

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 COEHLO FAMILY TRUST
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this _____ day of _____, 2001, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat.
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
17 hereinafter referred to as the United States, and **COEHLO FAMILY TRUST**, hereinafter referred to
18 as the Contractor, ~~a public agency of the State of California, duly organized, existing, and acting~~
19 pursuant to the laws **of the State of California;** ~~of business in California;~~

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,
24 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,
25 generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of
26 waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River
27 and their tributaries; and

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

31 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to
32 California law for operation of the Project; and

33 [4th] WHEREAS, the ~~Contractor~~ **Mason Loundy Trust** and the United States entered into
34 Contract No. **14-06-200-7859A**, which established terms for the delivery of **5,200 acre-feet of**
35 **supplemental water, hereinafter referred to as Project Water, from August 20, 1974, through**
36 **December 31, 2003, and 2,653 acre-feet of Schedule 2 water as a permanent adjustment and**
37 **settlement of the Mason Loundy Trust's asserted claims of rights to water in Fresno Slough**
38 **tributary to the San Joaquin River in fulfillment of such rights to the Mason Loundy Trust**

39 **from Delta Division Facilities; and**

40 **[4.1] WHEREAS, the Mason Loundy Trust entered into “Partial Assignment of**
41 **Contract and Consent Thereof” dated December 16, 1986, assigning 1,321 acre-feet of Schedule**
42 **2 water and 3,120 acre-feet of Project Water of Contract No. 14-06-200-7859A to the State of**
43 **Californin Department of Fish & Game, Wildlife Conservation Board, leaving a balance of**
44 **1,332 acre-feet of Schedule 2 water and 2,080 acre-feet of Project Water available to the Mason**
45 **Loundy Trust under Contract No. 14-06-200-7859A; and**

46 **[4.2] WHEREAS, the Mason Loundy Trust entered into the “Assignment of Contract,**
47 **Consent Thereto and Assumption Thereof” dated August 22, 1995, assigning the 1,321 acre-feet**
48 **of Schedule 2 water and 2,080 acre-feet of Project Water water remaining available under**
49 **Contract No. 14-06-200-7859A to the Contractor; and**

50 **[4.3] WHEREAS, Schedule 2 water is not the subject of this Contract and will**
51 **continued to be delivered under the terms and conditions of Contract No.14-06-200-7859A; and**

52 **[5th] WHEREAS, the Contractor and the United States have pursuant to Subsection**
53 **3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into**
54 **Binding Agreements identified as Binding Agreement No. 14-06-200-7859A-BA which provided**
55 **for the non-payment of the additional mitigation and restoration charges if the Contractor**
56 **agreed to renew their contract for Project Water after completion of the Programmatic**

57 **Environmental Impact Statement and negotiation of a renewal contract for Project Water; and**

58 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim
59 and existing long-term Project Water service contracts following completion of appropriate
60 environmental documentation, including a programmatic environmental impact statement (PEIS)
61 pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and
62 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project
63 Water; and

64 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
65 environmental review necessary to provide for long-term renewal of the **terms and conditions for**
66 **Project Water service under the Existing Contract**; and

67 [8th] WHEREAS, the Contractor has requested the long-term renewal **for Project Water**
68 **service under the Existing Contract**, pursuant to the terms of the Existing Contract, Federal
69 Reclamation law, and the laws of the State of California, for water service from the Central Valley
70 Project; and

71 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
72 its obligations under the Existing Contract; and

73 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
74 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and

75 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor
76 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project
77 Water to be made available to it pursuant to this Contract; and

78 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by
79 urban and agricultural areas within California for more than fifty (50) years, and is considered by the
80 Contractor as an essential portion of its water supply; and

81 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
82 Contractor's, depend upon the continued availability of water, including water service from the
83 Central Valley Project; and

84 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
85 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
86 purposes; and

87 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
88 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
89 the Central Valley Project as required by law; to guard reasonably against Project Water shortages; to
90 achieve a reasonable balance among competing demands for use of Project Water; and to comply
91 with all applicable environmental statutes, all consistent with the legal obligations of the United
92 States relative to the Central Valley Project; and

93 [14.1] WHEREAS, the United States and the Contractor acknowledge that the Base Supply

94 as defined in this Contract is a more accurate reflection of the amount of water the Contractor may
95 realistically expect in many water years in light of present constraints and that designation of a Base
96 Supply does not preclude delivery to the Contractor of a Supplemental Supply of Project Water as
97 defined herein; and

98 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
99 relationship in order to achieve their mutual goals; and

100 [16th] WHEREAS, the United States and the Contractor are willing to enter into this long-
101 term renewal contract pursuant to Federal Reclamation law on the terms and conditions set forth
102 below;

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

105 DEFINITIONS

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

108 (a) “Base Supply” shall mean that quantity of Project Water so designated in
109 subdivision (a) of Article 3 of this Contract.

