

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 PAJARO VALLEY WATER MANAGEMENT AGENCY
8 WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 1
9 AND SANTA CLARA VALLEY WATER DISTRICT
10 PROVIDING FOR PROJECT WATER SERVICE
11 FROM THE DELTA DIVISION

12 THIS CONTRACT, made this _____ day of _____, 2004, in pursuance
13 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
14 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
15 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
16 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
17 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
18 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
19 OF AMERICA, hereinafter referred to as the United States, and PAJARO VALLEY WATER
20 MANGEMENT AGENCY (PVWMA), WESTLANDS WATER DISTRICT DISTRIBUTION
21 DISTRICT NO. 1 (WWD-DD1), and SANTA CLARA VALLEY WATER DISTRICT (SCVWD),
22 hereinafter referred to as “the Contractors,” and each individually as “Contractor,” each a public
23 agency of the State of California, duly organized, existing, and acting pursuant to the laws thereof;

24 WITNESSETH, That:
25

26 EXPLANATORY RECITALS

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

33 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
34 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the
35 terms of this Contract; and [**Contractor specific issue w/respect to additional facilities**]

36 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
37 to California law for operation of the Project; and

38 [4th] WHEREAS, the Mercy Springs Water District (MSWD) and the United States
39 entered into Contract No. 14-06-200-3365, as amended, which established terms for the delivery to
40 the MSWD of Project Water from the Delta Division Facilities from June 21, 1967 through
41 February 28, 1995; and

42 [5th] WHEREAS, MSWD and the United States have pursuant to subsection 3404(c)(1) of
43 the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal
44 contract(s) identified as Contract No(s). 14-06-200-3365A-IR1, and 14-06-200-3365-IR2, which
45 provided for the continued water service to MSWD from March 1, 1995 through February 29, 2000;
46 and

47 [5.1] WHEREAS during the term of Contract No. 14-06-200-3365A-IR2 and following
48 the approval of the United States, MSWD assigned to the Contractors on May 14, 1999, the right,
49 title and interest in that portion of Contract No. 14-06-200-3365A-IR2 consisting of 6,260 acre-feet
50 of Project Water including any rights to renew that partial interest in Contract No. 14-06-200-
51 3365A-IR2 (**this transaction is referred to as “the assignment”**); and

52 [5.2] WHEREAS, concurrent with the assignment the Contractors entered into a separate
53 agreement (**Agreement Relating to Partial Assignment of Water Service Contract, dated May**
54 **14, 1999) stating the terms and conditions by which the Contractors would share the assigned**
55 **Project Water supply. Consistent with the approved partial assignment and SCVWD’s**
56 **Integrated Water Resources Plan, water available to SCVWD under this contract is used to**
57 **provide a more reliable water supply to its customers when shortages occur under its CVP**
58 **Water Service Contract No. 7-07-20-W0023 and other water supplies;** and

59 [5.3] WHEREAS, **MSWD** and the Contractors and the United States have subsequent to
60 the assignment entered into interim renewal contracts identified as Contract Nos. 14-06-200-
61 3365A-IR3-A, 14-06-200-3365A-IR4-A, 14-06-200-3365A-IR5-A, 14-06-200-3365A-IR6-A, and
62 14-06-200-3365A-IR7-A with the District, and Contract Nos. 14-06-200-3365A-IR3-B, 14-06-200-
63 3365A-IR4-B, 14-06-200-3365A-IR5-B, 14-06-200-3365A-IR6-B, 14-06-200-3365A-IR7-B, **and**
64 **14-06-200-3365A-IR8-B, the current** of which is hereinafter referred to as the Existing Contract,
65 to provide for **the** continued delivery of Project Water consistent with the partial assignment;

66 [5.4] WHEREAS, **the United States and SCVWD entered into Contract No. 6-07-20-**
67 **X0290 for the transfer of the operation and maintenance of certain San Felipe Division**

68 facilities to SCVWD, and said contract requires future contractors receiving CVP water
69 through San Felipe Division facilities to pay SCVWD an equitable share of the operation and
70 maintenance of certain joint-use San Felipe Division facilities pursuant to the terms of that
71 agreement.

72 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
73 Existing Contract following completion of appropriate environmental documentation, including a
74 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
75 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
76 CVPIA and the potential renewal of all existing contracts for Project Water; and [Contractor
77 specific issue]

78 [6.1] Omitted; and ~~Contractor Specific Issue recognizing partial assignment of the~~
79 ~~contract to a third party or the acquisition of Project Water through assignment(s), if such~~
80 ~~acquired water is being covered under this Contract; and~~

81 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
82 environmental review necessary to provide for long-term renewal of the Existing Contract; and

83 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
84 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of
85 the State of California, for water service from the Project; and

86 [9th] WHEREAS, the United States has determined that ~~the~~ each Contractor has fulfilled
87 all of its obligations under the Existing Contract; and

88 [10th] WHEREAS, ~~the~~ each Contractor has demonstrated to the satisfaction of the

89 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
90 reasonable and beneficial use and/or has demonstrated projected future demand for water use such
91 that the Contractor has, **or will have** the capability and expects to utilize fully for reasonable and
92 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and

93 **[Contractor Specific]**

94 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
95 agricultural areas within California for more than 50 years, and is considered by ~~the~~ **each**
96 Contractor as an essential portion of its water supply; and

97 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
98 depend upon the continued availability of water, including water service from the Project; and

99 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
100 partnerships to pursue measures to improve water supply, water quality, and reliability of the
101 Project for all Project purposes; and

102 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
103 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
104 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
105 reasonable balance among competing demands for use of Project Water; and to comply with all
106 applicable environmental statutes, all consistent with the legal obligations of the United States
107 relative to the Project; and

108 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
109 relationship in order to achieve their mutual goals; and

110 [15.1] WHEREAS, ~~the~~ **each** Contractor has utilized or may utilize transfers, contract
111 assignments, rescheduling and conveyance of Project Water and non-Project water under this
112 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
113 use of water; and

114 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
115 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory
116 Recital immediately above; and

117 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
118 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

121 DEFINITIONS

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

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

126 (b) “Charges” shall mean the payments required by Federal Reclamation law in
127 addition to the Rates and Tiered Pricing Component specified in this Contract as determined
128 annually by the Contracting Officer pursuant to this Contract;

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

131 Total;

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

135 (e) “Contract Total” shall mean the maximum amount of water to which the
136 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

137 (f) “Contractor's Service Area” shall mean the **respective** area to which **each the**
138 Contractor is permitted to provide Project Water under this Contract as described in Exhibit “A,”
139 **“A-1,” and “A-3”** attached hereto, **each of** which may be modified from time to time in accordance
140 with Article 35 of this Contract without amendment of this Contract;

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

143 (g.1) “Delta Division Facilities” shall mean those existing and future Project
144 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
145 Tracy Pumping Plant, the O’Neill Pumping/Generating Plant, and the San Luis Reservoir, used to
146 divert, store and convey water to those Project Contractors entitled to receive water conveyed
147 through the Delta-Mendota Canal;

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

151 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in

152 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
153 Reclamation law;

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

164 (k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be
165 delivered in accordance with Section 204 of the RRA;

166 (l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to
167 the delivery of Irrigation Water;

168 (m) “Irrigation Water” shall mean water made available from the Project that is
169 used primarily in the production of agricultural crops or livestock, including domestic use incidental
170 thereto, and watering of livestock;

171 (n) “Landholder” shall mean a party that directly or indirectly owns or leases
172 nonexempt land, as provided in 43 CFR 426.2;

173 (o) “Municipal and Industrial (M&I) Water” shall mean Project Water, other
174 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
175 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
176 which are kept for personal enjoyment or water delivered to landholdings operated in units of less
177 than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that
178 the use of water delivered to any such landholding is a use described in subdivision (m) of this
179 Article; **[Contractor Specific]**

