Buyer warrants by execution of this Contract, that no person or selling agency has been employed or retained to solicit or secure this Contract upon Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Buyer for the purpose of securing business. For breach or violation of this warranty, the Department shall, in addition to other remedies provided by law, have the right to annul this Contract without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
  
4. **CONFLICT OF INTEREST**
  - a. This contract cannot be awarded if if a current officer or employee of the State holds the financial interests. Additionally, a contract will not be awarded to an officer or employee of the State as an independent Buyer to provide goods and service. Likewise, the contracting agency officials and employees shall also avoid actions resulting in or creating an appearance of:
    - i. Using an official position for private gain;
    - ii. Giving preferential treatment to any particular person;
    - iii. Losing independence or impartiality;
    - iv. Making a decision outside official channels; and,
    - v. Affecting adversely the confidence of the public or local officials in the integrity of the program.
  
  - b. Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the 12-month period to his or her separation from state service.
  
5. **FORCE MAJEURE**

Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force

Majeure." As used in this section, "Force Majeure" is defined as follows: Acts of war and acts of god such as earthquakes, floods, and other natural disasters such that performance is impossible.

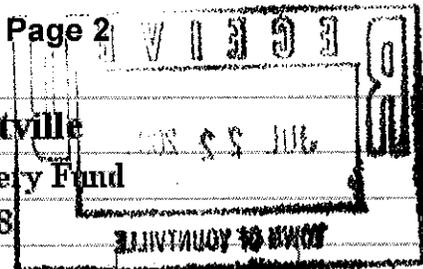
## ATTACHMENT A

| <b>COST RECOVERY MODEL FOR RECTOR RESERVOIR<br/>(EXHIBIT A)</b> |      |
|---|------|
| CHLORINE  | \$ - |
| ACH   | \$ - |
| POLYMER   | \$ - |
| ZINC PO4  | \$ - |
| POTASSIUM PERMANGANATE  | \$ - |
| COPPER SULFATE  | \$ - |
|   |      |
| CHIEF ENGINEER II   | \$ - |
| WATER TREATMENT PLANT SUPERVISOR                                | \$ - |
| WATER TREATMENT PLANT OPERATOR                                  | \$ - |
| WATER TREATMENT PLANT RELIEF OPERATOR                           | \$ - |
| BUILDING MAINTENANCE WORKER                                     | \$   |
| MISCELLANEOUS TRADES  | \$   |
| ELECTRICAL USAGE  | \$ - |
| CATHODIC PROTECTION   | \$ - |
| PERMIT FEES   | \$ - |
| OUTSIDE LAB ANALYSIS  | \$ - |
| CONSULTANT FEES   | \$   |
| PARTS AND SUPPLIES  | \$   |
| TOTAL PLANT OPERATING COST                                      | \$   |
|   |      |
| ADMINISTRATIVE COSTS  | \$   |
| IMPROVEMENTS - 20 YEARS - (Depreciation)                        | \$ - |
| TOTAL COST  | \$   |

ATTACHMENT B Page 1

| <b>Town of Yountville</b>              |                          |                 |                  |                  |                  |                  |                  |
|--|--------------------------|-----------------|------------------|------------------|------------------|------------------|------------------|
| <b>WasteWater Fund/Treatment Admin</b> |                          |                 |                  |                  |                  |                  |                  |
| <b>Fund 62-4515</b>                    |                          |                 |                  |                  |                  |                  |                  |
|  |                          |                 | <b>2001/02</b>   | <b>2002/03</b>   | <b>2003/04</b>   | <b>2003/04</b>   | <b>2004/05</b>   |
|  |                          |                 | <b>ACTUAL</b>    | <b>ACTUAL</b>    | <b>ESTIMATED</b> | <b>ADOPTED</b>   | <b>PROPOSED</b>  |
| <b>Personnel Services</b>              |                          |                 |                  |                  |                  |                  |                  |
| 201                                    | SALARIES, REGULAR        |                 | 147,819          | 156,628          | 168,000          | 162,000          | 158,000          |
| 202                                    | SALARIES, P/T            |                 | 0                | 0                | 200              | 0                | 0                |
| 204                                    | OVERTIME                 |                 | 1,442            | 2,779            | 2,600            | 2,500            | 2,500            |
| 205                                    | BENEFITS                 |                 | 28,768           | 38,623           | 52,000           | 50,000           | 60,500           |
| 206                                    | PR TAX-MEDICARE          |                 | 756              | 846              | 1,200            | 800              | 1,600            |
| 208                                    | WORKER'S COMPENSATION    |                 | 5,435            | 6,182            | 8,200            | 8,400            | 8,000            |
| 209                                    | DEFERRED COMPENSATION    |                 | 2,594            | 2,490            | 3,700            | 2,000            | 4,600            |
|  |                          | <b>SUBTOTAL</b> | <b>186,814</b>   | <b>207,548</b>   | <b>235,900</b>   | <b>225,700</b>   | <b>235,200</b>   |
| <b>Services &amp; Supplies</b>         |                          |                 |                  |                  |                  |                  |                  |
| 210                                    | SUPPLIES & MATERIALS     |                 | 293              | 568              | 500              | 500              | 500              |
| 212                                    | EQUIPMENT MAINTENANCE    |                 | 7,821            | 11,913           | 15,000           | 15,000           | 15,000           |
| 213                                    | SPECIAL DEPT SUPPLIES    |                 | 19,474           | 18,152           | 19,000           | 20,000           | 19,000           |
| 214                                    | VEHICLE OPERATION        |                 | 337              | 837              | 700              | 800              | 800              |
| 215                                    | BLDG/GROUNDS MAINT       |                 | 3,900            | 3,600            | 2,500            | 3,000            | 3,000            |
| 221                                    | DUES & SUBSCRIPTIONS     |                 | 378              | 465              | 300              | 2,000            | 2,000            |
| 228                                    | FEES & PERMITS           |                 | 11,040           | 16,339           | 17,000           | 18,000           | 17,100           |
| 230                                    | PHONE & COMMUNICATIONS   |                 | 574              | 2,284            | 1,900            | 1,500            | 1,500            |
| 231                                    | UTILITIES                |                 | 75,038           | 76,580           | 74,000           | 70,000           | 70,000           |
| 234                                    | CONFERENCE & TRAVEL      |                 | 0                | (81)             | 100              | 500              | 500              |
| 236                                    | INSURANCE-LIABILITY      |                 | 7,140            | 8,744            | 9,200            | 9,200            | 9,000            |
| 240                                    | AUDIT/ACCOUNTING         |                 | 1,882            | 1,474            | 1,700            | 1,600            | 1,700            |
| 241                                    | PERSONNEL ADMINISTRATION |                 | 0                | 0                | 1,800            | 1,900            | 0                |
| 249                                    | OTHER CONTRACT SERVICES  |                 | 34,048           | 80,144           | 115,000          | 100,000          | 80,000           |
|  |                          | <b>SUBTOTAL</b> | <b>161,925</b>   | <b>221,019</b>   | <b>258,700</b>   | <b>244,000</b>   | <b>220,100</b>   |
| <b>Capital Outlay</b>                  |                          |                 |                  |                  |                  |                  |                  |
| 253                                    | EQUIPMENT                |                 | 0                | 3,373            | 0                | 0                | 0                |
| 254                                    | COMPUTER EQUIPMENT       |                 | 0                | 0                | 0                | 0                | 700              |
|  |                          | <b>SUBTOTAL</b> | <b>0</b>         | <b>3,373</b>     | <b>0</b>         | <b>0</b>         | <b>700</b>       |
| <b>Total Program Budget</b>            |                          |                 | <b>\$348,739</b> | <b>\$431,940</b> | <b>\$494,600</b> | <b>\$469,700</b> | <b>\$456,000</b> |