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

112 (b) “Charges” shall mean the payments required by Federal Reclamation law in

113 addition to the Rates and Tiered Pricing Components specified in this Contract as determined
114 annually by the Contracting Officer pursuant to this Contract;

115 (c) “Condition of Shortage” shall mean a condition respecting the Project during
116 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract
117 Total;

118 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized
119 representative acting pursuant to this Contract or applicable Reclamation law or regulation;

120 (e) “Contract Total” shall mean the total of Base Supply and Supplemental Supply
121 of Project Water to which the Contractor is entitled under subdivision (a) of Article 3 of this
122 Contract;

123 (f) “Contractor's Service Area” shall mean the area to which the Contractor is
124 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,
125 which may be modified from time to time in accordance with Article 35 of this Contract without
126 amendment of this Contract;

127 (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title
128 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

129 (g.1) “Delta Division Facilities” shall mean those existing and future facilities in an
130 south of the Sacramento-San Joaquin Rivers Delta, including the Tracy Pumping Plan, used to divert,
131 store and convey water to those Project Contractors entitled to receive water conveyed through the

132 Delta-Mendota Canal;

133 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
134 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
135 Stat. 1263), as amended, hereinafter referred to as RRA;

136 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
137 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
138 Reclamation law;

139 (j) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3) or
140 202(3) of the RRA, whichever is applicable;

141 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be
142 delivered in accordance with Section 204 of the RRA;

143 (l) "Irrigation Full Cost Water Rate" shall have the same meaning as "full cost" as
144 that term is used in paragraph (3) of Section 202 of the RRA;

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

148 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
149 nonexempt land, as provided in 43 CFR 426.2;

150 (o) "Municipal and Industrial (M&I) Water" shall mean water made available from

151 the Project other than Irrigation Water made available to the Contractor. M&I Water shall include
152 water used for human use and purposes such as the watering of landscaping or pasture for animals
153 (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in
154 units of less than five (5) acres unless the Contractor establishes to the satisfaction of the Contracting
155 Officer that the use of water delivered to any such landholding is a use described in subdivision (m)
156 of this Article;

157 (p) "M&I Full Cost Water Rate" shall mean the annual rate, which, as determined
158 by the Contracting Officer, shall amortize the expenditures for construction allocable to Project M&I
159 facilities in service, including, O&M deficits funded, less payments, over such periods as may be
160 required under Federal Reclamation law with interest accruing from the dates such costs were first
161 incurred plus the applicable rate for the O&M of such Project facilities. Interest rates used in the
162 calculation of the M&I Full Cost Rate shall comply with the Interest Rate methodology contained in
163 Section 202 (3) (B) and (C) of the RRA;

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

167 (r) "Operating Non-Federal Entity" shall mean the San Luis & Delta-Mendota
168 Water Authority, a Non-Federal entity which has the obligation to operate and maintain all or a
169 portion of the Delta Division Facilities pursuant to an agreement with the United States, and which

170 may have funding obligations with respect thereto;

171 (s) "Project" shall mean the Central Valley Project owned by the United States and
172 managed by the Department of the Interior, Bureau of Reclamation;

173 (t) "Project Contractors" shall mean all parties who have water service contracts
174 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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

178 (v) "Rates" shall mean the payments determined annually by the Contracting
179 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
180 described in subdivision (a) of Article 7 of this Contract;

181 (w) "Recent Historic Average" shall mean the most recent five (5) -year average of
182 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
183 contract(s);

184 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
185 successor, or an authorized representative acting pursuant to any authority of the Secretary and
186 through any agency of the Department of the Interior;

187 (x.1) "Supplemental Supply" shall mean that quantity of Project Water so designated
188 in subdivision (a) of Article 3 of this Contract as that portion of the Contract Total that is in addition

189 to and less reliable than the Base Supply;

190 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for
191 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

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

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

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

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

202 TERM OF CONTRACT

203 2. (a) This Contract shall be effective **March 1, 20__**, through **February 28, 20__**.

204 **This contract when effective supersedes that portion of Contract No. 14-06-200-7859A, dated**

205 **August 20, 1974, pertaining to the furnishing of Project Water.** In the event the Contractor

206 wishes to renew this Contract beyond **February 28, 20__**, the Contractor shall submit a request for

207 renewal in writing to the Contracting Officer no later than two (2) years prior to the date this Contract
208 expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the
209 Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract
210 insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by
211 subdivision (c) of this Article.

212 (b) (1) Under terms and conditions of a renewal contract that are mutually
213 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of
214 contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to
215 Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the
216 Contractor, shall be renewed for a period of twenty-five (25) years.

217 (2) The conditions which must be met for this Contract to be renewed are:
218 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
219 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
220 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
221 effective water conservation and efficiency program based on the Contractor's water conservation
222 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all
223 water measuring devices and implementing all water measurement methods as approved by the
224 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and
225 beneficially used the Project Water supplies made available to it and, based on projected demands, is

226 reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of
227 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying
228 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal
229 ability to deliver Project Water.

230 (3) The terms and conditions of the renewal contract described in
231 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
232 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
233 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
234 Contractor's need for continued delivery of Project Water; environmental conditions affected by
235 implementation of the Contract to be renewed, and specifically changes in those conditions that
236 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
237 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
238 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

239 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
240 Contractor, shall be renewed for a period of twenty-five (25) years and thereafter shall be renewed for
241 successive periods of up to forty (40) years each, which periods shall be consistent with the then-
242 existing Reclamation-wide policy, under terms and conditions mutually agreeable to the parties and
243 consistent with Federal and State law. The present Reclamation-wide policy, dated March 20, 2000,
244 provides that the term of such contracts shall be no more than twenty-five (25) years each, subject to a

245 variance to allow a longer term in appropriate circumstances. The Contractor shall be afforded the
246 opportunity to comment to the Contracting Officer on the proposed adoption and application of any
247 revised Reclamation-wide policy applicable to the delivery of Project M&I Water that would limit the
248 term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to less
249 than twenty-five (25) years.