180 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
181 delivery of M&I Water;

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

185 (r) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)
186 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
187 Delta Division Facilities pursuant to written agreement(s) with the United States. When this
188 Contract was entered into, the Operating Non-Federal Entity(ies) was (were) _____.
189 **[Contractor Specific]** *[Further discussion required. Change in Delta form]*

190 (s) “Project” shall mean the Central Valley Project owned by the United States
191 and managed by the Department of the Interior, Bureau of Reclamation;

192 (t) “Project Contractors” shall mean all parties who have water service contracts
193 for Project Water from the Project with the United States pursuant to Federal Reclamation law;

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

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

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

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

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

208 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted
209 for use by ~~the a~~ Contractor **or Contractors** at the point(s) of delivery approved by the Contracting
210 Officer;

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

214 (bb) "Water Scheduled" shall mean Project Water made available to ~~the a~~

215 Contractor **or Contractors** for which times and quantities for delivery have been established by ~~the~~
216 **a** Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and
217 (cc) “Year” shall mean the period from and including March 1 of each Calendar
218 Year through the last day of February of the following Calendar Year.

219 TERM OF CONTRACT

220 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,
221 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract
222 beyond February 28, 2030, the Contractor(s) shall submit a request for renewal in writing to the
223 Contracting Officer no later than two (2) years prior to the date this Contract expires. The renewal
224 of this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor(s) shall
225 be governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains
226 to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this
227 Article. **[Contractor Specific]**

228 (b) (1) Under terms and conditions of a renewal contract that are mutually
229 agreeable to the **United States and the Contractor(s) requesting renewal, parties hereto**, and
230 upon a determination by the Contracting Officer that at the time of contract renewal the conditions
231 set forth in subdivision (b) (2) of this Article are met, and subject to Federal and State law, this
232 Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor(s), shall be
233 renewed for a period of 25 years.

234 (2) **For any Contractor(s) seeking renewal**, the conditions which must
235 be met for this Contract to be renewed are: (i) the Contractor(s) has prepared a water conservation

236 plan that has been determined by the Contracting Officer in accordance with Article 26 of this
237 Contract to meet the conservation and efficiency criteria for evaluating such plans established under
238 Federal law; (ii) the Contractor(s) is implementing an effective water conservation and efficiency
239 program based on the Contractor's water conservation plan as required by Article 26 of this
240 Contract; (iii) the Contractor(s) is operating and maintaining all water measuring devices and
241 implementing all water measurement methods as approved by the Contracting Officer pursuant to
242 Article 6 of this Contract; (iv) the Contractor(s) has reasonably and beneficially used the Project
243 Water supplies made available to it and, based on projected demands, is reasonably anticipated and
244 expects to fully utilize for reasonable and beneficial use the quantity of Project Water to be made
245 available to it pursuant to such renewal; (v) the Contractor(s) is complying with all terms and
246 conditions of this Contract; and (vi) the Contractor(s) has **or will have** the physical and legal ability
247 to deliver Project Water.

248 (3) The terms and conditions of the renewal contract described in
249 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
250 consistent with the parties' respective legal rights and obligations, and in consideration of all
251 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
252 without limitation, the ~~Contractor's~~ need **by the Contractor(s) seeking renewal** for continued
253 delivery of Project Water; environmental conditions affected by implementation of the Contract to
254 be renewed, and specifically changes in those conditions that occurred during the life of the
255 Contract to be renewed; the Secretary's progress toward achieving the purposes of the CVPIA as set
256 out in Section 3402 and in implementing the specific provisions of the CVPIA; and current and

257 anticipated economic circumstances of the region served by the Contractor(s) **seeking renewal**.

258 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
259 Contractor(s) **seeking renewal**, shall be renewed for successive periods of up to forty 40 years each,
260 which periods shall be consistent with the then-existing Reclamation-wide policy, under terms and
261 conditions mutually agreeable to the parties and consistent with Federal and State law. ~~[Contractor~~
262 ~~Specific]~~ **The Each** Contractor shall be afforded the opportunity to comment to the Contracting
263 Officer on the proposed adoption and application of any revised policy applicable to the delivery of
264 M&I Water that would limit the term of any subsequent renewal contract with the Contractor(s) for
265 the furnishing of M&I Water to less than 40 years.

266 (d) The Contracting Officer shall make a determination ten years after the date of
267 execution of this Contract, and every five years thereafter during the term of this Contract, of
268 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
269 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
270 Stat 483). The Contracting Officer shall also make a determination ten years after the date of
271 execution of this Contract and every five years thereafter during the term of this Contract of whether
272 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
273 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
274 Contract, ~~the~~ **each** Contractor reserves and shall have all rights and benefits under the Act of July 2,
275 1956 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
276 authorized Project construction expected to occur will have occurred, and on that basis the
277 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to

278 the Contractor(s), and agrees further that, at any time after such allocation is made, and subject to
279 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
280 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable of
281 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
282 conditions mutually agreeable to the Contractor(s) **entitled to receive water under the converted**
283 **contract** and the Contracting Officer. A condition for such conversion to occur shall be a
284 determination by the Contracting Officer that, account being taken of the amount credited to return
285 by the Contractor(s) **entitled to receive water under the converted contract** as provided for under
286 Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return
287 by the Contractor(s) **entitled to receive water under the converted contract** can probably be
288 repaid to the United States within the term of a contract under subsection 9(d) or 9(c)(1), whichever
289 is applicable. If the remaining amount of costs that are properly assignable to the Contractor(s)
290 **entitled to receive water under the converted contract** cannot be determined during the term of
291 this Contract, the Contracting Officer shall notify the Contractor(s) **entitled to receive water under**
292 **the converted contract**, and provide the reason(s) why such a determination could not be made.
293 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as
294 to permit, upon request of the Contractor(s) **entitled to receive water under the converted**
295 **contract** and satisfaction of the conditions set out above, conversion to a contract under subsection
296 9(d) or 9(c)(1), whichever is applicable. In the event such determination of costs has not been made
297 at a time which allows conversion of this Contract during the term of this Contract or the
298 Contractor(s) has not requested conversion of this Contract within such term, the parties shall

299 incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a
300 provision that carries forth in substantially identical terms the provisions of this subdivision.

301 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

302 3. (a) During each Year, consistent with all applicable State water rights, permits,
303 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
304 Contract, the Contracting Officer shall make available for delivery to the Contractor(s) **up to a total**
305 **of 6,260** acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the
306 Contractor(s) in accordance with this subdivision shall be scheduled and paid for pursuant to the
307 provisions of Articles 4 and 7 of this Contract.

308 (b) Because the capacity of the Project to deliver Project Water has been
309 constrained in recent years and may be constrained in the future due to many factors including
310 hydrologic conditions and implementation of Federal and State laws, the likelihood of **any and all**
311 **of** the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
312 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS
313 projected that the Contract Total set forth in this Contract will not be available to the Contractor in
314 many years. During the most recent five years, the Recent Historic Average of Water Made
315 Available **pursuant to the Contract and preceding contracts listed in Recitals 5 and 6 was**
316 **4,119 to the Contractor was** acre-feet. Nothing in subdivision (b) of this Article shall affect the
317 rights and obligations of the parties under any provision of this Contract.

318 (c) **The Each** Contractor shall utilize the Project Water in accordance with all
319 applicable legal requirements.

320 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)
321 that receives Project Water through the Delta Division Facilities obtains a contractual agreement
322 that the Contracting Officer shall make Project Water available at a point or points of delivery in or
323 north of the Delta, at the request of the Contractor and upon completion of any required
324 environmental documentation, this Contract shall be amended to provide for deliveries in or north
325 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely
326 to those changes made necessary by the addition of such alternate points of delivery in or north of
327 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to
328 deliver Project Water does not trigger this right of amendment.

