

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

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 _____
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM DELTA DIVISION

10 THIS CONTRACT, made this _____ day of _____, 2004, 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. 1263), 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 _____, hereinafter
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
19 acting pursuant to the laws thereof;

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

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

28 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
29 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the
30 terms of this Contract; and [**Contractor specific issue w/respect to additional facilities**]

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

33 [4th] WHEREAS, the Contractor and the United States entered into Contract No.
34 _____, as amended, which established terms for the delivery to the Contractor of Project
35 Water from the Delta Division Facilities from _____ through _____

36 [**For binding agreement contractors only**] (hereinafter referred to as “Existing Contract”) and

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003 CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

37 [5th] **[FOR IRC'S]** WHEREAS, the Contractor and the United States have pursuant to
38 subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered
39 into interim renewal contract(s) identified as Contract No(s)._____, the
40 current of which is hereinafter referred to as the Existing Contract, which provided for the continued
41 water service to the Contractor from _____ through
42 _____; and

43 [5th] **[For binding agreement contractors]** WHEREAS, the United States and the
44 Contractor have, pursuant to Subsection 3404 (c)(3) of the Central Valley Project Improvement Act
45 (CVPIA), subsequently entered into a binding agreement, identified as Binding Agreement
46 No._____
47 which sets out the terms pursuant to which the Contractor agreed to renew the Existing Contract
48 before its expiration date after completion of a programmatic environmental impact statement and
49 other appropriate environmental documentation and negotiation of a renewal contract, and which also
50 sets out the consequences of a subsequent decision not to renew; and

51 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
52 Existing Contract following completion of appropriate environmental documentation, including a
53 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy
54 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

55 the potential renewal of all existing contracts for Project Water; and [**Contractor specific issue**]

56 **[6.1]** Contractor Specific Issue recognizing partial assignment of the contract to a third
57 party or the acquisition of Project Water through assignment(s), if such acquired water is being
58 covered under this Contract

59 **[7th]** WHEREAS, the United States has completed the PEIS and all other appropriate
60 environmental review necessary to provide for long-term renewal of the Existing Contract; and

61 **[8th]** WHEREAS, the Contractor has requested the long-term renewal of the Existing
62 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
63 State of California, for water service from the Project; and

64 **[9th]** WHEREAS, the United States has determined that the Contractor has fulfilled all of
65 its obligations under the Existing Contract; and

66 **[10th]** WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
67 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
68 beneficial use and/or has demonstrated projected future demand for water use such that the
69 Contractor has the capability¹ and expects to utilize fully for reasonable and beneficial use the
70 quantity of Project Water to be made available to it pursuant to this Contract; and [**Contractor**

¹ Contractor specific issue – This recital may need to be modified for individual contractors who do not have the capability today to take Project Water but can demonstrate that they will have the capability to take Project Water prior to the delivery of water under this contract

71 **Specific]**

72 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
73 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
74 essential portion of its water supply; and

75 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
76 depend upon the continued availability of water, including water service from the Project; and

77 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
78 to pursue measures to improve water supply, water quality, and reliability of the Project for all
79 Project purposes; and

80 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
81 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
82 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
83 reasonable balance among competing demands for use of Project Water; and to comply with all
84 applicable environmental statutes, all consistent with the legal obligations of the United States
85 relative to the Project; and

86 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
87 relationship in order to achieve their mutual goals; and

88 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

89 rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the
90 impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

91 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
92 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
93 immediately above; and

94 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
95 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

98 DEFINITIONS

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

101 (a) "Calendar Year" shall mean the period January 1 through December 31, both
102 dates inclusive;

103 (b) "Charges" shall mean the payments required by Federal Reclamation law in
104 addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually
105 by the Contracting Officer pursuant to this Contract;

106 (c) "Condition of Shortage" shall mean a condition respecting the Project during

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

107 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract
108 Total;²

109 (d) "Contracting Officer" shall mean the Secretary of the Interior's duly authorized
110 representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

111 (e) "Contract Total" shall mean the maximum amount of water to which the
112 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

113 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
114 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,
115 which may be modified from time to time in accordance with Article 35 of this Contract without
116 amendment of this Contract³

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

119 (g.1) "Delta Division Facilities" shall mean those existing and future Project
120 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
121 Tracy Pumping Plant, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir, used to
122 divert, store and convey water to those Project Contractors entitled to receive water conveyed

² Contractor specific/ Unit specific issue

³ Contractor specific issue with respect to using legal description or service area map

123 through the Delta-Mendota Canal.