ATTACHMENT B Page 2



Town of Yountville  
 Joint Capital Recovery Fund  
 Fund 63-4518

|                                   |                           | 2001/02<br>ACTUAL | 2002/03<br>ACTUAL | 2003/04<br>ESTIMATED | 2003/04<br>ADOPTED | 2004/05<br>PROPOSED |
|-----------------------------------|---------------------------|-------------------|-------------------|----------------------|--------------------|---------------------|
| <b>BEGINNING FUND BALANCE</b>     |                           | 451,659           | 422,286           | 408,084              | 408,084            | 371,576             |
| <b>Revenues</b>                   |                           |                   |                   |                      |                    |                     |
| 3301                              | INVESTMENT INCOME         | 14,408            | 9,276             | 4,000                | 5,100              | 4,000               |
| 3652                              | MISCELLANEOUS (reclaimed) | 0                 | 0                 | 2,000                | 5,000              | 6,000               |
| 3650                              | CAPITAL RECOVERY-VH       | 36,996            | 36,996            | 36,996               | 36,996             | 37,000              |
| 3805                              | CAPITAL RECOVERY-TOWN     | 36,996            | 36,996            | 36,996               | 36,996             | 37,000              |
| <b>Total Revenues</b>             |                           | 88,400            | 83,268            | 79,992               | 84,092             | 84,000              |
| <b>Expenditures</b>               |                           |                   |                   |                      |                    |                     |
| 253                               | PLANT EQUIPMENT           | 0                 | 0                 | 5,800                | 5,500              | 0                   |
| 9xx                               | CAP IMPROVE-PRIOR YEARS   | 0                 | 0                 | 0                    | 0                  | 0                   |
| 916                               | PLANT EQUIP REPLACE       | 92,713            | 91,855            | 5,000                | 110,000            | 125,000             |
| 928                               | RECLAIMED WATER/DISCHRG   | 25,060            | 3,131             | 400                  | 0                  | 0                   |
| 979                               | NAPA RIVER DIFFUSER       | 0                 | 0                 | 0                    | 0                  | 250,000             |
| 989                               | WWTP IMPR-COMMUNITOR      | 0                 | 2,484             | 105,300              | 105,300            | 0                   |
| <b>Total Expenditures</b>         |                           | 117,773           | 97,470            | 116,500              | 220,800            | 375,000             |
| <b>ENDING FUND BALANCE</b>        |                           | \$422,286         | \$408,084         | \$371,576            | \$271,376          | \$80,576            |
| <b>Net Change in Fund Balance</b> |                           | (\$29,373)        | (\$14,202)        | (\$36,508)           | (\$136,708)        | (\$291,000)         |
| <b>Memo</b>                       |                           |                   |                   |                      |                    |                     |
| 305                               | DEPRECIATION              | 38,756            | 35,000            | 38,800               | 38,800             | 39,000              |

DATE: 7/2/04

TOWN ADMIN: [Signature]

# Town Council Staff Report

**To:** Mayor and Town Council  
**From:** Kevin R. Plett, Town Administrator  
 Myke Praul, Capital Projects/Public Works Manager  
**Meeting Date:** July 6, 2004

**Subject:** Water Supply Agreement with the Department of Veteran's Affairs for the Supply of Water From Rector Reservoir

**Background:** Over the last few months, staff has been meeting with the staff of the Department of Veteran's Affairs (Department) to come to agreement on the terms for the supply of potable water to the Town. The Town has been receiving water from Rector under an interim agreement, which was an extension of the original agreement executed in the 1960's. Terms of this agreement have been the matter of discussions between the Department and Town for several years with complications arising from many factors. Issues associated with the amount of water available from the reservoir (satisfied by the yield study conducted by the Department of Water Resources), the quality of water (failure of the treatment plant and the introduction of sand into the piping systems), costs associated with the operation of the water and wastewater treatment facilities, water supply interests of other State Agencies and the change in personnel for both the Department and the Town have lead to the prolonged negotiations of the terms of this agreement. Recent developments have lead to resolution of the last of these issues and the time for the Town to formally approve the long-term agreement is at hand.