329 (d) ~~The~~ **Each** Contractor shall make reasonable and beneficial use of all water
330 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
331 groundwater banking programs, surface water storage programs, and other similar programs
332 utilizing Project Water or other water furnished pursuant to this Contract conducted within ~~the~~ **a**
333 Contractor's Service Area which are consistent with applicable State law and result in use consistent
334 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is
335 (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this
336 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses
337 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered
338 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation
339 law. Groundwater recharge programs, groundwater banking programs, surface water storage
340 programs, and other similar programs utilizing Project Water or other water furnished pursuant to

341 this Contract conducted outside ~~the~~ **of a** Contractor's Service Area may be permitted upon written
342 approval of the Contracting Officer, which approval will be based upon environmental
343 documentation, Project Water rights, and Project operational concerns. The Contracting Officer
344 will address such concerns in regulations, policies, or guidelines.

345 (e) ~~The~~ **Each** Contractor shall comply with requirements applicable to ~~the~~ **that**
346 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of
347 this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
348 amended, that are within the Contractor's legal authority to implement. The Existing Contract **and**
349 **preceding contracts listed in Recitals 5 and 6**, which evidences in excess of **5** years of diversions
350 for irrigation and/or M&I purposes of the quantities of water provided in subdivision (a) of Article 3
351 of this Contract, will be considered in developing an appropriate baseline for biological
352 assessment(s) prepared pursuant to the ESA, and any other needed environmental review. **In**
353 **developing an appropriate baseline, biological assessment(s) prepared pursuant to the ESA,**
354 **and any other needed environmental review will also consider deliveries of Project Water to**
355 **the Contractor(s) pursuant to any other water service contracts for Project Water.** Nothing
356 herein shall be construed to prevent the Contractor from challenging or seeking judicial relief in a
357 court of competent jurisdiction with respect to any biological opinion or other environmental
358 documentation referred to in this Article.

359 (f) Following the declaration of Water Made Available under Article 4 of this
360 Contract, the Contracting Officer will make a determination whether Project Water, or other water
361 available to the Project, can be made available to ~~the~~ **any** Contractor in addition to the Contract

362 Total under this Article during the Year without adversely impacting other Project Contractors. At
363 the request of ~~the~~ **any** Contractor, the Contracting Officer will consult with the **requesting**
364 Contractor(s), **and other Contractors**, prior to making such a determination. If the Contracting
365 Officer determines that Project Water, or other water available to the Project, can be made available
366 to the Contractor, the Contracting Officer will announce the availability of such water and shall so
367 notify the Contractor(s) as soon as practical. The Contracting Officer will thereafter meet with the
368 Contractor(s) and other Project Contractors capable of taking such water to determine the most
369 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
370 quantity of such water, the Contracting Officer shall make such water available to the **requesting**
371 Contractor(s) in accordance with applicable statutes, regulations, guidelines, and policies. Subject
372 to existing long-term contractual commitments, water rights and operational constraints, long-term
373 Project Contractors shall have a first right to acquire such water, including Project Water made
374 available pursuant to Section 215 of the RRA.

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

382 (h) ~~The A~~ Contractor’s right pursuant to Federal Reclamation law and applicable

383 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during
384 the term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract,
385 during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its
386 obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall
387 affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of
388 Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

389 (i) Project Water furnished to ~~the a~~ Contractor pursuant to this Contract may be
390 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
391 Contract upon **a request by that Contractor and** written approval by the Contracting Officer in
392 accordance with the terms and conditions of such approval.

393 (j) The Contracting Officer shall make reasonable efforts to protect the water
394 rights necessary for the Project and to provide the water available under this Contract. The
395 Contracting Officer shall not object to participation by ~~the any~~ Contractor, in the capacity and to
396 the extent permitted by law, in administrative proceedings related to the Project Water rights;
397 Provided, That the Contracting Officer retains the right to object to the substance of ~~the any~~
398 Contractor's position in such a proceeding; Provided further, That in such proceedings the
399 Contracting Officer shall recognize ~~the that each~~ Contractor has a legal right under the terms of
400 this Contract to use Project Water.

401 TIME FOR DELIVERY OF WATER

402 4. (a) On or about February 20th of each Calendar Year, the Contracting Officer
403 shall announce the Contracting Officer's expected declaration of the Water Made Available. Such

404 declaration will be expressed in terms of both Water Made Available and the Recent Historic
405 Average and will be updated monthly, and more frequently if necessary, based on then-current
406 operational and hydrologic conditions and a new declaration with changes, if any, to the Water
407 Made Available will be made. The Contracting Officer shall provide forecasts of Project operations
408 and the basis of the estimate, with relevant supporting information, upon the written request of ~~the a~~
409 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting
410 Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

421 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
422 Contract, the United States shall deliver Project Water to the Contractor(s) in accordance with the
423 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any
424 written revision(s) thereto, satisfactory to the Contracting Officer, submitted within a reasonable

425 time prior to the date(s) on which the requested change(s) is/are to be implemented.

426 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

427 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
428 Contract shall be delivered to the Contractor(s) at a point or points and any additional point or
429 points of delivery either on Project facilities or another location or locations mutually agreed to in
430 writing by the Contracting Officer and the Contractor(s) **who is/or are scheduled to receive the**
431 **Project Water.**

432 (b) The Contracting Officer, either directly or indirectly through its written
433 agreement(s) with the Operating Non-Federal Entity(ies), **as designated by the Contracting**
434 **Officer (“hereinafter referred to as the “Other Appropriate Entity”)** shall make all reasonable
435 efforts to maintain sufficient flows and levels of water in Project facilities to deliver Project Water
436 to the Contractor **who scheduled the Project Water** at the point or points of delivery established
437 pursuant to subdivision (a) of this Article.

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

442 (d) All Water Delivered to **the each** Contractor pursuant to this Contract shall be
443 measured and recorded with equipment furnished, installed, operated, and maintained by the
444 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
445 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting

446 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.

447 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause
448 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
449 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
450 period of time when accurate measurements have not been made, the Contracting Officer shall
451 consult with the Contractor **subject to the request** and the appropriate Operating Non-Federal
452 Entity(ies), if any, prior to making a final determination of the quantity delivered for that period of
453 time.

454 (e) Absent a separate contrary written agreement with the Contractor, neither the
455 Contracting Officer nor any Operating Non-Federal Entity (ies) shall be responsible for the control,
456 carriage, handling, use, disposal, or distribution of Water Delivered to ~~the~~ **a** Contractor pursuant to
457 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this
458 Article. ~~The~~ **Each** Contractor shall indemnify the United States, its officers, employees, agents, and
459 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal
460 responsibility, including property damage, personal injury, or death arising out of or connected with
461 the control, carriage, handling, use, disposal, or distribution of such Water Delivered **to the**
462 **respective Contractor** beyond such point or points of delivery, except for any damage or claim
463 arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees,
464 agents, and assigns, including the Operating Non-Federal Entity(ies), with the intent of creating the
465 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any
466 of its officers, employees, agents, and assigns, including the Operating Non-Federal Entity(ies); (iii)

467 negligence of the Contracting Officer or any of its officers, employees, agents, and assigns
468 including the Operating Non-Federal Entity(ies); or (iv) a malfunction of facilities owned and/or
469 operated by the United States or the Operating Non-Federal Entity(ies).