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

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

130 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting
131 Officer that shall amortize the expenditures for construction properly allocable to the Project
132 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded,
133 less payments, over such periods as may be required under Federal Reclamation law, or applicable
134 contract provisions. Interest will accrue on both the construction expenditures and funded O&M
135 deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case
136 of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
137 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,
138 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for
139 the RRA;⁴

⁴This definition may be an issue with M&I contractors and those with Repayment contracts pursuant to section 9(d) of the Reclamation Projects Act 1939

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

142 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable to
143 the delivery of Irrigation Water;

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

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

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

155 **[Contractor Specific]**

156 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable

⁵ Some Contractors may want to include "other water" definition in lieu of this definition.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

157 to the delivery of M&I Water;

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

161 (r) "Operating Non-Federal Entity"⁶ shall mean the Operating Non-Federal
162 Entity(ies), its (their) successors or assigns, which has (have) the obligation to operate and maintain
163 all or a portion of the Delta Division Facilities pursuant to an written agreement(s) with the United
164 States. When this Contract was entered into, the Operating Non-Federal Entity(ies) were
165 _____ . **[Contractor Specific]**

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

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

⁶ Contractor specific issue with respect to additional operating non-federal entities

- 170 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
171 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
172 with the terms and conditions of water rights acquired pursuant to California law;
- 173 (v) "Rates" shall mean the payments determined annually by the Contracting
174 Officer in accordance with the then current applicable water ratesetting policies for the Project, as
175 described in subdivision (a) of Article 7 of this Contract;
- 176 (w) "Recent Historic Average" shall mean the most recent five year average of the
177 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
178 contract(s);
- 179 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
180 successor, or an authorized representative acting pursuant to any authority of the Secretary and
181 through any agency of the Department of the Interior;
- 182 (y) "Tiered Pricing Component" shall be the incremental amount to be paid for
183 each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;
- 184 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for
185 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;⁷
- 186 (aa) "Water Made Available" shall mean the estimated amount of Project Water

⁷Contractor specific

187 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
188 pursuant to subdivision (a) of Article 4 of this Contract;

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

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

194 TERM OF CONTRACT

195 2. (a) This Contract shall be effective March 1, 200_, through February 28, 20___,
196 and supercedes the Existing Contract⁸ In the event the Contractor wishes to renew this Contract
197 beyond February 28, _____, the Contractor shall submit a request for renewal in writing to the
198 Contracting Officer no later than two (2) years prior to the date this Contract expires. The renewal of
199 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
200 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
201 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

202 **[Contractor Specific]**

203 (b) (1) Under terms and conditions of a renewal contract that are mutually agreeable

⁸ Contractor specific. May need to include language regarding this contract superceding the Existing Contract, in whole or in part.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

204 to the parties hereto, and upon a determination by the Contracting Officer that at the time of contract
205 renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal
206 and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the
207 Contractor, shall be renewed for a period of 25 years.(2) The conditions which must be met for
208 this Contract to be renewed are: (i) the Contractor has prepared a water conservation plan that has
209 been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the
210 conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the
211 Contractor is implementing an effective water conservation and efficiency program based on the
212 Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is
213 operating and maintaining all water measuring devices and implementing all water measurement
214 methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the
215 Contractor has reasonably and beneficially used the Project Water supplies made available to it and,
216 based on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and
217 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)
218 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor
219 has the physical and legal ability to deliver Project Water⁹.

220 (3) The terms and conditions of the renewal contract described in

⁹Refer to footnote 1 with respect to contractor capability to take delivery of water

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

221 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
222 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
223 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
224 Contractor's need for continued delivery of Project Water; environmental conditions affected by
225 implementation of the Contract to be renewed, and specifically changes in those conditions that
226 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
227 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
228 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

229 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
230 Contractor, shall be renewed for successive periods of up to forty 40 years each, which periods shall
231 be consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
232 agreeable to the parties and consistent with Federal and State law. **[Contractor Specific]**. The
233 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the proposed
234 adoption and application of any revised policy applicable to the delivery of M&I Water that would
235 limit the term of any subsequent renewal contract with the Contractor for the furnishing of M&I
236 Water to less than 40 years.

237 (d) The Contracting Officer shall make a determination ten years after the date of

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

238 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
239 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
240 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat
241 483). The Contracting Officer shall also make a determination ten years after the date of execution
242 of this Contract and every five years thereafter during the term of this Contract of whether a
243 conversion of the relevant portion of this Contract to a contract under subsection 9 (c)(1) of the
244 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
245 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
246 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
247 authorized Project construction expected to occur will have occurred, and on that basis the
248 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
249 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
250 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
251 Contractor, be converted to a contract under subsection 9(d) or 9 (c)(1), whichever is applicable of
252 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
253 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
254 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
255 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

256 remaining amount of construction costs assignable for ultimate return by the Contractor can probably
257 be repaid to the United States within the term of a contract under subsection 9(d) or 9 (c)(1),
258 whichever is applicable. If the remaining amount of costs that are properly assignable to the
259 Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify
260 the Contractor, and provide the reason(s) why such a determination could not be made. Further, the
261 Contracting Officer shall make such a determination as soon thereafter as possible so as to permit,
262 upon request of the Contractor and satisfaction of the conditions set out above, conversion to a
263 contract under subsection 9(d) or 9 (c)(1), whichever is applicable. In the event such determination
264 of costs has not been made at a time which allows conversion of this Contract during the term of this
265 Contract or the Contractor has not requested conversion of this Contract within such term, the parties
266 shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a
267 provision that carries forth in substantially identical terms the provisions of this subdivision.