**Discussion/Analysis:** The following summarizes the essential terms of the agreement and compares it to the original agreement:

|              | <u>Proposed</u>  | <u>Original</u>  |
|--------------|--|--|
| Amount:      | 250 AF minimum<br>500+AF maximum   | no minimum<br>325+ AF maximum  |
| Term:        | 20 years with<br>unlimited 10 year<br>extensions   | 10 years<br>no provisions for<br>extensions  |
| Termination: | 30 days for cause<br>2 years without cause,<br>either party  | 30 days, for cause<br>either party   |
| Priority:    | Vet's Home, Fish & Game<br>State Hospital, other State<br>Agencies, Town and smaller<br>users (G.C. Section 14715) | Vet's Home, Fish & Game<br>State Hospital, other State<br>Agencies, Town and smaller<br>users (G.C. Section 14715) |

|                           |  |   |
|---------------------------|--|---|
| Cost:                     | Cost to provide<br>improvements amortized  | Cost to provide<br>improvements amortized                     |
|                           | <b>Billed for a percentage of<br/>Total plant cost regardless of<br/>Amount of water taken<br/>Maximum of \$550/AF for<br/>two years due to sand issue<br/>New Exhibit A &amp; B</b> | <b>Only billed for water taken<br/>5% annual CPI increase</b> |
| Flow Rate:                | 1500/750 gpm   | 500 gpm   |
| JTP – Wastewater:         | Modification of sampling plan<br>to weekend measurements to<br>be included in monthly billings   | no provision  |
| Water Operations<br>Plan: | Provision of a Water Operations<br>Plan to establish water<br>delivery on an annual basis<br>dependent upon rainfall   | no provision  |

A critical issue for the Town in evaluating whether it has adequate water for its current users and to meet future water demands for new users is the evaluation of the reliability of the water supply source. As discussed in the Water Supply Plan prepared by West Yost & Associates, a great deal of time and effort has been spent in evaluating this issue. Most State Water Project contractors are in similar situations due to the lack of reliability of the State Water Project during below normal rainfall years. The Water Supply Plan presents reliability of water sources by a percentage linked to the amount of rainfall for the year. For example, during a year of normal rainfall, which occurs 60 out of 100 years, the North Bay Aqueduct (NBA) can provide the Town with 569 acre-feet of water, which is the existing water demand. During below normal rainfall years, or up to 90 out of 100 years, the NBA will only provide 331 acre-feet or 65% of our existing demand. And during a dry year, or 95 out of 100 years, the NBA can provide 278 acre-feet or 61% of our demand. From this analysis, the Town can determine the shortfall of water supply and add in the future water demand to determine the necessary future water supply.

A key to the evaluation of alternative water sources is the relative reliability of that source compared to the NBA. The specifics that enter into this evaluation include:

- Statistical analysis of rainfall and yield records
- Condition and operation of the facility
- Water rights and ownership
- Availability and priority of users
- Financial considerations

With the terms of the Rector agreement before us, West Yost & Associates can now more accurately evaluate the reliability of the Rector water for present and future uses. Staff proposes to return to the Council on September 21<sup>st</sup> with the final Water Supply Plan update and recommendations for current and future acquisition of water supply.

The most significant issues related to the Rector agreement have been the reliability of the supply due to the term, subordination to State water users, cost and water quality (i.e. the sand problem). The proposed term of this agreement is 20 years with unlimited 10-year extensions. This term is an improvement over the original agreement, which was for 10 years and no provisions for extensions.

The Department has shared with staff that the annual cost to operate the Rector treatment facility is about \$500,000 per year. Since the proposed terms of this agreement require the Town to purchase a minimum of 250 acre-feet when available and that all costs for operation will be born by all the users, there is great incentive for the Department to sell as much water each year to the Town that they can. Thus the cost per acre-foot of water for all users is less. The subordination to State users will only occur if other State water users can physically receive water from Rector which, at present and into the foreseeable future, is not possible. Even with the ability to serve water to the State Hospital in Napa, the Department will be able to deliver at least 500 acre-feet of water 92% of the time to the Town. For any water agency, this is a relatively high level of reliability especially when you consider the cost incentive to assure it will happen on a yearly basis. A water operations plan is currently being developed to assist all users in planning the amount of water that will be available in any given year due to rainfall conditions.

The Department has also agreed to work with the Town to address the sand problem. They have contracted to install a new transmission line within the Veterans' Home that will allow them to fully flush the main water line from the reservoir. Improvements made to the treatment plant included a water storage tank that provides assurance that any sand from the new filter can't reach the pipeline. With joint cooperation in a flushing program, staff believes that the sand issue can be resolved within the next year or two.

In summary, the proposed terms of this agreement may present the opportunity for the Town to increase the reliability of water supply that, upon Council approval, will be factored into the final Water Supply Plan update and presented to the Council on September 21<sup>st</sup>.

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**Recommended Action:**

1. Adopt Resolution Number 2255-04 Approving an Agreement for the Sale of Rector Water with the State of California, Department of Veterans Affairs and Waive the Reading.