470 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

471 6. (a) **The Each** Contractor has established a measuring program satisfactory to the
472 Contracting Officer. **The Each** Contractor shall ensure that all surface water delivered for irrigation
473 purposes **to the Contractor's customers** within the Contractor's Service Area is measured at each
474 agricultural turnout and such water delivered for M&I purposes **to the Contractor's customers** is
475 measured at each M&I service connection. The water measuring devices or water measuring
476 methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor
477 shall be responsible for installing, operating, and maintaining and repairing all such measuring
478 devices **within that Contractor's Service Area** and implementing all such water measuring
479 methods at no cost to the United States. The Contractors shall use the information obtained from
480 such water measuring devices or water measuring methods to ensure its proper management of the
481 water, to bill water users for water delivered by the **respective** Contractor; and, if applicable, to
482 record water delivered for M&I purposes by customer class as defined in the **respective**
483 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein
484 contained, however, shall preclude the **respective** Contractor from establishing and collecting any
485 charges, assessments, or other revenues authorized by California law. **The Each** Contractor shall
486 include a summary of all its annual surface water deliveries in the annual report described in
487 subdivision (c) of Article 26.

488 (b) To the extent the information has not otherwise been provided, upon
489 execution of this Contract, ~~the~~ **Each** Contractor shall provide to the Contracting Officer a written
490 report describing the measurement devices or water measuring methods being used or to be used **by**
491 **that Contractor** to implement subdivision (a) of this Article and identifying the agricultural
492 turnouts and the M&I service connections or alternative measurement programs approved by the
493 Contracting Officer, at which such measurement devices or water measuring methods are being
494 used, and, if applicable, identifying the locations at which such devices and/or methods are not yet
495 being used including a time schedule for implementation at such locations. The Contracting Officer
496 shall advise ~~the~~ **each** Contractor in writing within 60 days as to the adequacy, and necessary
497 modifications, if any, of the measuring devices or water measuring methods identified in the
498 Contractor's report and if the Contracting Officer does not respond in such time, they shall be
499 deemed adequate. If the Contracting Officer notifies ~~the~~ **a** Contractor that the measuring devices or
500 methods are inadequate, the parties shall within 60 days following the Contracting Officer's
501 response, negotiate in good faith the earliest practicable date by which ~~the~~ **that** Contractor shall
502 modify said measuring devices and/or measuring methods as required by the Contracting Officer to
503 ensure compliance with subdivision (a) of this Article.

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

507 (d) ~~The~~ **Each** Contractor shall inform the Contracting Officer and the State of
508 California in writing by April 30 of each Year of the monthly volume of surface water delivered

509 within the Contractor's Service Area during the previous Year.

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

513 RATES AND METHOD OF PAYMENT FOR WATER

514 7. (a) The Contractor shall pay the United States as provided in this Article for all
515 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
516 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
517 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
518 modified, or superceded only through a public notice and comment procedure; (ii) applicable
519 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
520 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,
521 or any other mechanism as may be agreed to in writing by ~~the a~~ Contractor and the Contracting
522 Officer. The Rates, Charges, and Tiered Pricing Component applicable to ~~the each~~ Contractor
523 upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

524 (b) The Contracting Officer shall notify ~~the each~~ Contractor of the Rates,
525 Charges, and Tiered Pricing Component as follows:

526 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
527 provide ~~the each~~ Contractor an estimate of the Charges for Project Water that will be applied to the
528 period October 1, of the current Calendar Year, through September 30, of the following Calendar
529 Year, and the basis for such estimate. **The Each** Contractor shall be allowed not less than two

530 months to review and comment on such estimates. On or before September 15 of each Calendar
531 Year, the Contracting Officer shall notify ~~the~~ **each** Contractor in writing of the Charges to be in
532 effect during the period October 1 of the current Calendar Year, through September 30, of the
533 following Calendar Year, and such notification shall revise Exhibit "B."

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

541 (c) At the time ~~the~~ **a** Contractor submits the initial schedule for the delivery of
542 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
543 Contractor(s) **receiving delivered water** shall make an advance payment to the United States equal
544 to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this
545 Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two
546 calendar months of the Year. Before the end of the first month and before the end of each calendar
547 month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s)
548 set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this
549 Contract during the second month immediately following. Adjustments between advance payments
550 for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end

551 of the following month; Provided, That any revised schedule submitted by ~~the~~ **a** Contractor
552 pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to
553 this Contract during any month shall be accompanied with appropriate advance payment, at the
554 Rates then in effect, to assure that Project Water is not delivered to the Contractor(s) in advance of
555 such payment. In any month in which the quantity of Water Delivered to the Contractor(s) pursuant
556 to this Contract equals the quantity of Water Scheduled and paid for by the Contractor(s), no
557 additional Project Water shall be delivered to the Contractor(s) unless and until an advance payment
558 at the Rates then in effect for such additional Project Water is made. Final adjustment between the
559 advance payments for the Water Scheduled and payments for the quantities of Water Delivered
560 during each Year pursuant to this Contract shall be made as soon as practicable but no later than
561 April 30th of the following Year, or sixty days after the delivery of Project Water rescheduled under
562 subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of
563 February.

564 (d) **The Each** Contractor shall also make a payment in addition to the Rate(s) in
565 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
566 appropriate Tiered Pricing Component then in effect, before the end of the month following the
567 month of delivery; Provided, That ~~the~~ **any** Contractor may be granted an exception from the Tiered
568 Pricing Component pursuant to subdivision (j) (2) of this Article. The payments shall be consistent
569 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
570 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
571 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be

572 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
573 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
574 adjustment of payments due to the United States for Charges for the next month. Any amount to be
575 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
576 pursuant to Article 20 of this Contract.

577 (e) ~~The~~ **Each** Contractor shall pay for any Water Delivered under subdivision
578 (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
579 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
580 policies; Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this
581 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water
582 under subdivision (a) of this Article.

583 (f) Payments to be made by ~~the a~~ Contractor to the United States under this
584 Contract may be paid from any revenues available to ~~the that~~ Contractor.

585 (g) All revenues received by the United States from ~~the a~~ Contractor relating to
586 the delivery of Project Water or the delivery of non-Project water **to that Contractor** through
587 Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the
588 associated rules or regulations, and the then current Project ratesetting policies for M&I Water or
589 Irrigation Water.

590 (h) The Contracting Officer shall keep its accounts pertaining to the
591 administration of the financial terms and conditions of its long-term contracts, in accordance with
592 applicable Federal standards, so as to reflect the application of Project costs and revenues. The

593 Contracting Officer shall, each Year upon request of ~~the~~ **any** Contractor, provide to the Contractor a
594 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project
595 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer
596 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes
597 relating to accountings, reports, or information.

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

605 (j) (1) Beginning at such time as deliveries of Project Water in a Year
606 exceed 80 percent of the Contract Total, then before the end of the month following the month of
607 delivery the Contractor**s** shall make an additional payment to the United States equal to the
608 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
609 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
610 Contract Total, shall equal one-half of the difference between the Rate established under
611 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
612 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
613 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established

614 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
615 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article
616 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be
617 deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual
618 deliveries of each bear to the cumulative total Water Delivered. [Deletion of the last sentence or
619 alternate language may be negotiated by individual districts.]

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

628 (3) For purposes of determining the applicability of the Tiered Pricing
629 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
630 transfers to others but shall not include Project Water transferred to the Contractors, nor shall it
631 include the additional water provided to the Contractor under the provisions of subdivision (f) of
632 Article 3 of this Contract.

633 (k) For the term of this Contract, Rates applied under the respective ratesetting
634 policies will be established to recover only reimbursable O&M (including any deficits) and capital

635 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
636 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
637 with the relevant Project ratesetting policy. Changes of significance in practices which implement
638 the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer
639 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
640 change.