268 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR¹⁰

269 3. (a) During each Year, consistent with all applicable State water rights, permits,
270 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
271 Contract, the Contracting Officer shall make available for delivery to the Contractor _____ acre-feet
272 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance

¹⁰Contractors proposed conceptual language on 4/1/04 in response to Article 12 discussions. Usbr to evaluate concept.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

273 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
274 this Contract.

275 (b) Because the capacity of the Project to deliver Project Water has been
276 constrained in recent years and may be constrained in the future due to many factors including
277 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
278 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
279 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
280 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
281 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
282 was ____ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations
283 of the parties under any provision of this Contract.

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

286 (d) The Contractor shall make reasonable and beneficial use of all water furnished
287 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
288 banking programs, surface water storage programs, and other similar programs utilizing Project Water
289 or other water furnished pursuant to this Contract conducted within the Contractor's Service Area

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

290 which are consistent with applicable State law and result in use consistent with Federal Reclamation
291 law will be allowed; Provided, That any direct recharge program(s) is (are) described in the
292 Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
293 further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's
294 Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
295 reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge
296 programs, groundwater banking programs, surface water storage programs, and other similar programs
297 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the
298 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which
299 approval will be based upon environmental documentation, Project Water rights, and Project
300 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
301 guidelines.

302 (e) The Contractor shall comply with requirements applicable to the Contractor in
303 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
304 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
305 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
306 excess of _____ years of diversions for irrigation and/or M&I purposes¹¹ of the quantities of water

¹¹ Contractor Specific Issue. The type of water diverted will be addressed on a contractor specific basis

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

307 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
308 appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and any other needed
309 environmental review. Nothing herein shall be construed to prevent the Contractor from challenging
310 or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or
311 other environmental documentation referred to in this Article.¹²

312 (f) Following the declaration of Water Made Available under Article 4 of this
313 Contract, the Contracting Officer will make a determination whether Project Water, or other water
314 available to the Project, can be made available to the Contractor in addition to the Contract Total under
315 this Article during the Year without adversely impacting other Project Contractors. At the request of
316 the Contractor, the Contracting Officer will consult with the Contractor prior to making such a
317 determination. If the Contracting Officer determines that Project Water, or other water available to the
318 Project, can be made available to the Contractor, the Contracting Officer will announce the availability
319 of such water and shall so notify the Contractor as soon as practical. The Contracting Officer will
320 thereafter meet with the Contractor and other Project Contractors capable of taking such water to
321 determine the most equitable and efficient allocation of such water. If the Contractor requests the
322 delivery of any quantity of such water, the Contracting Officer shall make such water available to the
323 Contractor in accordance with applicable statutes, regulations, guidelines, and policies. Subject to

¹² Specific Contract Issue. Concern over land use authority may be the subject of discussion with individual contractors.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

324 existing long-term contractual commitments, water rights and operational constraints, long-term
325 Project Contractors shall have a first right to acquire such water, including Project Water made
326 available pursuant to Section 215 of the RRA.

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

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

340 (i) Project Water furnished to the Contractor pursuant to this Contract may be
341 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this

342 Contract upon written approval by the Contracting Officer in accordance with the terms and
343 conditions of such approval.

344 (j) The Contracting Officer shall make reasonable efforts to protect the water
345 rights necessary for the Project and to provide the water available under this Contract. The
346 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
347 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
348 that the Contracting Officer retains the right to object to the substance of the Contractor's position in
349 such a proceeding; Provided further That in such proceedings the Contracting Officer shall recognize
350 the Contractor has a legal right under the terms of this Contract to use Project Water.

351 TIME FOR DELIVERY OF WATER

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

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

360 shall provide the Contractor with the updated Recent Historic Average.

361 (b)¹³ On or before each March 1 and at such other times as necessary, the Contractor
362 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
363 showing the monthly quantities of Project Water to be delivered by the United States to the
364 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
365 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
366 for the Year commencing on such March 1.

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

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

375 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003
R.O.Draft 6/26-2003**CVP Wide Form 5/23/03; 2/13/04;3/18/04**
Delta Division
R.O. Delta Division 11/15-2000

¹³ Contractor Specific with respect to binding agreement contractors

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

380 (b) The Contracting Officer, either directly or indirectly through its written
381 agreement(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
382 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the
383 Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article.

384 (c) The Contractor shall deliver Irrigation Water in accordance with any
385 applicable land classification provisions of Federal Reclamation law and the associated regulations.
386 The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
387 approved in advance by the Contracting Officer.

388 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
389 measured and recorded with equipment furnished, installed, operated, and maintained by the
390 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
391 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
392 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon
393 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

394 investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
395 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
396 period of time when accurate measurements have not been made, the Contracting Officer shall
397 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
398 making a final determination of the quantity delivered for that period of time.

399 (e) Absent a separate contrary written agreement with the Contractor, neither the
400 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
401 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
402 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.