250 (d) The Contracting Officer anticipates that by December 31, 2024, all
251 authorized project construction expected to occur will have occurred, and on that basis the
252 Contracting Officer agrees by that date to allocate all costs that are properly assignable to the
253 Contractor, and agrees further that, at any time after such allocation is made, and subject to
254 satisfaction of the conditions set out in this subdivision, this Contract shall, at the request of the
255 Contractor, be converted to a contract under subsection (d) , Section 9 of the Reclamation Project Act
256 of 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable
257 to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
258 determination by the Contracting Officer that, account being taken of the amount credited to return by
259 the Contractor as provided for under Reclamation law, the remaining amount of construction costs
260 assignable for ultimate return by the Contractor can probably be repaid to the United States within the
261 term of a contract under said subsection (d). If the remaining amount of costs that are properly
262 assignable to the Contractor cannot be determined by December 31, 2024, the Contracting Officer
263 shall notify the Contractor, and provide the reason(s) why such a determination could not be made.

264 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as
265 to permit, upon request of the Contractor and satisfaction of the conditions set out above, conversion
266 to a contract under said subsection (d). In the event such determination of costs has not been made at
267 a time which allows conversion of this Contract during the term of this Contract or the Contractor has
268 not requested conversion of this Contract within such term, the parties shall incorporate in any
269 subsequent renewal contract as described in subdivision (b) of this Article a provision that carries
270 forth in substantially identical terms the provisions of this subdivision. In the event the Contracting
271 Officer is able to make a determination of the remaining amount of costs that are properly assignable
272 to the Contractor before December 31, 2024, the Contracting Officer shall do so at the earliest time
273 the Contracting Officer has such ability.

274 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

275 3. (a) During each Year, consistent with all applicable State water rights, permits,
276 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
277 Contract, the Contracting Officer shall make available for delivery to the Contractor **1,456** acre-feet
278 designated as Base Supply and **624** acre-feet designated as Supplemental Supply for a Contract Total
279 of **2,080** acre-feet for irrigation and M&I purposes. To reflect changes in reliability, the quantity of
280 Base Supply and Supplemental Supply will be reassessed at least every five (5) years and may be
281 adjusted upon mutual agreement of the parties. The quantity of Water Delivered to the Contractor in

282 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
283 Articles 4 and 7 of this Contract. **Schedule 2 water shall continue to be delivered to the**
284 **Contractor at no cost pursuant to the Existing Contract and not be subject to the provisions of**
285 **this Contract, and the Existing Contract shall be in full force and effect insofar as it pertains to**
286 **the furnishing of Schedule 2 water.**

287 (b) Because the capacity of the Central Valley Project to deliver Project Water has
288 been constrained in recent years and may be constrained in the future due to many factors including
289 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
290 actually receiving full amount of the Contract Total set out in subdivision (a) of this Article in any
291 given Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS
292 projected that the full amount of the Contract Total set forth in this Contract will not be available to
293 the Contractor in many years. During the most recent five (5) years, the Recent Historic Average of
294 Water Made Available to the Contractor was **1,540** acre-feet. Nothing in this subdivision (b) of this
295 Article 3 shall affect the rights and obligations of the parties under any provision of this Contract.

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

298 (d) The Contractor shall make reasonable and beneficial use of all Project Water or
299 other water furnished pursuant to this Contract. Groundwater recharge programs, groundwater

300 banking programs, surface water storage programs, and other similar programs utilizing Project
301 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
302 Area which are consistent with applicable State law and result in use consistent with Reclamation law
303 will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's
304 Water Conservation Plan submitted pursuant to Article 26 of this Contract; Provided, further, That
305 such Water Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service
306 Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
307 reasonable for such uses and in compliance with Reclamation law. Groundwater recharge programs,
308 groundwater banking programs, surface water storage programs, and other similar programs utilizing
309 Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's
310 Service Area may be permitted upon written approval of the Contracting Officer, which approval will
311 be based upon environmental documentation, Project Water rights, and Project operational concerns.
312 The Contracting Officer will address such concerns in regulations, policies, or guidelines.

313 (e) The Contractor shall comply with requirements applicable to the Contractor in
314 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
315 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
316 the Contractor's legal authority to implement. The Contractor shall comply with the limitations or
317 requirements imposed by environmental documentation applicable to the Contractor and within its
318 legal authority to implement regarding specific activities, including conversion of Irrigation Water to

319 M&I Water. Nothing herein shall be construed to prevent the Contractor from challenging or seeking
320 judicial relief in a court of competent jurisdiction with respect to any biological opinion or other
321 environmental documentation referred to in this Article.

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

335 (g) The Contractor may request permission to reschedule for use during the
336 subsequent Year some or all of the Water Made Available to the Contractor during the current Year
337 referred to as "carryover." The Contractor may request permission to use during the current Year a

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

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

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

352 (j) The Contracting Officer shall make reasonable efforts to protect the water
353 rights necessary for the Project and to provide the water available under this Contract. The
354 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
355 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
356 however, That the Contracting Officer retains the right to object to the substance of the Contractor’s

357 position in such a proceeding.

358 TIME FOR DELIVERY OF WATER

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

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

375 (c) The Contractor shall not schedule Project Water in excess of the quantity of

376 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's
377 Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

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

383 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

384 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
385 Contract shall be delivered to the Contractor at a point or points and any additional point or points of
386 delivery either on Project facilities or another location or locations mutually agreed to in writing by
387 the Contracting Officer and the Contractor.

388 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
389 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
390 the Delta-Mendota Canal to deliver Project Water to the Contractor at specific turnouts established
391 pursuant to subdivision (a) of this Article.

392 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable
393 land classification provisions of Federal Reclamation law and the associated regulations. The
394 Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless

395 approved in advance by the Contracting Officer.

396 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
397 measured and recorded with equipment furnished, installed, operated, and maintained by the United
398 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting
399 Officer (hereafter "other appropriate entity") at the point or points of delivery established pursuant to
400 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
401 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal Entity,
402 the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
403 therein. For any period of time when accurate measurements have not been made, the Contracting
404 Officer shall consult with the Contractor and the responsible Operating Non-Federal Entity prior to
405 making a final determination of the quantity delivered for that period of time.