641 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
642 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
643 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect
644 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred
645 Project Water to the transferee's point of delivery. If ~~the~~ **any** Contractor is receiving lower Rates
646 and Charges because of inability to pay and is transferring Project Water to another entity whose
647 Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred
648 Project Water shall not be adjusted to reflect the Contractor's inability to pay.

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

651 (n) With respect to the Rates for M&I Water, ~~the~~ **each** Contractor asserts that it
652 is not legally obligated to pay any Project deficits claimed by the United States to have accrued as
653 of the date of this Contract or deficit-related interest charges thereon. By entering into this
654 Contract, ~~the~~ **each** Contractor does not waive any legal rights or remedies that it may have with
655 respect to such disputed issues. Notwithstanding the execution of this Contract and payments made

656 hereunder, **the each** Contractor may challenge in the appropriate administrative or judicial forums;
657 (1) the existence, computation, or imposition of any deficit charges accruing during the term of the
658 Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing
659 on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the
660 application by the United States of payments made by the Contractor under its Existing Contract
661 and any preceding interim renewal contracts if applicable; and (5) the application of such payments
662 in the Rates. The Contracting Officer agrees that **the each** Contractor shall be entitled to the benefit
663 of any administrative or judicial ruling in favor of any Project M&I contractor on any of these
664 issues, and credits for payments heretofore made, provided that the basis for such ruling is
665 applicable to **the that** Contractor. **[Contractor Specific]**

666 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

667 8. The Contractor and the Contracting Officer concur that, as of the effective date of
668 this Contract, **the no** Contractor has ~~no~~ **a** non-interest bearing O&M deficits **under this Contract**
669 and shall have no further liability therefore.

670 **[Or,]**

671 ~~—————The Contractor and the Contracting Officer have entered into a written~~
672 ~~agreement specifying a mutually acceptable mechanism through which the Contractor will~~
673 ~~retire its outstanding non-interest bearing O&M deficits.~~

674 SALES, TRANSFERS, OR EXCHANGES OF WATER

675 9. (a) The right to receive Project Water provided for in this Contract may be sold,
676 transferred, or exchanged to others for reasonable and beneficial uses within the State of California

677 if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
678 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
679 Contract may take place without the prior written approval of the Contracting Officer, except as
680 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
681 approved absent all appropriate environmental documentation, including but not limited to,
682 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
683 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
684 including environmental justice, of the proposed water transfers on both the transferor and
685 transferee.

686 (b) In order to facilitate efficient water management by means of water transfers
687 of the type historically carried out among Project Contractors located within the same geographical
688 area and to allow ~~the~~ **each** Contractor to participate in an accelerated water transfer program during
689 the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary
690 environmental documentation, including but not limited to documents prepared pursuant to NEPA
691 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer
692 shall determine whether such transfers comply with applicable law. Following the completion of
693 the environmental documentation, such transfers addressed in such documentation shall be
694 conducted with advance notice to the Contracting Officer, but shall not require prior written
695 approval by the Contracting Officer. Such environmental documentation and the Contracting
696 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
697 prior to the expiration of the then existing five year period. All subsequent environmental

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

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

710 APPLICATION OF PAYMENTS AND ADJUSTMENTS

711 10. (a) The amount of any overpayment by ~~the~~ a Contractor of the Contractor's
712 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
713 liabilities of ~~the~~ that Contractor arising out of this Contract then due and payable. Overpayments
714 of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount
715 of such overpayment at the option of ~~the~~ that Contractor's may be credited against amounts to
716 become due to the United States by ~~the~~ that Contractor. With respect to overpayment, such refund
717 or adjustment shall constitute the sole remedy of ~~the~~ that Contractor or anyone having or claiming
718 to have the right to the use of any of the Project Water supply provided for herein. All credits and

719 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
720 direction as to how to credit or refund such overpayment in response to the notice to the **overpaying**
721 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

722 (b) All advances for miscellaneous costs incurred for work requested by **the a**
723 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when
724 the work has been completed. If the advances exceed the actual costs incurred, the difference will
725 be refunded to the **requesting** Contractor. If the actual costs exceed **the that** Contractor's advances,
726 **the that** Contractor will be billed for the additional costs pursuant to Article 25.

727 TEMPORARY REDUCTIONS--RETURN FLOWS

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

733 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may
734 temporarily discontinue or reduce the quantity of Water Delivered to **the a** Contractor as herein
735 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of
736 the Project facilities or any part thereof necessary for the delivery of Project Water to **the that**
737 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will
738 give **the that** Contractor due notice in advance of such temporary discontinuance or reduction,
739 except in case of emergency, in which case no notice need be given; Provided, That the United

740 States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon
741 resumption of service after such reduction or discontinuance, and if requested by the **effected**
742 Contractor, the United States will, if possible, deliver the quantity of Project Water which would
743 have been delivered hereunder in the absence of such discontinuance or reduction.

744 (c) The United States reserves the right to all seepage and return flow water
745 derived from Water Delivered to ~~the a~~ Contractor hereunder which escapes or is discharged beyond
746 ~~the that~~ Contractor's Service Area; Provided, That this shall not be construed as claiming for the
747 United States any right to seepage or return flow being put to reasonable and beneficial use pursuant
748 to this Contract within ~~the a~~ Contractor's Service Area by ~~the that~~ Contractor or those claiming by,
749 through, or under the Contractor.

750 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

761 (c) In any Year in which there may occur a Condition of Shortage for any of the
762 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
763 Contracting Officer will first allocate the available Project Water consistent with the [insert title of
764 final policy] in its form on the effective date of this Contract for determining the amount of Project
765 Water available for delivery to the Project Contractors. Subject to the foregoing allocation, in any
766 year in which there may occur a Condition of Shortage, the Contracting Officer shall then apportion
767 Project Water among the Contractors **receiving water** and others entitled to Project Water from
768 Delta Division Facilities under long-term water service or repayment contracts (or renewals thereof
769 or binding commitments therefore) in force on February 28, 2005, as follows:

770 (1) The Contracting Officer shall make an initial and subsequent
771 determination as necessary of the total quantity of Project Water estimated to be scheduled or
772 actually scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term
773 water service or repayment contracts then in force for the delivery of Project Water by the United
774 States from Delta Division Facilities during the relevant Year, the quantity so determined being
775 hereinafter referred to as the scheduled total;

776 (2) A determination shall be made of the total quantity of Project Water
777 that is available for meeting the scheduled total, the quantity so determined being hereinafter
778 referred to as the available supply;

779 (3) The total quantity of Project Water estimated to be scheduled or
780 actually scheduled by the Contractors during the relevant Year, under subdivision (b) of Article 4
781 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred

782 to as the Contractor's proportionate share; and

783 (4) The available supply shall be multiplied by the Contractor(s)'
784 proportionate share and the result shall be the quantity of Project Water made available by the
785 United States to the Contractor for the relevant Year in accordance with the schedule developed by
786 the Contracting Officer under subdivision (c) (1) of this Article, but in no event shall such amount
787 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
788 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
789 Division Facilities to long-term water service and repayment Contractors during the relevant Year,
790 such additions or reductions to the available supply shall be apportioned consistent with
791 subparagraphs (1) through (4), inclusive.

792 (d) By entering into this Contract, the Contractor does not waive any legal rights
793 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
794 (i) the sufficiency of the *[title of policy named in subdivision c]*; (ii) the substance of such a policy;
795 (iii) the applicability of such a policy; or (iv) the manner in which such policy is implemented in
796 order to allocate Project Water between municipal and industrial and irrigation purposes; Provided,
797 that the Contractor has commenced any such judicial challenge or any administrative procedures
798 necessary to institute any judicial challenge within 6 months of the policy becoming final. By
799 agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies
800 that it may have to assert in such a proceeding. **[Contractor Specific]** Nothing contained herein
801 shall be interpreted to validate or invalidate the *[title of policy named in subdivision (c)]*.