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**Attachment 1 -** Agreement for Sale of Water with the Department of Veteran Affairs from Rector Reservoir.

**Town of Yountville**  
**Resolution Number 2255-04**

**Approving an Agreement for the Sale of Rector Water with the State of California, Department of Veteran's Affairs**

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**Recitals**

- A. An Interim Agreement between the Department of Veteran's Affairs and the Town of Yountville was approved in December of 2001, and has been verbally extended through 2004.
- B. The Department of Veteran's Affairs is the owner of and in control of certain real property in the County of Napa, State of California, upon which is located Rector Dam and Reservoir.
- C. The Town of Yountville and the Veteran's Home of California, Department of Veteran's Affairs, wish to enter into this agreement for the term of twenty years from the effective date of this agreement for the purchase of water from Rector Reservoir.

**Now therefore, the Town Council of the Town of Yountville does resolve as follows:**

- 1. The Agreement for Sale of Water, a copy of which is attached and hereby made a part of this resolution, is approved.

\_\_\_\_\_  
Todd R. Carlson, Mayor

ATTEST:

State of California    )  
County of Napa        )§  
Town of Yountville    )

I, K. Joyce Houghton, Town Clerk of the Town of Yountville, do hereby certify that the foregoing Resolution was duly adopted by the Town Council of the Town of Yountville at a regular meeting thereof held on the 6<sup>th</sup> day of July 2004, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
K. Joyce Houghton, CMC, Town Clerk

**AGREEMENT FOR SALE OF WATER**

The parties to this agreement are the Department of Veterans Affairs (hereinafter referred to as "Department") and the Town of Yountville (hereinafter referred to as "Buyer").

**RECITALS**

1. WHEREAS, Department has jurisdiction, control, and possession, of certain real property in the County of Napa, State of California, upon which Rector Dam and Reservoir are located; and

2. WHEREAS, Department impounds water behind Rector Dam in Rector Reservoir and distributes that water through various facilities for various purposes to state and non-state water users; and

3. WHEREAS, Government Code section 14715 provides that the Veterans Home of California—Yountville (VHC-Y), for all purposes, including irrigation and domestic, shall have the first and prior right to all available water stored in Rector Reservoir (hereinafter referred to as "Rector Reservoir water"); and

4. WHEREAS, Government Code Section 14715 provides further that in the event that there is more Rector Reservoir water available than necessary to meet the requirements of the VHC-Y, the Department of General Services may take and conduct from Rector Reservoir such quantity of surplus water for the

use of state establishments within the County of Napa, including, but not limited to, the Napa State Hospital and the State Game Farm, if and only if the Department of Water Resources determines that said establishment has a need for Rector Reservoir water; and

5. WHEREAS, the "Water License for Diversion and Use of Water" (License No. 10911) issued to Department by the State Water Resources Control Board on May 7, 1979 authorizes Department to put Rector Reservoir water to beneficial use at the VHC-Y, the State Game Farm, the Napa State Hospital, the Town of Yountville, and specified agricultural properties; and

6. WHEREAS, Department has been selling Rector Reservoir water to Buyer pursuant to various agreements for over 40 years; including an interim agreement entered into by the parties hereto in 2001, which will expire upon execution of this agreement by all parties; and

7. WHEREAS, Department completed the construction of a new water treatment facility at Rector Reservoir at an approximate cost of 4.5 million dollars, and, as a result of the construction and operation of the treatment facility, treated water is available for municipal uses; and

8. WHEREAS, Department intends to recover from users of Rector Reservoir water the pro rata share of the cost of said water, including, but not limited to, the cost of operation, treatment, and maintenance associated with Rector Reservoir and the treatment facility; costs of compliance with regulatory agencies; and the recovery of investment for the treatment facilities and

equipment amortized over a twenty year period; and any Rector Reservoir-related studies; and

9. WHEREAS, article X, section 2 of the California Constitution and Water Code section 100 declare that the general welfare requires that California's water resources be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare and these provisions establish state water policy; and

10. WHEREAS, Buyer requires water for beneficial use consistent with article X, section 2 of the California Constitution and Water Code section 100; and

11. WHEREAS, Department is a member of the Town of Yountville's community and is in a unique position to provide Rector Reservoir water to that community, thereby contributing to the community's general well-being.

NOW THEREFORE, the parties mutually agree as follows:

12. Department agrees to provide Rector Reservoir water to Buyer for its reasonable and beneficial use in the amount of 500 acre-feet per year. However, should there be surplus water in excess of such amount, Department may, at its option, deliver additional water to Buyer on the same terms and conditions as set forth in this agreement provided. The peak flow rate shall not to

exceed 1500 gallons per minute for 15 minutes, and the average flow rate is not to exceed 750 gallons per minute.

13. On April 1 of each year, the Department shall notify Buyer of the amount of Rector Reservoir water available for delivery to Buyer under this agreement. The Department's determination of the amount available to Buyer shall be based on an adopted water operations plan, which may be amended from time to time with notice to Buyer. By May 1 of each year, Buyer shall provide a schedule of monthly deliveries for such water as is made available, and Department shall endeavor to make Rector Reservoir water available consistent with such schedule.

14. Except as provided in paragraph 15, Buyer shall pay only for treated water delivered to Buyer. By the tenth of each month beginning in August of 2004, the Department will invoice Buyer for the greater of (a) all Rector Reservoir water delivered to Buyer during the preceding month or (b) ten percent of the minimum amount Buyer is required to purchase for the fiscal year pursuant to paragraph 15. Said invoice shall include the total quantity of Rector Reservoir water delivered to the Buyer and the initial charge as determined pursuant to paragraph 16. Buyer agrees to pay the Department the invoice amount within 30 days of receipt thereof.