406 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
407 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
408 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
409 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
410 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
411 for which there is legal responsibility, including property damage, personal injury, or death arising out
412 of or connected with the control, carriage, handling, use, disposal, or distribution of such Project
413 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or

414 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
415 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in any
416 damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees,
417 agents, or assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the
418 Contracting Officer or any of its officers, employees, agents, or assigns including any responsible
419 Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction of facilities
420 owned and/or operated by the United States or responsible Operating Non-Federal Entity; Provided,
421 That the Contractor is not the Operating Non-Federal Entity that owned or operated the
422 malfunctioning facility(ies) from which the damage claim arose.

423 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

424 6. (a) The Contractor has established a measuring program satisfactory to the
425 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
426 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water
427 delivered for municipal and industrial purposes is measured at each municipal and industrial service
428 connection. The water measuring devices or water measuring methods of comparable effectiveness
429 must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing,
430 operating, and maintaining and repairing all such measuring devices and implementing all such water
431 measuring methods at no cost to the United States. The Contractor shall use the information obtained
432 from such water measuring devices or water measuring methods to ensure its proper management of

433 the water, to bill water users for water delivered by the Contractor; and, if applicable, to record water
434 delivered for municipal and industrial purposes by customer class as defined in the Contractor's water
435 conservation plan provided for in Article 26 of this Contract. Nothing herein contained, however,
436 shall preclude the Contractor from establishing and collecting any charges, assessments, or other
437 revenues authorized by California law. The Contractor shall include a summary of all its annual
438 surface water deliveries in the annual report described in subdivision (c) of Article 26 of this
439 Contract.

440 (b) To the extent the information has not otherwise been provided, upon execution
441 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
442 measurement devices or water measuring methods being used or to be used to implement subdivision
443 (a) of this Article and identifying the agricultural turnouts and the municipal and industrial service
444 connections or alternative measurement programs approved by the Contracting Officer, at which such
445 measurement devices or water measuring methods are being used, and, if applicable, identifying the
446 locations at which such devices and/or methods are not yet being used including a time schedule for
447 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
448 within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring
449 devices or water measuring methods identified in the Contractor's report and if the Contracting
450 Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer
451 notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within

452 sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest
453 practicable date by which the Contractor shall modify said measuring devices and/or measuring
454 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this
455 Article.

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

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

462 (e) The Contractor shall inform the Contracting Officer and the Operating Non-
463 Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of
464 Irrigation Water and M&I Water taken during the preceding month.

465 RATES AND METHOD OF PAYMENT FOR WATER

466 7. (a) The Contractor shall pay the United States as provided in this Article for all
467 Delivered Water at Rates, Charges, and the Tiered Pricing Components established in accordance
468 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
469 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified,
470 or superseded only through a public notice and comment procedure; (ii) applicable Reclamation law

471 and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract.
472 Payment shall be made by cash transaction, wire, or any other mechanism as may be agreed to in
473 writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
474 Components applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B",
475 as may be revised annually.

476 (b) The Contracting Officer shall notify the Contractor of the Rates,
477 Charges, and Tiered Pricing Components as follows:

478 (1) Prior to July 1 of each Calendar Year, the Contracting Officer
479 shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the
480 period October 1, of the current Calendar Year, through September 30, of the following Calendar
481 Year, and the basis for such estimate. The Contractor shall be allowed not less than two (2) months
482 to review and comment on such estimates. On or before September 15 of each Calendar Year, the
483 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the
484 period October 1 of the current Calendar Year, through September 30, of the following Calendar
485 Year, and such notification shall revise Exhibit "B."

486 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
487 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project
488 Water for the following Year and the computations and cost allocations upon which those Rates are
489 based. The Contractor shall be allowed not less than two (2) months to review and comment on such

490 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
491 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for
492 the upcoming Year, and such notification shall revise Exhibit "B".

493 (c) At the time the Contractor submits the initial schedule for the delivery of
494 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
495 shall make an advance payment to the United States equal to the total amount payable pursuant to the
496 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
497 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
498 end of the first month and before the end of each calendar month thereafter, the Contractor shall make
499 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
500 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
501 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
502 for Water Delivered shall be made before the end of the following month; Provided, That any revised
503 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
504 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
505 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
506 to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered
507 to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the
508 Contractor, no additional Project Water shall be delivered to the Contractor unless and until an

509 advance payment at the Rates then in effect for such additional Project Water is made. Final
510 adjustment between the advance payments for the Water Scheduled and payments for the quantities
511 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
512 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project
513 Water carried over under subdivision (f) of Article 3 of this Contract if such water is not delivered by
514 the last day of February.

515 (d) The Contractor shall also make a payment in addition to the Rate(s) in
516 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
517 appropriate Tiered Pricing Component then in effect, before the end of the month following the
518 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
519 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
520 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
521 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating
522 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
523 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
524 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
525 payments due to the United States for Charges for the next month. Any amount to be paid for past
526 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
527 of this Contract.

528 (e) The Contractor shall pay for any Water Delivered under subdivision (d), (f), or
529 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
530 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;

531 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
532 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
533 (a) of this Article.

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

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

540 (h) The Contracting Officer shall keep its accounts pertaining to the administration
541 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
542 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
543 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
544 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,
545 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
546 enter

547 into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports,
548 or information.