403 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
404 account of damage or claim of damage of any nature whatsoever for which there is legal
405 responsibility, including property damage, personal injury, or death arising out of or connected with
406 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
407 point or points of delivery; except for any damage or claim arising out of: (i) acts or omissions of the
408 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
409 Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii)
410 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
411 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

412 its officers, employees, agents, ~~or~~ and assigns including the Operating Non-Federal Entity(ies); or
413 (iv) a malfunction of facilities owned and/or operated by the United States or the Operating Non-
414 Federal Entity(ies).

415 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA¹⁴

416 6. (a) The Contractor has established a measuring program satisfactory to the
417 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
418 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
419 water delivered for M&I purposes is measured at each M&I service connection. The water
420 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
421 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
422 maintaining and repairing all such measuring devices and implementing all such water measuring
423 methods at no cost to the United States. The Contractor shall use the information obtained from such
424 water measuring devices or water measuring methods to ensure its proper management of the water,
425 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
426 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided
427 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
428 from establishing and collecting any charges, assessments, or other revenues authorized by California

¹⁴ Contractor specific issue which may require additional language

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

429 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
430 report described in subdivision (c) of Article 26.

431 (b) To the extent the information has not otherwise been provided, upon execution
432 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
433 the measurement devices or water measuring methods being used or to be used to implement
434 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
435 connections or alternative measurement programs approved by the Contracting Officer, at which such
436 measurement devices or water measuring methods are being used, and, if applicable, identifying the
437 locations at which such devices and/or methods are not yet being used including a time schedule for
438 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
439 within 60 days as to the adequacy, and necessary modifications, if any, of the measuring devices or
440 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
441 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
442 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
443 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
444 which the Contractor shall modify said measuring devices and/or measuring methods as required by
445 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

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

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

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

455

456 RATES AND METHOD OF PAYMENT FOR WATER

457 7. (a) The Contractor shall pay the United States as provided in this Article for all
458 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
459 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
460 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
461 modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal
462 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
463 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

464 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.

465 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
466 this Contract are set forth in Exhibit "B", as may be revised annually.

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

469 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
470 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
471 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
472 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
473 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
474 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
475 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
476 notification shall revise Exhibit "B."

477 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
478 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
479 Water for the following Year and the computations and cost allocations upon which those Rates are
480 based. The Contractor shall be allowed not less than two months to review and comment on such
481 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

482 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
483 upcoming Year, and such notification shall revise Exhibit "B.

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

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

500 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
501 adjustment between the advance payments for the Water Scheduled and payments for the quantities
502 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
503 but no later than April 30th of the following Year, or sixty days after the delivery of Project Water
504 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
505 last day of February.

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

518 of this Contract.

519 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
520 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
521 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
522 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
523 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
524 (a) of this Article.

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

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

531 (h) The Contracting Officer shall keep its accounts pertaining to the administration
532 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
533 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer
534 shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all
535 Project and Contractor expense allocations, the disposition of all Project and Contractor revenues,

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

536 and a summary of all water delivery information. The Contracting Officer and the Contractor shall
537 enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings,
538 reports, or information.

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

546 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
547 80 percent of the Contract Total, then before the end of the month following the month of delivery
548 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
549 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
550 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
551 one-half of the difference between the Rate established under subdivision (a) of this Article and the
552 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
553 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

554 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
555 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
556 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
557 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
558 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
559 Water Delivered. **[deletion of the last sentence or alternate language may be negotiated by**
560 **individual districts.]**

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

568 (3) For purposes of determining the applicability of the Tiered Pricing
569 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
570 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it
571 include the additional water provided to the Contractor under the provisions of subdivision (f) of

572 Article 3 of this Contract.

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

581 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
582 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
583 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
584 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project
585 Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges
586 because of inability to pay and is transferring Project Water to another entity whose Rates and
587 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water
588 shall not be adjusted to reflect the Contractor's inability to pay.

589 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

590 Officer is authorized to adjust determinations of ability to pay every five ~~(5)~~ years.

591 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not
592 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
593 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
594 Contractor does not waive any legal rights or remedies that it may have with respect to such disputed
595 issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor
596 may challenge in the appropriate administrative or judicial forums; (1) the existence, computation, or
597 imposition of any deficit charges accruing during the term of the Existing Contract and any preceding
598 interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of
599 any such deficit charges or interest in the Rates; (4) the application by the United States of payments
600 made by the Contractor under its Existing Contract and any preceding interim renewal contracts if
601 applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees
602 that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of
603 any Project M&I contractor on any of these issues, and credits for payments heretofore made,
604 provided that the basis for such ruling is applicable to the Contractor. **[Contractor Specific]**

605

606 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS¹⁵

¹⁵ Contractor specific.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

607 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
608 Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further liability
609 therefore.

610 [Or,]

611 The Contractor and the Contracting Officer have entered into a written agreement
612 specifying a mutually acceptable mechanism through which the Contractor will retire its outstanding
613 non-interest bearing O&M deficits.