802 UNAVOIDABLE GROUNDWATER PERCOLATION

828 level reasonably attainable as determined by the Contracting Officer. ~~The~~ Each Contractor shall be
829 responsible for compliance with all State and Federal water quality standards applicable to surface
830 and subsurface agricultural drainage discharges generated through the use of Federal or ~~that~~
831 Contractor facilities or Project Water provided by ~~the~~ ~~that~~ Contractor within the Contractor's
832 Service Area.

833 (c) Omitted.

834 WATER ACQUIRED BY THE CONTRACTOR
835 OTHER THAN FROM THE UNITED STATES

836 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
837 other than from the United States and Irrigation Water furnished pursuant to the terms of this
838 Contract may be simultaneously transported through the same distribution facilities of the
839 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and
840 non-Project water were constructed without funds made available pursuant to Federal Reclamation
841 law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands
842 which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be
843 established through the certification requirements as specified in the Acreage Limitation Rules and
844 Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within ~~the~~ ~~that~~
845 Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is
846 less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities
847 utilized for commingling Irrigation Water and non-Project water are/were constructed with funds
848 made available pursuant to Federal Reclamation law, the non-Project water will be subject to the
849 acreage limitation provisions of Federal Reclamation law, unless ~~the~~ ~~that~~ Contractor pays to the

850 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,
851 the Contracting Officer will calculate annually the cost to the Federal Government, including
852 interest of storing or delivering non-Project water, which for purposes of this Contract shall be
853 determined as follows: The quotient shall be the unpaid distribution system costs divided by the
854 total irrigable acreage within ~~the~~ **that** Contractor's Service Area. The incremental fee per acre is
855 the mathematical result of such quotient times the interest rate determined using Section 202 (3) of
856 the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
857 excess or full cost land within ~~the~~ **that** Contractor's Service Area that receives non-Project water
858 through Federally financed or constructed facilities. The incremental fee calculation methodology
859 will continue during the term of this Contract absent the promulgation of a contrary Reclamation-
860 wide rule, regulation or policy adopted after ~~the~~ **each** Contractor has been afforded the opportunity
861 to review and comment on the proposed rule, regulation or policy. If such rule, regulation or policy
862 is adopted it shall supercede this provision.

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

868 (1) ~~The~~ **A** Contractor may introduce non-Project water into Project
869 facilities and deliver said water to lands within ~~the~~ **that** Contractor's Service Area, including
870 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating Non-

871 Federal Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the
872 RRA, and the Project use power policy, if such Project use power policy is applicable, each as
873 amended, modified or superceded from time to time.

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

879 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
880 shall be responsible for control, care or distribution of the non-Project water before it is introduced
881 into or after it is delivered from the Project facilities. ~~The~~ **Each** Contractor hereby releases and
882 agrees to defend and indemnify the United States and the Operating Non-Federal Entity (ies), and
883 their respective officers, agents, and employees, from any claim for damage to persons or property,
884 direct or indirect, resulting from the act(s) of the **respective** Contractor's, its officers, employees,
885 agents, or assigns, in (i) extracting or diverting non-Project water from any source, or (ii) diverting
886 such non-Project water into Project facilities.

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

890 (5) After Project purposes are met, as determined by the Contracting
891 Officer, the United States and Project Contractors entitled to Project Water from Delta Division

892 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
893 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
894 any such remaining capacity being made available to non-Project contractors. Other Project
895 Contractors shall have a second priority to any remaining capacity of facilities declared to be
896 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
897 any such remaining capacity being made available to non-Project contractors.

898 OPINIONS AND DETERMINATIONS

899 18. (a) Where the terms of this Contract provide for actions to be based upon the
900 opinion or determination of ~~either~~ **any** party to this Contract, said terms shall not be construed as
901 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
902 determinations. ~~Both~~ **The** parties, notwithstanding any other provisions of this Contract, expressly
903 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
904 unreasonable opinion or determination. Each opinion or determination by ~~either~~ **any** party shall be
905 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
906 affect or alter the standard of judicial review applicable under Federal law to any opinion or
907 determination implementing a specific provision of Federal law embodied in statute or regulation.

908 (b) The Contracting Officer shall have the right to make determinations
909 necessary to administer this Contract that are consistent with the provisions of this Contract, the
910 laws of the United States and of the State of California, and the rules and regulations promulgated
911 by the Secretary of the Interior. Such determinations shall be made in consultation with ~~the~~ **each**
912 Contractor to the extent reasonably practicable.

913 COORDINATION AND COOPERATION

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

924 (b) Within 120 days following the effective date of this Contract, ~~the~~ **each**
925 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
926 with interested Project Contractors to develop a mutually agreeable, written Project-wide process,
927 which may be amended as necessary separate and apart from this Contract. The goal of this process
928 shall be to provide, to the extent practicable, the means of mutual communication and interaction
929 regarding significant decisions concerning Project operation and management on a real-time basis.

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

933 (1) The Contracting Officer will, at the request of ~~the~~ **any** Contractor,

934 assist in the development of integrated resource management plans for the **requesting** Contractors.

935 Further, the Contracting Officer will, as appropriate, seek authorizations for implementation of
936 partnerships to improve water supply, water quality, and reliability.

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

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

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

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

947 (d) Without limiting the contractual obligations of the Contracting Officer under
948 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
949 Contracting Officer's ability to communicate, coordinate, and cooperate with ~~the~~ **each** Contractor
950 or other interested stakeholders or to make decisions in a timely fashion as needed to protect health,
951 safety or the physical integrity of structures or facilities.

952 CHARGES FOR DELINQUENT PAYMENTS

953 20. (a) ~~The~~ **Each** Contractor shall be subject to interest, administrative and penalty
954 charges on delinquent installments or payments. When a payment is not received by the due date,
955 the **late** Contractor shall pay an interest charge for each day the payment is delinquent beyond the
956 due date. When a payment becomes sixty (60) days delinquent, the **late** Contractor shall pay an

957 administrative charge to cover additional costs of billing and processing the delinquent payment.
958 When a payment is delinquent ninety (90) days or more, the **late** Contractor shall pay an additional
959 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due
960 date. Further, the **late** Contractor shall pay any fees incurred for debt collection services associated
961 with a delinquent payment.

962
963 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in
964 the Federal Register by the Department of the Treasury for application to overdue payments, or the
965 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation
966 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due
967 date and remain fixed for the duration of the delinquent period.

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

971
972

EQUAL OPPORTUNITY

973 21. During the performance of this Contract, ~~the~~ **each** Contractor agrees as follows:

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

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

987 (c) The Contractor will send to each labor union or representative of workers
988 with which it has a collective bargaining agreement or other contract or understanding, a notice, to
989 be provided by the Contracting Officer, advising the said labor union or workers' representative of
990 ~~the~~ **that** Contractor's commitments under Section 202 of Executive Order 11246 of September 24,
991 1965, and shall post copies of the notice in conspicuous places available to employees and
992 applicants for employment.

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

996 (e) The Contractor will furnish all information and reports required by said
997 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
998 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
999 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such
1000 rules, regulations, and orders.

1001 (f) In the event of ~~the a~~ Contractor's noncompliance with the nondiscrimination
1002 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract, **as to the**
1003 **non-complying Contractor**, may be canceled, terminated, or suspended, in whole or in part, and
1004 ~~the that~~ Contractor may be declared ineligible for further Government contracts in accordance with
1005 procedures authorized in said amended Executive Order, and such other sanctions may be imposed
1006 and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the
1007 Secretary of Labor, or as otherwise provided by law.