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

556 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
557 eighty (80%) percent of the Contract Total, then before the end of the month following the month of
558 delivery the Contractor shall make an additional payment to the United States equal to the applicable
559 Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in
560 excess of eighty (80%) percent of the Contract Total, but less than or equal to ninety (90%) percent of
561 the Contract Total, shall equal the one-half of the difference between the Rate established under
562 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
563 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
564 exceeds ninety (90%) percent of the Contract Total shall equal the difference between (i) the Rate
565 established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I

566 Full Cost Water Rate, whichever is applicable.

567 (2) Subject to the Contracting Officer's written approval, the Contractor
568 may request and receive an exemption from such Tiered Pricing Components for Project Water
569 delivered to produce a crop which the Contracting Officer determines will provide significant and
570 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
571 Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply
572 only if such habitat values can be assured consistent with the purposes of CVPIA through binding
573 agreements executed with or approved by the Contracting Officer prior to use of such water.

574 (3) For purposes of determining the applicability of the Tiered Pricing
575 Components pursuant to this Article, Water Delivered shall include Project Water that the Contractor
576 transfers to others but shall not include Project Water transferred and delivered to the Contractor.

577 (k) For the term of this Contract, Rates applied to under the respective ratesetting
578 policies will be established to recover only reimbursable Operation and Maintenance (including any
579 deficits) and capital costs of the Project, as those terms are used in the then-current Project ratesetting
580 policies, and interest, where appropriate, except in instances where a minimum Rate is applicable in
581 accordance with the relevant Project ratesetting policy. Changes of significance in practices which
582 implement the Contracting Officer's ratesetting policies will not be implemented until the
583 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
584 impact of the proposed change.

585 (1) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
586 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
587 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water
588 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy. If
589 the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring
590 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
591 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges
592 unadjusted for ability to pay.

593 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
594 Officer is authorized to adjust determinations of ability to pay every five (5) years.

595 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

596 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
597 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall
598 have no further liability therefor.

599 SALES, TRANSFERS, OR EXCHANGES OF WATER

600 9. (a) The right to receive Project Water provided for in this Contract may be sold,
601 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
602 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
603 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this

604 Contract may take place without the prior written approval of the Contracting Officer, except as
605 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
606 approved absent compliance with appropriate environmental documentation including but not limited
607 to the National Environmental Policy Act and the Endangered Species Act. Such environmental
608 documentation should include, as appropriate, an analysis of groundwater impacts and economic and
609 social effects, including environmental justice, of the proposed water transfers on both the transferor
610 and transferee.

611 (b) In order to facilitate efficient water management by means of water transfers of
612 the type historically carried out among Project Contractors located within the same geographical area
613 and to allow the Contractor to participate in an accelerated water transfer program during the term of
614 this Contract, the Contracting Officer shall prepare, as appropriate, necessary environmental
615 documentation including, but not limited to, the National Environmental Policy Act and the
616 Endangered Species Act analyzing annual transfers within such geographical areas and the
617 Contracting Officer shall determine whether such transfers comply with applicable law. Following
618 the completion of the environmental documentation, such transfers addressed in such documentation
619 shall be conducted with advance notice to the Contracting Officer, but shall not require prior written
620 approval by the Contracting Officer. Such environmental documentation and the Contracting
621 Officer's compliance determination shall be reviewed every five (5) years and updated, as necessary,
622 prior to the expiration of the then existing five (5) -year period. All subsequent environmental

623 documentation shall include an alternative to evaluate not less than the quantity of Project Water
624 historically transferred within the same geographical area.

625 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
626 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for
627 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface
628 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
629 established cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur
630 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
631 through existing facilities with no new construction or modifications to facilities and be between
632 existing Project Contractors and/or the Contractor and the United States, Department of the Interior;
633 and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed
634 for protection of the environment and Indian Trust Assets, as defined under Federal law.

635 APPLICATION OF PAYMENTS AND ADJUSTMENTS

636 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
637 Capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
638 the Contractor arising out of this Contract then due and payable. Overpayments of more than One
639 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
640 amount of such overpayment at the option of the Contractor, may be credited against amounts to
641 become due to the United States by the Contractor. With respect to overpayment, such refund or

642 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
643 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of
644 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as
645 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
646 finalized the accounts for the Year in which the overpayment was made.

647 (b) All advances for miscellaneous costs incurred for work requested by the
648 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the
649 work has been completed. If the advances exceed the actual costs incurred, the difference will be
650 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will
651 be billed for the additional costs pursuant to Article 25 of this Contract.

652 TEMPORARY REDUCTIONS--RETURN FLOWS

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

658 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
659 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
660 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project

661 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
662 feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due notice
663 in advance of such temporary discontinuance or reduction, except in case of emergency, in which case
664 no notice need be given; Provided, That the United States shall use its best efforts to avoid any
665 discontinuance or reduction in such service. Upon resumption of service after such reduction or
666 discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the
667 quantity of Project Water which would have been delivered hereunder in the absence of such
668 discontinuance or reduction.

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

675 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

680 as soon as practicable.

681 (b) If there is a Condition of Shortage because of errors in physical operations of
682 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions
683 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
684 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
685 agents, or employees for any damage, direct or indirect, arising therefrom.

686 (c) In any Year in which there may occur a Condition of Shortage for any of the
687 reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation
688 Water among the Contractor and others entitled to receive Irrigation Water from the Delta-Mendota
689 Canal as follows:

690 (1) A determination shall be made of the total quantity of Irrigation Water
691 scheduled to be delivered during the respective Year under all contracts then in force for the delivery
692 of Irrigation Water from the Delta Division Facilities, the quantity so determined being therein
693 referred to as the contractual commitments for Irrigation Water from such facilities.