614

615 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

625 including environmental justice, of the proposed water transfers on both the transferor and transferee.

626 (b) In order to facilitate efficient water management by means of water transfers of
627 the type historically carried out among Project Contractors located within the same geographical area
628 and to allow the Contractor to participate in an accelerated water transfer program during the term of
629 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
630 documentation, including but not limited to documents prepared pursuant to NEPA and ESA,
631 analyzing annual transfers within such geographical areas and the Contracting Officer shall
632 determine whether such transfers comply with applicable law. Following the completion of the
633 environmental documentation, such transfers addressed in such documentation shall be conducted
634 with advance notice to the Contracting Officer, but shall not require prior written approval by the
635 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
636 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
637 the then existing five year period. All subsequent environmental documentation shall include an
638 alternative to evaluate not less than the quantity of Project Water historically transferred within the
639 same geographical area.

640 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
641 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for
642 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

643 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
644 established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single
645 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
646 facilities with no new construction or modifications to facilities and be between existing Project
647 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
648 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of
649 the environment and Indian Trust Assets, as defined under Federal law.

650

651

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

661 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
662 in which the overpayment was made.

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

668 TEMPORARY REDUCTIONS--RETURN FLOWS

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

674 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily
675 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
676 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
677 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

678 as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due
679 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
680 which case no notice need be given; Provided, That the United States shall use its best efforts to
681 avoid any discontinuance or reduction in such service. Upon resumption of service after such
682 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
683 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
684 such discontinuance or reduction.

685 (c) The United States reserves the right to all seepage and return flow water
686 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
687 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
688 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
689 Contract within the Contractor's Service Area¹⁶ by the Contractor or those claiming by, through, or
690 under the Contractor.¹⁷

¹⁶Refer to footnote 3

¹⁷ Contractor specific issue with respect to reclaimed water

691 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

702 (c)¹⁸ In any Year in which there may occur a Condition of Shortage for any of the
703 reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation
704 Water among the Contractor and others entitled to Irrigation Water (which for purposes of this
705 Article 12(c) only, shall include other Project Water that is subject to Irrigation Water shortage
706 criteria) from Delta Division Facilities under long-term water service or repayment contracts as
707 follows:

¹⁸Contractors propose rewrite. Technical session scheduled for 4/1/04. See footnote #10 at Article 3.

708 (1) The Contracting Officer shall make ~~A~~ an initial and subsequent
709 determination ~~as necessary shall be made~~ of the total quantity of Irrigation Water estimated to be
710 scheduled or actually scheduled under subdivision (b) of Article 4 of this Contract
711 and under all other long-term water service or repayment contracts then in force for the delivery of
712 Irrigation Water by the United States from Delta Division Facilities during the relevant Year, the
713 quantity so determined being hereinafter referred to as the ~~total scheduled entitlements contractual~~
714 ~~commitments~~;

715 (2) A determination shall be made of the total quantity of Irrigation Water
716 that is available for meeting the ~~total scheduled entitlements contractual commitments~~, the quantity
717 so determined being hereinafter referred to as the available supply;

718 (3) The total quantity of Irrigation Water estimated to be scheduled or
719 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4
720 hereof, shall be divided by the ~~total scheduled entitlements contractual commitments~~, the quotient
721 thus obtained being hereinafter referred to as the Contractor's ~~proportionate entitlement~~; and

722 (4) The available supply shall be multiplied by the Contractor's ~~proportionate~~
723 ~~entitlement~~ and the result shall be the quantity of Irrigation Water ~~required to be delivered made~~
724 ~~available~~ by the United States to the Contractor for the relevant Year ~~in accordance with the schedule~~
725 ~~developed by the Contracting Officer under subdivision (c)(1)~~, but in no event shall such amount

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

726 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
727 Contracting Officer can increase **or needs to decrease** the available supply for delivery from Delta
728 Division Facilities to long-term water service and repayment Contractors during the relevant Year,
729 such **additions or reductions to the available supply** ~~additional Irrigation Water~~ shall be apportioned
730 consistent with subparagraphs (1) through (4), inclusive.

731 (d) Project Water furnished under this long-term renewal contract for M&I
732 purposes will be allocated in accordance with the then existing Project M&I Water Shortage Policy.
733 Such policy shall be amended, modified, or superceded only through a public notice and comment
734 procedure. [Contractor Specific]

735 (e) By entering into this Contract, the Contractor does not waive any legal rights
736 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
737 (i) the sufficiency of any Project M&I Water Shortage Policy adopted after the effective date of this
738 Contract was promulgated; (ii) the substance of such a policy; or (iii) the applicability of such a
739 policy. By agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or
740 remedies that it may then have to assert in such a proceeding. [Contractor Specific]

741 UNAVOIDABLE GROUNDWATER PERCOLATION

742 13. To the extent applicable, the Contractor shall not be deemed to have delivered
743 Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

744 lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of
745 the delivery of Irrigation Water by the Contractor to Eligible Lands.