15. Buyer agrees to purchase a minimum of 250 acre feet each fiscal year to offset Department's cost of operating Rector Reservoir and water treatment facility. However, if for any reason outside of the control of Buyer, less than 250 acre feet of water is available for delivery to Buyer, Buyer shall have no

obligation to purchase more than the maximum amount available for delivery to Buyer.

16. The initial charge for the first fiscal year in which this agreement is effective will be determined by Department no later than July 15, 2004, in accordance with the cost recovery model attached hereto as Exhibit A. The term "fiscal year" as used herein means from July 1 through June 30. In subsequent fiscal years, the initial charge shall be the greater of (a) the initial charge for the preceding fiscal year or (b) the actual per-acre-foot cost (as calculated pursuant to paragraph 17) for the preceding fiscal year. The charge shall not exceed \$550 per Acre/foot for the first two years of this agreement. This will allow the Buyer to resolve sand issues in the system.

17. By September 1st of each year, beginning September 1, 2005, the Department shall determine the total actual cost of all Rector Reservoir water delivered to all users, including the VHC-Y, during the preceding fiscal year. The total actual cost shall include the cost of all items set forth in the cost recovery model attached hereto as Exhibit A. The total actual cost shall then be divided by the number of acre-feet of treated Rector Reservoir water delivered to all users, including the VHC-Y, to determine the actual per-acre-foot cost. The actual charges payable by Buyer for any fiscal year shall be the actual per-acre-foot cost multiplied by the greater of (a) the number of acre feet of Rector Reservoir water delivered to Buyer pursuant to this agreement or (b) the number of acre feet Buyer is obligated to purchase pursuant to paragraph 15.

18. Within 30 days of the calculation of the total actual cost and the actual per-acre-foot cost as described above, Department shall provide a statement to Buyer indicating the allocation of said cost in accordance with the cost recovery model contained in Exhibit A, along with a report showing the number of acre feet of Rector Reservoir water supplied to each entity, including the VHC-Y, receiving deliveries thereof during the preceding fiscal year.

19. If the actual charges payable by Buyer for any fiscal year exceed the amount paid by Buyer pursuant to the terms of this agreement during said year, the Buyer shall remit the difference to Department within 30 days of receipt of the information described in paragraph 18. If the actual charges payable by Buyer for any fiscal year are less than the amount paid by Buyer pursuant to the terms of this agreement during said year, the Department shall credit the difference to the Buyer for Rector Reservoir water delivered (or which Buyer is obligated to purchase pursuant to Paragraph 15) during the year in which said difference is discovered.

20. Department shall maintain accurate, complete, and current records associated with the operation and maintenance of Rector Reservoir and the treatment facility and equipment, the treatment and delivery to Buyer of Rector Reservoir water, and the recovery of Department's investment in the treatment facility and equipment, and shall make such records available for inspection by Buyer at all reasonable times during regular business hours.

21. The quality of Rector Reservoir water delivered by Department to Buyer at its point of connection with Department's water pipeline under this

agreement shall be the same as that provided to the VHC-Y. Department shall notify Buyer verbally or in writing of any significant change in water quality within twenty-four hours of discovering the change or any earlier period of time which is required by the operating permit with the Department of Health Services.

22. Rector Reservoir water delivered to Buyer under this agreement shall be delivered through Department's facilities to a delivery point or points consisting of one or more mains of Buyer mutually acceptable to Department and Buyer.

23. Buyer agrees to provide accurate metering of Rector Reservoir water at any point of delivery specified in paragraph 22. Buyer agrees that Department shall have the right at any and all reasonable times to inspect any of Buyer's metering equipment and records thereof. Buyer agrees to have its meters checked every two years by the meter manufacturer or the manufacturer's designated representative. The Buyer shall notify Department 72 hours in advance of any testing to be done. The cost of meter checks shall be borne by Buyer, and the results thereof shall be reported to Department within 14 days of receipt by Buyer. If Department requests meter checks on a more frequent basis than every two years, then the Department shall pay for the additional checks if any of the meters being checked are accurate to within ten percent. Buyer shall pay the cost of the additional meter checks if any of the meters being checked are ten percent or more out of calibration.

24. The design, construction, and maintenance of any connections between Department's and Buyer's pipelines shall be subject to the approval of Department, but at no cost to Department.

25. Department shall not be under any obligation whatever to change, or in any manner modify, its present water distribution system or to accommodate it to the Buyer's water system. Department makes no warranty as to the pressure under which Rector Reservoir water will be delivered to Buyer. Department and Buyer agree to cooperate regarding any water quality issues that arise during the term of this agreement.

26. Any rights of Buyer under this agreement shall be subject to the provisions of Government Code section 14715, it being expressly understood that any commitment by Department under this agreement to provide Buyer Rector Reservoir water shall be inferior to the senior prior rights of the VHC-Y. It is also understood that, to the extent the Department of Fish and Game, the Department of Mental Health and other state establishments located in the County of Napa (hereinafter, collectively with VHC-Y, referred to as "State Users") are determined by the Department of Water Resources to have need of Rector Reservoir water and the Department of General Services has consented to conduct said water, as set forth in Government Code section 14715, Buyer shall have no claim to the delivery of Rector Reservoir water under this agreement, except as to such water which is at all times during this agreement is surplus to the needs of the State Users. Department in consultation with the Department of Water Resources and the Department of General Services shall

be the sole judge of whether surplus Rector Reservoir is available for delivery to Buyer. To the maximum extent reasonably practicable, Department will notify Buyer as soon as possible of any potential limitations in the supply of water available for delivery to Buyer due to the needs of the State Users demands of Priority Users, to provide Buyer with the opportunity to arrange for alternate water supplies.