694 (2) The total quantity of Irrigation Water scheduled to be delivered to the
695 Contractor from the Delta Division Facilities during the respective Year under subdivision (a) of
696 Article 3 of this Contract shall be divided by the contractual commitments for Irrigation Water, the
697 quotient thus obtained therein referred to as the Contractor's contractual entitlement for Irrigation
698 Water from such facilities.

699 (3) The supply of Irrigation Water determined by the Contracting Officer to
700 be available from the Delta Division Facilities shall be multiplied by the Contractor's contractual
701 entitlement for Irrigation Water and the result shall be the quantity of Irrigation Water required to be
702 delivered by the Contracting Officer to the Contractor for the respective Year from such facilities.

703 (d) **Project Water furnished under this Contract for M&I purposes will be**
704 **allocated and conformed in accordance with the then existing Project M&I Water Shortage**
705 **Policy. Such policy shall be amended, modified, or superseded only through a public notice**
706 **and comment procedure.**

707 UNAVOIDABLE GROUNDWATER PERCOLATION

708 13. To the extent applicable, the Contractor shall not be deemed to have delivered
709 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands
710 are irrigated with groundwater that reaches the underground strata as an unavoidable result of the
711 delivery of Irrigation Water by the Contractor to Eligible Lands.

712 RULES AND REGULATIONS

713 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
714 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the
715 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the
716 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

717 WATER AND AIR POLLUTION CONTROL

718 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
719 and air pollution laws and regulations of the United States and the State of California, and shall

720 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

721 QUALITY OF WATER

722 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
723 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
724 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
725 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
726 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
727 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
728 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
729 Contractor pursuant to this Contract.

730 (b) The Operation and Maintenance of Project facilities shall be performed in such
731 manner as is practicable to maintain the quality of raw water made available through such facilities at
732 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall
733 be responsible for compliance with all State and Federal water quality standards applicable to surface
734 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
735 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

736 WATER ACQUIRED BY THE CONTRACTOR
737 OTHER THAN FROM THE UNITED STATES

738 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other

739 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
740 be simultaneously transported through the same distribution facilities of the Contractor subject to the
741 following: (i) if the facilities utilized for commingling Irrigation Water and non-project water were
742 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
743 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
744 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
745 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
746 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
747 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
748 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
749 Water and non-project water are/were constructed with funds made available pursuant to Federal
750 Reclamation law, the non-project water will be subject to the acreage limitation provisions of Federal
751 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
752 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
753 cost to the Federal Government, including interest of storing or delivering non-project water, which
754 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
755 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
756 The incremental fee per acre is the mathematical result of such quotient times the interest rate
757 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental

758 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
759 receives non-project water through Federally financed or constructed facilities. The incremental fee
760 calculation methodology will continue during the term of this Contract absent the promulgation of a
761 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
762 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
763 regulation or policy is adopted it shall supersede this provision.

764 (b) Water or water rights now owned or hereafter acquired by the Contractor, other
765 than from the United States or adverse to the Project or its contractors (i.e. non-project water), may be
766 stored, conveyed and/or diverted through Project facilities, subject to the completion of appropriate
767 environmental documentation, with the approval of the Contracting Officer and the execution of any
768 contract determined by the Contracting Officer to be necessary, consistent with the following
769 provisions:

770 (1) The Contractor may introduce non-project water into Project facilities
771 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
772 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
773 appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended,
774 modified or superseded from time to time. In addition, if electrical power is required to pump non-
775 project water through the facilities, the Contractor shall be responsible for obtaining the necessary
776 power and paying the necessary charges therefor.

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

783 (3) Neither the United States nor the Operating Non-Federal Entity shall be
784 responsible for control, care or distribution of the non-project water before it is introduced into or
785 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
786 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
787 agents, and employees, from any claim for damage to persons or property, direct or indirect, resulting
788 from Contractor's diversion or extraction of non-project water from any source.

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

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

796 contractors.

797 OPINIONS AND DETERMINATIONS

798 18. (a) Where the terms of this Contract provide for actions to be based upon the
799 opinion or determination of either party to this Contract, said terms shall not be construed as
800 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
801 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve
802 the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
803 unreasonable opinion or determination. Each opinion or determination by either party shall be
804 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
805 or shall affect or alter the standard of judicial review applicable under federal law to any opinion or
806 determination implementing a specific provision of federal law embodied in statute or regulation.

807 (b) The Contracting Officer shall have the right to make determinations necessary
808 to administer this Contract that are consistent with the provisions of this Contract, the laws of the
809 United States and of the State of California, and the rules and regulations promulgated by the
810 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
811 the extent reasonably practicable.

812 COORDINATION AND COOPERATION

813 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
814 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other

815 affected Project Contractors, in order to improve the operation and management of the Project. The
816 communication, coordination, and cooperation regarding operations and management shall include,
817 but not be limited to, any action which will or may materially affect the quantity or quality of Project
818 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
819 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
820 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
821 authority for all actions, opinion, and determinations to be made by the respective party.

822 (b) Within one-hundred twenty (120) days following the effective date of this
823 Contract, the Contractor, other affected Project Contractors, and the Contracting Officer shall arrange
824 to meet with interested Project Contractors to develop a mutually agreeable, written Project-wide
825 process, which may be amended as necessary separate and apart from this Contract. The goal of this
826 process shall be to provide, to the extent practicable, the means of mutual communication and
827 interaction regarding significant decisions concerning Project operation and management on a real-
828 time basis.

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

831 (1) The Contracting Officer will, at the request of the Contractor, assist in
832 the development of integrated resource management plans for the Contractor. Further, the
833 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to

834 improve water supply, water quality, and reliability.