746 RULES AND REGULATIONS

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

751 WATER AND AIR POLLUTION CONTROL

752 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
753 and air pollution laws and regulations of the United States and the State of California, and shall
754 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

755 QUALITY OF WATER¹⁹

756 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
757 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
758 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
759 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
760 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
761 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor

¹⁹ Contractor specific.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

762 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
763 Contractor pursuant to this Contract.

764 (b) The O&M of Project facilities shall be performed in such manner as is
765 practicable to maintain the quality of raw water made available through such facilities at the highest
766 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be
767 responsible for compliance with all State and Federal water quality standards applicable to surface
768 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
769 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

770 (c) **[San Luis Unit specific issue regarding Drainage language]**

771 WATER ACQUIRED BY THE CONTRACTOR
772 OTHER THAN FROM THE UNITED STATES

773 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
774 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
775 be simultaneously transported through the same distribution facilities of the Contractor subject to the
776 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
777 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
778 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

779 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
780 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
781 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
782 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
783 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
784 Water and non-Project water are/were constructed with funds made available pursuant to Federal
785 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
786 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
787 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
788 cost to the Federal Government, including interest of storing or delivering non-Project water, which
789 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
790 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
791 The incremental fee per acre is the mathematical result of such quotient times the interest rate
792 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
793 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
794 receives non-Project water through Federally financed or constructed facilities. The incremental fee
795 calculation methodology will continue during the term of this Contract absent the promulgation of a
796 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

797 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
798 regulation or policy is adopted it shall supercede this provision.

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

804 (1) The Contractor may introduce non-Project water into Project facilities
805 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,
806 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
807 appropriate rate as determined by the applicable Project ratesetting policy, ~~and the RRA, and the~~
808 ~~Project use power policy, if such Project use power policy is applicable, [USBR proposal]~~ each as
809 amended, modified or superceded from time to time. ~~In addition, if electrical power is required to~~
810 ~~pump non-Project water through the facilities, project power shall be provided for the delivery of~~
811 ~~non-project water through Delta Division Facilities for deliveries of up to the Contract Total~~
812 ~~[Contractor proposal; not accepted] the Contractor shall be responsible for obtaining the necessary~~
813 ~~power and paying the necessary charges therefore.~~

814 (2) Delivery of such non-Project water in and through Project facilities

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

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

819 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
820 shall be responsible for control, care or distribution of the non-Project water before it is introduced
821 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
822 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
823 respective officers, agents, and employees, from any claim for damage to persons or property, direct
824 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in
825 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
826 into Project facilities.

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

830 (5) After Project purposes are met, as determined by the Contracting
831 Officer, the United States and the Project Contractors entitled to receive Project Water through Delta
832 Division Facilities shall share priority to utilize the remaining capacity of the facilities declared to be

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

833 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
834 any such remaining capacity being made available to non-Project contractors. **Other Project**
835 **[c]ontractors shall have a second priority to any remaining capacity of facilities declared to be**
836 **available by the Contracting Officer for conveyance and transportation of non-Project water prior to**
837 **any such remaining capacity being made available to non-Project contractors.[Contractor's**
838 **proposal][Divisional Issue]**

839 OPINIONS AND DETERMINATIONS

840 18. (a) Where the terms of this Contract provide for actions to be based upon the
841 opinion or determination of either party to this Contract, said terms shall not be construed as
842 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
843 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
844 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
845 unreasonable opinion or determination. Each opinion or determination by either party shall be
846 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
847 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
848 determination implementing a specific provision of Federal law embodied in statute or regulation.

849 (b) The Contracting Officer shall have the right to make determinations necessary
850 to administer this Contract that are consistent with the provisions of this Contract, the laws of the

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

851 United States and of the State of California, and the rules and regulations promulgated by the
852 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to
853 the extent reasonably practicable.

854 COORDINATION AND COOPERATION

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

864 (b) Within 120 days following the effective date of this Contract, the Contractor,
865 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
866 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
867 amended as necessary separate and apart from this Contract. The goal of this process shall be to
868 provide, to the extent practicable, the means of mutual communication and interaction regarding

869 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

886 (d) Without limiting the contractual obligations of the Contracting Officer under

887 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
888 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
889 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety or
890 the physical integrity of structures or facilities.

891 CHARGES FOR DELINQUENT PAYMENTS

892 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
893 on delinquent installments or payments. When a payment is not received by the due date, the
894 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
895 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
896 charge to cover additional costs of billing and processing the delinquent payment. When a payment
897 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
898 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
899 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
900 payment.

901
902 b) The interest charge rate shall be the greater of the rate prescribed quarterly in
903 the Federal Register by the Department of the Treasury for application to overdue payments, or the
904 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation
905 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due
906 date and remain fixed for the duration of the delinquent period.