27. Any rights of Buyer under this agreement shall be subordinate to any prior encumbrance, claims, or rights to Rector Reservoir water including adjudicated rights of State Users. Department shall not have any liability whatever to Buyer for failure to deliver Rector Reservoir water for any other reason beyond the control of the Department, including but not limited to fire, drought, disaster, other emergency, or acts of God. Department shall not have any liability whatever to Buyer for failure to deliver Rector Reservoir water due to the lack of availability thereof resulting from deliveries of water to State Users.

28. Buyer shall indemnify, defend, and hold harmless the Department and its officers, employees, and agents from and against any and all claims, demands, liability, costs, and expenses of whatever nature, including court costs and counsel fees arising from the injury or death of any person or persons or the loss of or damage to any property arising in any manner from supplying or not supplying Rector Reservoir water to Buyer except as such is solely the result of gross negligence on the part of the Department.

29. The parties to this agreement agree that Buyer, and any of its officers, employees, agents, and representatives, in the performance of this

agreement, shall act in an independent capacity and not as officers, employees, agents, or representatives of the State of California, the Department, or any other state agency.

30. Buyer may not assign or transfer this agreement either in whole or in part.

31. The term of this agreement (hereinafter referred to as the "initial term") shall be twenty (20) years commencing on the date this agreement is executed or July 1, 2004, whichever is later. The agreement may be renewed in ten year increments provided the Department and Buyer mutually agree on the renewal, subject to the same subordination to State Users provided in paragraph 26 hereof. Department or Buyer may terminate this agreement at any time upon two-years' written notice to all parties to this agreement. However, either party may terminate this agreement upon 30 days written notice to other for cause. For purposes of this agreement, the phrase "for cause" shall mean the failure of the other party to meet the terms, conditions, and/or responsibilities of the agreement. A termination for cause shall be effective as of the date indicated on the notice provided. Deliveries of Rector Reservoir water to State Users shall not result in termination of this agreement, even if such delivery results in Department's inability to deliver Rector Reservoir water to Buyer hereunder either temporarily or indefinitely, provided, however, that Buyer shall have no obligation to pay for water that is unavailable to it due to such deliveries to State Users.

32. Should any dispute arise out of the interpretation, administration or performance of this agreement, the parties shall make a good faith effort to resolve such dispute. In the event litigation arises between the parties hereto arising out of the interpretation, administration, or performance of this agreement, the following shall apply:

a) Attorney's fees and costs incurred in said litigation shall be borne by the respective parties.

b) Trial by jury is waived by both parties, and any trial shall be by a judge alone.

c) The venue of any action between the parties hereto arising out of the interpretation, administration, or performance of this agreement shall be the Superior Court in and for the County of Sacramento.

d) Each party shall continue to perform its obligations hereunder while said litigation is pending unless the agreement is terminated pursuant to paragraph 31.

33. This agreement represents and contains the entire and only agreement and understanding among the parties with respect to the subject matter of this agreement. This document supersedes any and all prior and contemporaneous oral and written agreements, understandings, representations, inducements, promises, warranties, and conditions between the Department and the Buyer. No agreement, understanding, representations, inducement, promise, warranty or condition of any kind with respect to the subject matter of this agreement shall be relied upon unless expressly incorporated herein.

34. This agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

35. In the event that any provision of this agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this agreement shall have full force and effect.

36. This agreement will remain in effect unless amended, modified or superseded or unless terminated pursuant to paragraph 31. All amendments, addition, deletions and/or changes shall be made only in writing and signed by the signatories or their designated authorized representatives.

37. The parties acknowledge that prior to entering into or renewing any long-term agreement, they must comply with the California Environmental Quality Act, which could affect the terms and conditions of any long-term agreement. Buyer shall act as lead agency for compliance with the California Environmental Quality Act.

38. As consideration for the Department entering into this agreement, Buyer and Department agree to establish a fair and equitable billing formula for the operation of the wastewater Joint Treatment Plant (JTP) with the goal of ensuring that Department pays no more than its proportionate share of the cost of operations of the JTP. To that end, the parties agree to the following:

a) Of the four samples taken each month for calculation of influent flow, Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS), Buyer agrees to take one sample per month during the weekend for testing by an independent laboratory. The three other monthly samples will be taken on

weekdays, as has been the current practice. The day of the weekend that this sample is taken will be rotated each month to capture loadings on Friday, Saturday and Sundays. The Buyer agrees to this revised sampling plan effective July 1, 2004. It is Buyer's intent to determine the day of the weekend that has the highest loading for the Town of Yountville and, thereafter to sample on that day each month.

b) Upon the request of either party, but in no event more often than once each year, Buyer and Department will review billing formula, including, but not limited to the data generated by the sample testing to observe any significant loading patterns to the JTP. Should either party, based on said review, determine that billing formula, for any reason, is not fair and equitable to each party the Buyer will make mutually agreed upon adjustments to the billing formula, including, but not limited to the sampling schedule to ensure said formula accurately reflects Department's share of the loading of the JTP in proportion to all other users. Should the adjustment to the billing formula not be consistent with the existing agreement, both parties shall be committed to amend said JTP agreement.

c) If mutual agreement can not be obtained, both parties agree to retain a professional wastewater engineering consultant, mutually agreeable to the parties to make an independent review of the billing formula contained with the original JTP agreement as modified herein who shall recommend any modifications which, in the opinion of the consultant, will make the billing formula fair and equitable. The parties agree to be mutually bound by the

recommendation of any consultant retained pursuant to this paragraph. The cost of any such consultant shall be considered an operating cost of the JTP to be allocated to the parties according to the billing formula.

d) The total actual operating cost shall include the cost of all items set forth in the cost recovery model attached hereto as Exhibit B. Department shall pay the proportion of the total actual operating cost of the JTP as its loading thereon bears to the loading from all users of the JTP.