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

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

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

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

845 (d) Without limiting the contractual obligations of the Contracting Officer
846 hereunder, nothing in this Contract shall be construed to limit or constrain the Contracting Officer's
847 ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders
848 or to make decisions in a timely fashion as needed to protect health, safety, physical integrity of
849 structures or facilities, or the Contracting Officer's ability to comply with applicable laws.

850 CHARGES FOR DELINQUENT PAYMENTS

851 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
852 on delinquent installments or payments. When a payment is not received by the due date, the
853 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.

854 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
855 charge to cover additional costs of billing and processing the delinquent payment. When a payment is
856 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)
857 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
858 shall pay any fees incurred for debt collection services associated with a delinquent payment.

859 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
860 the Federal Register by the Department of the Treasury for application to overdue payments, or the
861 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation
862 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due
863 date and remain fixed for the duration of the delinquent period.

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

867 EQUAL OPPORTUNITY

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

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

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

881 (c) The Contractor will send to each labor union or representative of workers with
882 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
883 provided by the Contracting Officer, advising the said labor union or workers' representative of the

884 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
885 shall post copies of the notice in conspicuous places available to employees and applicants for
886 employment.

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

890 (e) The Contractor will furnish all information and reports required by said
891 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
892 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
893 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
894 regulations, and orders.

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

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

911 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

915 water users in their obligations to the Contractor.

916 (b) The payment of charges becoming due hereunder is a condition precedent to
917 receiving benefits under this Contract. The United States shall not make water available to the
918 Contractor through Project facilities during any period in which the Contractor may be in arrears in
919 the advance payment of water rates due the United States. The Contractor shall not furnish water
920 made available pursuant to this Contract for lands or parties which are in arrears in the advance
921 payment of water rates levied or established by the Contractor.

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

924 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

925 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
926 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
927 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
928 well as with their respective implementing regulations and guidelines imposed by the U.S.
929 Department of the Interior and/or Bureau of Reclamation.

930 (b) These statutes require that no person in the United States shall, on the grounds
931 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
932 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
933 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
934 agrees to immediately take any measures necessary to implement this obligation, including permitting
935 officials of the United States to inspect premises, programs, and documents.

936 (c) The Contractor makes this agreement in consideration of and for the purpose of
937 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
938 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
939 installment payments after such date on account of arrangements for Federal financial assistance
940 which were approved before such date. The Contractor recognizes and agrees that such Federal
941 assistance will be extended in reliance on the representations and agreements made in this Article,
942 and that the United States reserves the right to seek judicial enforcement thereof.

943

PRIVACY ACT COMPLIANCE

944 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the
945 Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in
946 maintaining Landholder acreage certification and reporting records, required to be submitted to the
947 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96
948 Stat. 1266), and pursuant to 43 CFR 426.18.

949 (b) With respect to the application and administration of the criminal penalty
950 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
951 for maintaining the certification and reporting records referenced in (a) above are considered to be
952 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

953 (c) The Contracting Officer or a designated representative shall provide the
954 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
955 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
956 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
957 contained in the Landholder's certification and reporting records.

958 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
959 Reclamation to be the System Manager who shall be responsible for making decisions on denials
960 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
961 authorized to grant requests by individuals for access to their own records.

962 (e) The Contractor shall forward promptly to the System Manager each proposed
963 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
964 2.71; notify the requester accordingly of such referral; and provide the System Manager with
965 information and records necessary to prepare an appropriate response to the requester. These
966 requirements do not apply to individuals seeking access to their own certification and reporting forms
967 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
968 Act as a basis for the request.

969 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

970 25. In addition to all other payments to be made by the Contractor pursuant to this

971 Contract, the Contractor shall pay to the United States, within sixty (60) days after receipt of a bill

972 and detailed statement submitted by the Contracting Officer to the Contractor for such specific items
973 of direct cost incurred by the United States for work requested by the Contractor associated with this
974 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
975 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
976 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
977 administration.

978 WATER CONSERVATION

979 26. (a) Prior to the delivery of water provided from or conveyed through Federally
980 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
981 implementing an effective water conservation and efficiency program based on the Contractor's water
982 conservation plan that has been determined by the Contracting Officer to meet the conservation and
983 efficiency criteria for evaluating water conservation plans established under Federal law. The water
984 conservation and efficiency program shall contain definite water conservation objectives, appropriate
985 economically feasible water conservation measures, and time schedules for meeting those objectives.
986 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
987 continued implementation of such water conservation program. In the event the Contractor's water
988 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
989 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
990 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the

991 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
992 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
993 thereafter the Contractor immediately begins implementing its water conservation and efficiency
994 program in accordance with the time schedules therein.

995 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
996 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor
997 shall implement the Best Management Practices identified by the time frames issued by the California
998 Urban Water Conservation Council for such M&I Water unless any such practice is determined by
999 the Contracting Officer to be inappropriate for the Contractor.

1000 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1001 its implementation of the water conservation plan on the reporting dates specified in the then existing
1002 conservation and efficiency criteria established under Federal law.

1003 (d) At five (5) -year intervals, the Contractor shall revise its water conservation
1004 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation
1005 plans established under Federal law and submit such revised water management plan to the
1006 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1007 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1008 evaluating water conservation plans established under Federal law.

1009 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall

1010 be described in the Contractor's water conservation plan.

1011 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1012 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1013 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter
1014 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1015 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1016 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1017 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1018 Reclamation law.