1008
1009 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
1010 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
1011 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1012 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
1013 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
1014 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,
1015 That in the event ~~the that~~ Contractor becomes involved in, or is threatened with, litigation with a
1016 subcontractor or vendor as a result of such direction, ~~the that~~ Contractor may request the United
1017 States to enter into such litigation to protect the interests of the United States.

1018 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1019 22. (a) The obligation of ~~the each~~ Contractor to pay the United States as provided in
1020 this Contract is a general obligation of ~~the that~~ Contractor notwithstanding the manner in which the
1021 obligation may be distributed among the Contractor's water users and notwithstanding the default of
1022 individual water users in their obligations to ~~the that~~ Contractor.

1023 (b) The payment of charges becoming due hereunder is a condition precedent to
1024 receiving benefits under this Contract. The United States shall not make water available to ~~the a~~
1025 Contractor through Project facilities during any period in which ~~the that~~ Contractor may be in
1026 arrears in the advance payment of water rates due the United States. **The Each** Contractor shall not
1027 furnish water made available pursuant to this Contract for lands or parties which are in arrears in the
1028 advance payment of water rates levied or established by ~~the that~~ Contractor.

1029 (c) With respect to subdivision (b) of this Article, ~~the~~ **each** Contractor shall have
1030 no obligation to require advance payment for water rates which it levies.

1031

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1032 23. (a) ~~The~~ **Each** Contractor shall comply with Title VI of the Civil Rights Act of
1033 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended),
1034 the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
1035 laws, as well as with their respective implementing regulations and guidelines imposed by the U.S.
1036 Department of the Interior and/or Bureau of Reclamation.

1037 (b) These statutes require that no person in the United States shall, on the
1038 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1039 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1040 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, ~~the~~
1041 **each** Contractor agrees to immediately take any measures necessary to implement this obligation,
1042 including permitting officials of the United States to inspect premises, programs, and documents.

1043 (c) ~~The~~ **Each** Contractor makes this agreement in consideration of and for the
1044 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1045 Federal financial assistance extended after the date hereof to ~~the that~~ Contractor by the Bureau of
1046 Reclamation, including installment payments after such date on account of arrangements for Federal
1047 financial assistance which were approved before such date. ~~The~~ **Each** Contractor recognizes and
1048 agrees that such Federal assistance will be extended in reliance on the representations and
1049 agreements made in this Article, and that the United States reserves the right to seek judicial
1050 enforcement thereof.

1051

PRIVACY ACT COMPLIANCE

1052 24. (a) ~~The~~ **Each** Contractor shall comply with the Privacy Act of 1974 (5 U.S.C.
1053 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45
1054 et seq.) in maintaining Landholder acreage certification and reporting records, required to be
1055 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform
1056 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1057 (b) With respect to the application and administration of the criminal penalty
1058 provisions of the Act (5 U.S.C. 552a(i)), ~~the each~~ Contractor and the Contractor's employees
1059 responsible for maintaining the certification and reporting records referenced in (a) above are
1060 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1061 (c) The Contracting Officer or a designated representative shall provide ~~the each~~
1062 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1063 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1064 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1065 contained in the Landholder's certification and reporting records.
1066

1067 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1068 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1069 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. **The Each**
1070 Contractor is authorized to grant requests by individuals for access to ~~their~~ **its** own records.

1071 (e) **The Each** Contractor shall forward promptly to the System Manager each
1072 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1073 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1074 Manager with information and records necessary to prepare an appropriate response to the
1075 requester. These requirements do not apply to individuals seeking access to their own certification
1076 and reporting forms filed with ~~the a~~ Contractor pursuant to 43 CFR 426.18, unless the requester
1077 elects to cite the Privacy Act as a basis for the request.

1078 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1079 25. In addition to all other payments to be made by ~~the each~~ Contractor pursuant to this
1080 Contract, ~~the each~~ Contractor shall pay to the United States, within 60 days after receipt of a bill
1081 and detailed statement submitted by the Contracting Officer to ~~the that~~ Contractor for such specific
1082 items of direct cost incurred by the United States for work requested by ~~the that~~ Contractor
1083 associated with this Contract plus indirect costs in accordance with applicable Bureau of
1084 Reclamation policies and procedures. All such amounts referred to in this Article shall not exceed
1085 the amount agreed to in writing in advance by ~~the that~~ Contractor. This Article shall not apply to
1086 costs for routine contract administration.

1087 WATER CONSERVATION

1088 26. (a) Prior to the delivery of water **to a Contractor** provided from or conveyed
1089 through Federally constructed or Federally financed facilities pursuant to this Contract, ~~the that~~
1090 Contractor shall be implementing an effective water conservation and efficiency program based on
1091 the Contractor's water conservation plan that has been determined by the Contracting Officer to

1092 meet the conservation and efficiency criteria for evaluating water conservation plans established
1093 under Federal law. The water conservation and efficiency program shall contain definite water
1094 conservation objectives, appropriate economically feasible water conservation measures, and time
1095 schedules for meeting those objectives. Continued Project Water delivery **to that Contractor**
1096 pursuant to this Contract shall be contingent upon ~~the~~ **that** Contractor's continued implementation
1097 of such water conservation program. In the event ~~the~~ **a** Contractor's water conservation plan or any
1098 revised water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract
1099 **have has** not yet been determined by the Contracting Officer to meet such criteria, due to
1100 circumstances which the Contracting Officer determines are beyond the control of ~~the~~ **that**
1101 Contractor, water deliveries shall be made under this Contract so long as ~~the~~ **that** Contractor
1102 diligently works with the Contracting Officer to obtain such determination at the earliest practicable
1103 date, and thereafter the Contractor immediately begins implementing its water conservation and
1104 efficiency program in accordance with the time schedules therein.

1105 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1106 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor **receiving M&I**
1107 **water** shall implement the Best Management Practices identified by the time frames issued by the
1108 California Urban Water Conservation Council for such M&I Water unless any such practice is
1109 determined by the Contracting Officer to be inappropriate for ~~the~~ **that** Contractor.

1110 (c) **The Each** Contractor shall submit to the Contracting Officer a report on the
1111 status of its implementation of the water conservation plan on the reporting dates specified in the
1112 then existing conservation and efficiency criteria established under Federal law.

1113 (d) At 5 year intervals, ~~the~~ **each** Contractor shall revise its water conservation
1114 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation
1115 plans established under Federal law and submit such revised water management plan to the
1116 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1117 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1118 evaluating water conservation plans established under Federal law.

1119 (e) If ~~the~~ **a** Contractor is engaged in direct groundwater recharge, such activity
1120 shall be described in the Contractor's water conservation plan.

1121 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1122 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1123 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1124 hereafter acquired by ~~the~~ **each** Contractor or any user of such water within ~~the~~ **any** Contractor's
1125 Service Area. Any such water shall not be considered Project Water under this Contract. In
1126 addition, this Contract shall not be construed as limiting or curtailing any rights which ~~the~~ **any**
1127 Contractor or any water user within the Contractor's Service Area acquires or has available under
1128 any other contract pursuant to Federal Reclamation law.

1129 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1130 28. (a) The O&M of a portion of the Project facilities which serve ~~the~~ **each**
1131 Contractor, and responsibility for funding a portion of the costs of such O&M, have been
1132 transferred to the San Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by
1133 separate agreement (8-07-20-X0354) between the United States and the Operating Non-Federal

1134 Entity San Luis & Delta-Mendota Water Authority. That separate agreement shall not interfere
1135 with or affect the rights or obligations of ~~the~~ **each** Contractor or the United States hereunder.