TOWN OF YOUNTVILLE,  
a municipal Corporation

DEPARTMENT OF VETERAN AFFAIRS

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

By: \_\_\_\_\_  
Undersecretary

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Deputy Secretary/Chief Counsel

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Town Attorney

| <b>COST RECOVERY MODEL FOR RECTOR RESERVOIR<br/>(EXHIBIT A)</b> |      |
|---|------|
| CHLORINE  | \$ - |
| ACH   | \$ - |
| POLYMER   | \$ - |
| ZINC PO4  | \$ - |
| POTASSIUM PERMANGANATE  | \$ - |
| COPPER SULFATE  | \$ - |
|   |      |
| CHIEF ENGINEER II   | \$ - |
| WATER TREATMENT PLANT SUPERVISOR                                | \$ - |
| WATER TREATMENT PLANT OPERATOR                                  | \$ - |
| WATER TREATMENT PLANT RELIEF OPERATOR                           | \$ - |
| BUILDING MAINTENANCE WORKER                                     | \$   |
| MISCELLANEOUS TRADES  | \$   |
| ELECTRICAL USAGE  | \$ - |
| CATHODIC PROTECTION   | \$ - |
| PERMIT FEES   | \$ - |
| OUTSIDE LAB ANALYSIS  | \$ - |
| CONSULTANT FEES   | \$   |
| PARTS AND SUPPLIES  | \$   |
| TOTAL PLANT OPERATING COST                                      | \$   |
|   |      |
| ADMINISTRATIVE COSTS  | \$   |
| IMPROVEMENTS - 20 YEARS - (3)                                   | \$ - |
| TOTAL COST  | \$   |

**Town of Yountville**  
**WasteWater Fund/Treatment Admin**  
**Fund 62-4515**

|                                |                          | 2001/02          | 2002/03          | 2003/04          | 2003/04          | 2004/05          |
|--------------------------------|--------------------------|------------------|------------------|------------------|------------------|------------------|
|                                |                          | ACTUAL           | ACTUAL           | ESTIMATED        | ADOPTED          | PROPOSED         |
| <b>Personnel Services</b>      |                          |                  |                  |                  |                  |                  |
| 201                            | SALARIES, REGULAR        | 147,819          | 156,628          | 168,000          | 162,000          | 158,000          |
| 202                            | SALARIES, P/T            | 0                | 0                | 200              | 0                | 0                |
| 204                            | OVERTIME                 | 1,442            | 2,779            | 2,600            | 2,500            | 2,500            |
| 205                            | BENEFITS                 | 28,768           | 38,623           | 52,000           | 50,000           | 60,500           |
| 206                            | PR TAX-MEDICARE          | 756              | 846              | 1,200            | 800              | 1,600            |
| 208                            | WORKER'S COMPENSATION    | 5,435            | 6,182            | 8,200            | 8,400            | 8,000            |
| 209                            | DEFERRED COMPENSATION    | 2,594            | 2,490            | 3,700            | 2,000            | 4,600            |
| <b>SUBTOTAL</b>                |                          | <b>186,814</b>   | <b>207,548</b>   | <b>235,900</b>   | <b>225,700</b>   | <b>235,200</b>   |
| <b>Services &amp; Supplies</b> |                          |                  |                  |                  |                  |                  |
| 210                            | SUPPLIES & MATERIALS     | 293              | 568              | 500              | 500              | 500              |
| 212                            | EQUIPMENT MAINTENANCE    | 7,821            | 11,913           | 15,000           | 15,000           | 15,000           |
| 213                            | SPECIAL DEPT SUPPLIES    | 19,474           | 18,152           | 19,000           | 20,000           | 19,000           |
| 214                            | VEHICLE OPERATION        | 337              | 837              | 700              | 800              | 800              |
| 215                            | BLDG/GROUNDS MAINT       | 3,900            | 3,600            | 2,500            | 3,000            | 3,000            |
| 221                            | DUES & SUBSCRIPTIONS     | 378              | 465              | 300              | 2,000            | 2,000            |
| 228                            | FEES & PERMITS           | 11,040           | 16,339           | 17,000           | 18,000           | 17,100           |
| 230                            | PHONE & COMMUNICATIONS   | 574              | 2,284            | 1,900            | 1,500            | 1,500            |
| 231                            | UTILITIES                | 75,038           | 76,580           | 74,000           | 70,000           | 70,000           |
| 234                            | CONFERENCE & TRAVEL      | 0                | (81)             | 100              | 500              | 500              |
| 236                            | INSURANCE-LIABILITY      | 7,140            | 8,744            | 9,200            | 9,200            | 9,000            |
| 240                            | AUDIT/ACCOUNTING         | 1,882            | 1,474            | 1,700            | 1,600            | 1,700            |
| 241                            | PERSONNEL ADMINISTRATION | 0                | 0                | 1,800            | 1,900            | 0                |
| 249                            | OTHER CONTRACT SERVICES  | 34,048           | 80,144           | 115,000          | 100,000          | 80,000           |
| <b>SUBTOTAL</b>                |                          | <b>161,925</b>   | <b>221,019</b>   | <b>258,700</b>   | <b>244,000</b>   | <b>220,100</b>   |
| <b>Capital Outlay</b>          |                          |                  |                  |                  |                  |                  |
| 253                            | EQUIPMENT                | 0                | 3,373            | 0                | 0                | 0                |
| 254                            | COMPUTER EQUIPMENT       | 0                | 0                | 0                | 0                | 700              |
| <b>SUBTOTAL</b>                |                          | <b>0</b>         | <b>3,373</b>     | <b>0</b>         | <b>0</b>         | <b>700</b>       |
| <b>Total Program Budget</b>    |                          | <b>\$348,739</b> | <b>\$431,940</b> | <b>\$494,600</b> | <b>\$469,700</b> | <b>\$456,000</b> |