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

910 EQUAL OPPORTUNITY

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

913 (a) The Contractor will not discriminate against any employee or applicant for

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

914 employment because of race, color, religion, sex, or national origin. The Contractor will take
915 affirmative action to ensure that applicants are employed, and that employees are treated during
916 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
917 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
918 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
919 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
920 conspicuous places, available to employees and applicants for employment, notices to be provided by
921 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

931 (d) The Contractor will comply with all provisions of Executive Order
932 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
933 the Secretary of Labor.
934

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

940 (f) In the event of the Contractor's noncompliance with the nondiscrimination
941 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
942 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
943 for further Government contracts in accordance with procedures authorized in said amended
944 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said

945 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
946 by law.

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

956 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

970 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

971 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
972 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age

973 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
974 well as with their respective implementing regulations and guidelines imposed by the U.S.
975 Department of the Interior and/or Bureau of Reclamation.

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

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

989
990
991

PRIVACY ACT COMPLIANCE

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

997 (b) With respect to the application and administration of the criminal penalty
998 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
999 for maintaining the certification and reporting records referenced in (a) above are considered to be
1000 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1001
1002 (c) The Contracting Officer or a designated representative shall provide the
1003 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1004 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1005 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1006 contained in the Landholder's certification and reporting records.

1007 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1008 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1009 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1010 authorized to grant requests by individuals for access to their own records.

1011 (e) The Contractor shall forward promptly to the System Manager each proposed
1012 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1013 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1014 information and records necessary to prepare an appropriate response to the requester. These
1015 requirements do not apply to individuals seeking access to their own certification and reporting forms
1016 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1017 Act as a basis for the request.

1018

1019

1020 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1021 25. In addition to all other payments to be made by the Contractor pursuant to this
1022 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1023 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1024 direct cost incurred by the United States for work requested by the Contractor associated with this
1025 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1026 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1027 writing in advance by the Contractor. This Article shall not apply to costs for routine contract

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1028 administration.

1029

WATER CONSERVATION

1030 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1031 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1032 implementing an effective water conservation and efficiency program based on the Contractor's water
1033 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1034 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1035 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1036 economically feasible water conservation measures, and time schedules for meeting those objectives.
1037 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1038 continued implementation of such water conservation program. In the event the Contractor's water
1039 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1040 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1041 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1042 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1043 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1044 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1045 program in accordance with the time schedules therein.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1046 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1047 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1048 the Best Management Practices identified by the time frames issued by the California Urban Water
1049 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1050 Officer to be inappropriate for the Contractor.

1051 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1052 its implementation of the water conservation plan on the reporting dates specified in the then existing
1053 conservation and efficiency criteria established under Federal law.

1054 (d) At 5 year intervals, the Contractor shall revise its water conservation plan to
1055 reflect the then current conservation and efficiency criteria for evaluating water conservation plans
1056 established under Federal law and submit such revised water management plan to the Contracting
1057 Officer for review and evaluation. The Contracting Officer will then determine if the water
1058 conservation plan meets Reclamation's then current conservation and efficiency criteria for
1059 evaluating water conservation plans established under Federal law.

1060 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1061 be described in the Contractor's water conservation plan.

1062 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1063 27. Except as specifically provided in Article 17 of this Contract, the provisions of this

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1064 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter
1065 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1066 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1067 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1068 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1069 Reclamation law.

1070

1071 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY²⁰

1072 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1073 responsibility for funding a portion of the costs of such O&M, have been transferred to the **San Luis**
1074 **and Delta-Mendota Water Authority**, an Operating Non-Federal Entity by separate agreement (**8-**
1075 **07-20-X0354**) between the United States and the Operating Non-Federal Entity **San Luis and Delta-**
1076 **Mendota Water Authority**. That separate agreement shall not interfere with or affect the rights or
1077 obligations of the Contractor or the United States hereunder.

1078 (b) The Contracting Officer has previously notified the Contractor in writing that

²⁰ Contractor/Unit specific. Other ONFE's may need to be referenced for each individual contractor

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1079 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1080 been transferred to the Operating Non-Federal Entity **San Luis and Delta-Mendota Water**
1081 **Authority**, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity **San**
1082 **Luis and Delta-Mendota Water Authority**, or to any successor approved by the Contracting
1083 Officer under the terms and conditions of the separate agreement between the United States and the
1084 Operating Non-Federal Entity **San Luis and Delta-Mendota Water Authority** described in
1085 subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any
1086 assessment for reserve funds, which the Operating Non-Federal Entity **San Luis and Delta-Mendota**
1087 **Water Authority** or such successor determines, sets, or establishes for the O&M of the portion of
1088 the Project facilities operated and maintained by the Operating Non-Federal Entity **San Luis and**
1089 **Delta-Mendota Water Authority** or such successor. Such direct payments to the Operating Non-
1090 Federal Entity **San Luis and Delta-Mendota Water Authority** or such successor shall not relieve
1091 the Contractor of its obligation to pay directly to the United States the Contractor's share of the
1092 Project Rates, Charges, and Tiered Pricing Component except to the extent the Operating Non-
1093 Federal Entity **San Luis and Delta-Mendota Water Authority** collects payments on behalf of the
1094 United States in accordance with the separate agreement identified in subdivision (a) of this Article.