1019 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

1020 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1021 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1022 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1023 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1024 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1025 (b) The Contracting Officer has previously notified the Contractor in writing that
1026 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1027 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1028 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under

1029 the terms and conditions of the separate agreement between the United States and the Operating Non-
1030 Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any
1031 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1032 successor determines, sets, or establishes for the Operation and Maintenance of the portion of the
1033 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor.
1034 Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1035 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project
1036 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal
1037 Entity collects payments on behalf of the United States in accordance with the separate agreement
1038 identified in subdivision (a) of this Article.

1039 (c) For so long as the Operation and Maintenance of any portion of the Project
1040 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1041 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1042 this Contract representing the cost associated with the activity being performed by the Operating Non-
1043 Federal Entity or its successor.

1044 (d) In the event the Operation and Maintenance of the Project facilities operated
1045 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the
1046 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1047 the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the

1048 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of
1049 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in
1050 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1051 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United
1052 States in compliance with Article 7 of this Contract.

1053 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1054 29. The expenditure or advance of any money or the performance of any obligation of the
1055 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1056 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1057 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1058 or allotted.

1059 BOOKS, RECORDS, AND REPORTS

1060 30. (a) The Contractor shall establish and maintain accounts and other books and
1061 records pertaining to administration of the terms and conditions of this Contract, including: the
1062 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1063 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1064 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1065 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1066 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1067 during office hours to examine and make copies of the other party's books and records relating to
1068 matters covered by this Contract.

1069 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1070 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1071 such books, records, or information are reasonably related to the administration or performance of
1072 this Contract. Any such request shall allow the Contractor a reasonable period of time within which

1073 to provide the requested books, records, or information.

1074 (c) At such time as the Contractor provides information to the Contracting Officer
1075 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1076 Operating Non-Federal Entity.

1077 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1078 31. (a) The provisions of this Contract shall apply to and bind the successors and
1079 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1080 therein shall be valid until approved in writing by the Contracting Officer.

1081 (b) The assignment of any right or interest in this Contract by either party shall not
1082 interfere with the rights or obligations of the other party to this Contract absent the written
1083 concurrence of said other party.

1084 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1085 of any proposed assignment.

1086 SEVERABILITY

1087 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1088 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1089 association or other form of organization whose primary function is to represent parties to Project
1090 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1091 enforceability of a provision included in this Contract and said person, entity, association, or
1092 organization obtains a final court decision holding that such provision is legally invalid or

1093 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1094 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such final
1095 court decision identify by mutual agreement the provisions in this Contract which must be revised
1096 and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time
1097 periods specified above may be extended by mutual agreement of the parties. Pending the completion
1098 of the actions designated above, to the extent it can do so without violating any applicable provisions
1099 of law, the United States shall continue to make the quantities of Project Water specified in this
1100 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1101 to be legally invalid or unenforceable in the final court decision.

1102 RESOLUTION OF DISPUTES

1103 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1104 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1105 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1106 any matter to Department of Justice, the party shall provide to the other party thirty (30) days' written
1107 notice of the intent to take such action; Provided, That such notice shall not be required where a delay
1108 in commencing an action would prejudice the interests of the party that intends to file suit. During
1109 the thirty (30) -day notice period, the Contractor and the Contracting Officer shall meet and confer in
1110 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to waive
1111 or abridge any right or remedy that the Contractor or the United States may have.

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OFFICIALS NOT TO BENEFIT

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

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CHANGES IN CONTRACTOR'S SERVICE AREA

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

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(b) Within thirty (30) days of receipt of a request for such a change, the Contracting Officer will notify the Contractor of any additional information required by the Contracting Officer for processing said request, and both parties will meet to establish a mutually agreeable schedule for timely completion of the process. Such process will analyze whether the proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with the National Environmental Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

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FEDERAL LAWS

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36. By entering into this Contract, the Contractor does not waive its rights to contest the

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validity or application in connection with the performance of the terms and conditions of this

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Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the

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terms and conditions of this Contract unless and until relief from application of such Federal law or

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regulation to the implementing provision of the Contract is granted by a court of competent

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jurisdiction.

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NOTICES

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37. Any notice, demand, or request authorized or required by this Contract shall be

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deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered

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to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 97321, and on

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behalf of the United States, when mailed, postage prepaid, or delivered to **Mr. Joe Coehlo, Sr.,**

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Coehlo Family Trust, 5494 West Mount Whitney Avenue, Riverdale, California 93656. The

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designation of the addressee or the address may be changed by notice given in the same manner as

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provided in this Article for other notices.

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CONFIRMATION OF CONTRACT

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38. The Contractor, after the execution of this Contract, shall promptly seek to secure a

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decree of a court of competent jurisdiction of the State of California, confirming the execution of this

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Contract. The Contractor shall furnish the United States a certified copy of the final decree, the

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validation proceedings, and all pertinent supporting records of the court approving and confirming

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this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

R.O. Draft 11/01-2000
CVP-Wide Form 11-05

Delta Division

R.O. Rev. Delta Division 11/17-2000
Contract No. **14-06-200-7859A**- LTR1

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

THE UNITED STATES OF AMERICA

By: _____
Regional Director, Mid-Pacific Region
Bureau of Reclamation

COEHLO FAMILY TRUST

By: _____
Trustee

Attest:

By: _____
Secretary

R.O. Draft 11/01-2000
CVP-Wide Form 11-05

Delta Division

R.O. Rev. Delta Division 11/17-2000
Contract No. **14-06-200-7859A**- LTR1

EXHIBIT A

[Map or Description of Service Area]

R.O. Draft 11/01-2000
CVP-Wide Form 11-05
Delta Division
R.O. Rev. Delta Division 11/17-2000
Contract No. **14-06-200-7859A**- LTR1

EXHIBIT B
[Initial Rates and Charges]

(S:\www\cvpia\3404c\calendar\Oct16-25-01Coelho.wpd)