Exhibit B  
Agreement # 2004-104

**Town of Yountville**  
**Joint Capital Recovery Fund**  
**Fund 63-4518**

|                                   |                           | 2001/02           | 2002/03           | 2003/04           | 2003/04            | 2004/05            |
|-----------------------------------|---------------------------|-------------------|-------------------|-------------------|--------------------|--------------------|
|                                   |                           | ACTUAL            | ACTUAL            | ESTIMATED         | ADOPTED            | PROPOSED           |
| <b>BEGINNING FUND BALANCE</b>     |                           | <b>451,659</b>    | <b>422,286</b>    | <b>408,084</b>    | <b>408,084</b>     | <b>371,576</b>     |
| <b>Revenues</b>                   |                           |                   |                   |                   |                    |                    |
| 3301                              | INVESTMENT INCOME         | 14,408            | 9,276             | 4,000             | 5,100              | 4,000              |
| 3652                              | MISCELLANEOUS (reclaimed) | 0                 | 0                 | 2,000             | 5,000              | 6,000              |
| 3650                              | CAPITAL RECOVERY-VH       | 36,996            | 36,996            | 36,996            | 36,996             | 37,000             |
| 3805                              | CAPITAL RECOVERY-TOWN     | 36,996            | 36,996            | 36,996            | 36,996             | 37,000             |
| <b>Total Revenues</b>             |                           | <b>88,400</b>     | <b>83,268</b>     | <b>79,992</b>     | <b>84,092</b>      | <b>84,000</b>      |
| <b>Expenditures</b>               |                           |                   |                   |                   |                    |                    |
| 253                               | PLANT EQUIPMENT           | 0                 | 0                 | 5,800             | 5,500              | 0                  |
| 9xx                               | CAP IMPROVE-PRIOR YEARS   | 0                 | 0                 | 0                 | 0                  | 0                  |
| 916                               | PLANT EQUIP REPLACE       | 92,713            | 91,855            | 5,000             | 110,000            | 125,000            |
| 928                               | RECLAIMED WATER/DISCHRG   | 25,060            | 3,131             | 400               | 0                  | 0                  |
| 979                               | NAPA RIVER DIFFUSER       | 0                 | 0                 | 0                 | 0                  | 250,000            |
| 989                               | WWTP IMPR-COMMUNITOR      | 0                 | 2,484             | 105,300           | 105,300            | 0                  |
| <b>Total Expenditures</b>         |                           | <b>117,773</b>    | <b>97,470</b>     | <b>116,500</b>    | <b>220,800</b>     | <b>375,000</b>     |
| <b>ENDING FUND BALANCE</b>        |                           | <b>\$422,286</b>  | <b>\$408,084</b>  | <b>\$371,576</b>  | <b>\$271,376</b>   | <b>\$80,576</b>    |
| <b>Net Change in Fund Balance</b> |                           | <b>(\$29,373)</b> | <b>(\$14,202)</b> | <b>(\$36,508)</b> | <b>(\$136,708)</b> | <b>(\$291,000)</b> |
| <b>Memo</b>                       |                           |                   |                   |                   |                    |                    |
| 305                               | DEPRECIATION              | 38,756            | 35,000            | 38,800            | 38,800             | 39,000             |

| <b>Town of Yountville</b>                       |                 |                 |                 |                |             |
|---|-----------------|-----------------|-----------------|----------------|-------------|
| <b>Personnel Allocation Summary</b>             |                 |                 |                 |                |             |
| Fiscal Years ending June 30th 2003, 2004 & 2005 |                 |                 |                 |                |             |
| Allocated to Joint Treatment Plant              |                 |                 |                 |                |             |
|   |                 |                 |                 |                |             |
|   | <b>FY 02/03</b> | <b>FY 03/04</b> | <b>FY 04/05</b> | <b>Current</b> | <b>+/-</b>  |
| <b>JTP (4515)</b>                               |                 |                 |                 |                |             |
| Account Clerk II                                | 0.05            | 0.05            | 0.05            | 0.00           | 0.00        |
| Administrative Secretary                        | 0.02            | 0.02            | 0.02            | 0.00           | 0.00        |
| Finance Director                                | 0.08            | 0.08            | 0.08            | 0.00           | 0.00        |
| Office Assistant II                             | 0.02            | 0.02            | 0.02            | 0.00           | 0.00        |
| Operator II                                     | 1.75            | 1.75            | 1.75            | 0.00           | 0.00        |
| Operator I                                      | 0.00            | 0.00            | 0.00            | 0.00           | 0.00        |
| Town Administrator                              | 0.05            | 0.05            | 0.05            | 0.00           | 0.00        |
| WW System Supervisor                            | 0.90            | 0.90            | 0.90            | 0.00           | 0.00        |
| Subtotal  | <b>2.86</b>     | <b>2.86</b>     | <b>2.86</b>     | <b>0.00</b>    | <b>0.00</b> |