1095 (c) For so long as the O&M of any portion of the Project facilities serving the
1096 Contractor is performed by the Operating Non-Federal Entity **San Luis and Delta-Mendota Water**

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1097 **Authority**, or any successor thereto, the Contracting Officer shall adjust those components of the
1098 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1099 performed by the Operating Non-Federal Entity **San Luis and Delta-Mendota Water Authority** or
1100 its successor.

1101 (d) In the event the O&M of the Project facilities operated and maintained by the
1102 Operating Non-Federal Entity **San Luis and Delta-Mendota Water Authority** is re-assumed by the
1103 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1104 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1105 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1106 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1107 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1108 Charges, and Tiered Pricing Component specified in the revised Exhibit "B" directly to the United
1109 States in compliance with Article 7 of this Contract.

1110 [insertion of article 28.1 if needed for additional onfe's. Contractor Specific]

1111 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1112 29. The expenditure or advance of any money or the performance of any obligation of the
1113 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1114 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1115 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1116 or allotted.

1117

BOOKS, RECORDS, AND REPORTS

1118 30. (a) The Contractor shall establish and maintain accounts and other books and
1119 records pertaining to administration of the terms and conditions of this Contract, including: the
1120 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1121 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1122 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1123 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1124 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1125 during office hours to examine and make copies of the other party's books and records relating to
1126 matters covered by this Contract.

1127

1128 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1129 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1130 such books, records, or information are reasonably related to the administration or performance of
1131 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1132 to provide the requested books, records, or information.

1133 (c) At such time as the Contractor provides information to the Contracting Officer
1134 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1135 Operating Non-Federal Entity.

1136

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1137 31. (a) The provisions of this Contract shall apply to and bind the successors and
1138 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1139 therein shall be valid until approved in writing by the Contracting Officer.

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1140 (b) The assignment of any right or interest in this Contract by either party shall not
1141 interfere with the rights or obligations of the other party to this Contract absent the written
1142 concurrence of said other party.

1143 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1144 of any proposed assignment.

1145

1146

1147

SEVERABILITY

1148 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1149 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1150 association or other form of organization whose primary function is to represent parties to Project
1151 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1152 enforceability of a provision included in this Contract and said person, entity, association, or
1153 organization obtains a final court decision holding that such provision is legally invalid or
1154 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1155 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1156 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1157 within ~~three~~ 3 months thereafter promptly agree on the appropriate revision(s). The time periods

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1158 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1159 actions designated above, to the extent it can do so without violating any applicable provisions of
1160 law, the United States shall continue to make the quantities of Project Water specified in this
1161 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1162 to be legally invalid or unenforceable in the final court decision.

1163

1164

1165

RESOLUTION OF DISPUTES

1166 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1167 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1168 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1169 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1170 notice of the intent to take such action; Provided, That such notice shall not be required where a
1171 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1172 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in
1173 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1174 waive or abridge any right or remedy that the Contractor or the United States may have.

1175

OFFICIALS NOT TO BENEFIT

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04

Delta Division

R.O. Delta Division 11/15-2000

1196 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1197 terms and conditions of this Contract unless and until relief from application of such Federal law or
1198 regulation to the implementing provision of the Contract is granted by a court of competent
1199 jurisdiction.

1200 NOTICES

1201 37. Any notice, demand, or request authorized or required by this Contract shall be
1202 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1203 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on
1204 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors/City
1205 Council of the _____. The designation of the addressee or the address
1206 may be changed by notice given in the same manner as provided in this Article for other notices.

1207 CONFIRMATION OF CONTRACT²¹

1208 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1209 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1210 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1211 validation proceedings, and all pertinent supporting records of the court approving and confirming
1212 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1213 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1214 year first above written.

1215 THE UNITED STATES OF AMERICA

1216 By: _____

²¹ Contractor Specific

R.O. Draft 3/25-2004
R. O. Draft 3/23-2004
R.O. Draft 2/20-2004
R.O. Draft 7/24-2003

R.O.Draft 6/26-2003CVP Wide Form 5/23/03; 2/13/04;3/18/04
Delta Division
R.O. Delta Division 11/15-2000

1217
1218

Regional Director, Mid-Pacific Region
Bureau of Reclamation

1219

[NAME OF CONTRACTOR]

1220
1221

By: _____
President of the Board of Directors

1222 Attest:

1223 By: _____
1224 Secretary of the Board of Directors

R.O. Draft 11/01-2000
CVP-Wide Form 11-05
Delta Division
R.O. Delta Division 11/15-2000
Contract No. _____ - LTR1

1225
1226

EXHIBIT A
[Map or Description of Service Area]

R.O. Draft 11/01-2000
CVP-Wide Form 11-05
Delta Division
R.O. Delta Division 11/15-2000
Contract No. _____ - LTR1

1227
1228

EXHIBIT B
[Initial Rates and Charges]

(I:\1113DeltaDivision.wpd)