1136 (b) The Contracting Officer has previously notified the Contractor in writing that
1137 the O&M of a portion of the Project facilities which serve ~~the~~ **each** Contractor has been transferred
1138 to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, ~~the~~
1139 **each** Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota
1140 Water Authority, or to any successor approved by the Contracting Officer under the terms and
1141 conditions of the separate agreement between the United States and the Operating Non-Federal
1142 Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this Article, all
1143 rates, charges, or assessments of any kind, including any assessment for reserve funds, which the
1144 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor
1145 determines, sets, or establishes for the O&M of the portion of the Project facilities operated and
1146 maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1147 such successor. Such direct payments to the Operating Non-Federal Entity San Luis & Delta-
1148 Mendota Water Authority or such successor shall not relieve ~~the~~ **any** Contractor of its obligation to
1149 pay directly to the United States ~~the~~ **that** Contractor's share of the Project Rates, Charges, and
1150 Tiered Pricing Component except to the extent the Operating Non-Federal Entity San Luis & Delta-
1151 Mendota Water Authority collects payments on behalf of the United States in accordance with the
1152 separate agreement identified in subdivision (a) of this Article.

1153 (c) For so long as the O&M of any portion of the Project facilities serving ~~the~~
1154 **each** Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota

1155 Water Authority, or any successor thereto, the Contracting Officer shall adjust those components of
1156 the Rates for Water Delivered under this Contract representing the cost associated with the activity
1157 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1158 or its successor.

1159 (d) In the event the O&M of the Project facilities operated and maintained by the
1160 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1161 United States during the term of this Contract, the Contracting Officer shall so notify the
1162 Contractor, in writing, and present to ~~the~~ **each** Contractor a revised Exhibit "B" which shall include
1163 the portion of the Rates to be paid by ~~the~~ **each** Contractor for Project Water under this Contract
1164 representing the O&M costs of the portion of such Project facilities which have been re-assumed.
1165 **The Each** Contractor shall, thereafter, in the absence of written notification from the Contracting
1166 Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the
1167 revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

1168 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1169 29. The expenditure or advance of any money or the performance of any obligation of
1170 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1171 Absence of appropriation or allotment of funds shall not relieve ~~the~~ **any** Contractor from any
1172 obligations under this Contract. No liability shall accrue to the United States in case funds are not
1173 appropriated or allotted.

1174 BOOKS, RECORDS, AND REPORTS

1175 30. (a) **The Each** Contractor shall establish and maintain accounts and other books
1176 and records pertaining to administration of the terms and conditions of this Contract, including: ~~the~~
1177 **each** Contractor's financial transactions, water supply data, and Project land and right-of-way
1178 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1179 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1180 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may

1181 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1182 the right during office hours to examine and make copies of the other party's books and records
1183 relating to matters covered by this Contract.

1184 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1185 records, or other information shall be requested from ~~the~~ **any** Contractor by the Contracting Officer
1186 unless such books, records, or information are reasonably related to the administration or
1187 performance of this Contract. Any such request shall allow the Contractor **to which the request is**
1188 **made** a reasonable period of time within which to provide the requested books, records, or
1189 information.

1190 (c) At such time as the Contractor **to which the request is made** provides
1191 information to the Contracting Officer pursuant to subdivision (a) of this Article, a copy of such
1192 information shall be provided to the Operating Non-Federal Entity.

1193 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1194 31. (a) The provisions of this Contract shall apply to and bind the successors and
1195 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1196 therein shall be valid until approved in writing by the Contracting Officer.

1197 (b) The assignment of any right or interest in this Contract by either party shall
1198 not interfere with the rights or obligations of the other party to this Contract absent the written
1199 concurrence of said other party.

1200 (c) The Contracting Officer shall not unreasonably condition or withhold
1201 approval of any proposed assignment.

1202 SEVERABILITY

1203 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor

1204 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1205 association or other form of organization whose primary function is to represent parties to Project
1206 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1207 enforceability of a provision included in this Contract and said person, entity, association, or
1208 organization obtains a final court decision holding that such provision is legally invalid or
1209 unenforceable and ~~the~~ **any** Contractor has not intervened in that lawsuit in support of the
1210 plaintiff(s), the parties to this Contract shall use their best efforts to (i) within 30 days of the date of
1211 such final court decision identify by mutual agreement the provisions in this Contract which must
1212 be revised and (ii) within 3 months thereafter promptly agree on the appropriate revision(s). The
1213 time periods specified above may be extended by mutual agreement of the parties. Pending the
1214 completion of the actions designated above, to the extent it can do so without violating any
1215 applicable provisions of law, the United States shall continue to make the quantities of Project
1216 Water specified in this Contract available to ~~the~~ **each** Contractor pursuant to the provisions of this
1217 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1218 RESOLUTION OF DISPUTES

1219 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1220 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1221 dispute. Prior to ~~the~~ **any** Contractor commencing any legal action, or the Contracting Officer
1222 referring any matter to the Department of Justice, the party shall provide to the other party 30 days'
1223 written notice of the intent to take such action; Provided, That such notice shall not be required
1224 where a delay in commencing an action would prejudice the interests of the party that intends to file

1225 suit. During the 30 day notice period, the Contractor and the Contracting Officer shall meet and
1226 confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is
1227 intended to waive or abridge any right or remedy that **the any** Contractor or the United States may
1228 have.

1229 OFFICIALS NOT TO BENEFIT

1230 34. No Member of or Delegate to Congress, Resident Commissioner, or official of **the**
1231 **any** Contractor shall benefit from this Contract other than as a water user or landowner in the same
1232 manner as other water users or landowners.

1233 CHANGES IN CONTRACTOR'S SERVICE AREA

1234 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1235 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1236 except upon the Contracting Officer's written consent.

1237 (b) Within 30 days of receipt of a request for such a change, the Contracting
1238 Officer will notify **the each** Contractor of any additional information required by the Contracting
1239 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1240 schedule for timely completion of the process. Such process will analyze whether the proposed
1241 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii)
1242 impair the ability of the Contractor to pay for Project Water furnished under this Contract or to pay
1243 for any Federally-constructed facilities for which the Contractor **is are** responsible; and (iii) have an
1244 impact on any Project Water rights applications, permits, or licenses. In addition, the Contracting
1245 Officer shall comply with the NEPA and the ESA. The Contractor will be responsible for all costs
1246 incurred by the Contracting Officer in this process, and such costs will be paid in accordance with
1247 Article 25 of this Contract.

1248 FEDERAL LAWS

1249 36. By entering into this Contract, the Contractors ~~does~~ not waive ~~its~~ **their** rights to

1250 contest the validity or application in connection with the performance of the terms and conditions of

1251 this Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with

1252 the terms and conditions of this Contract unless and until relief from application of such Federal law

1253 or regulation to the implementing provision of the Contract is granted by a court of competent

1254 jurisdiction.

1255 NOTICES

1256 37. Any notice, demand, or request authorized or required by this Contract shall be

1257 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered

1258 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and

1259 on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of

1260 Directors/City Council of the **Pajaro Valley Water Management Agency, 36 Brennan Street,**

1261 **Watsonville CA 95076; Santa Clara Valley Water District, 570 Almaden Expressway, San**

1262 **Jose CA 95118-3686; and Westlands Water District Distribution District No. 1, P.O. Box 6065,**

1263 **Fresno CA 93703-6065.** The designation of the addressee or the address may be changed by notice

1264 given in the same manner as provided in this Article for other notices.

1265 CONFIRMATION OF CONTRACT

1266 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a

1267 decree of a court of competent jurisdiction of the State of California, confirming the execution of

1268 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the

1269 validation proceedings, and all pertinent supporting records of the court approving and confirming

1270 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

T.O. Draft 9/27/04
T.O. Draft 12/2-2003
R.O. Draft Final Delta Division Form 9/14/04
Delta Division Form 7/30/04
R.O. Draft 7/22/04
CVP-Wide Form 5/23/04
Delta Division

1283
1284

SANTA CLARA VALLEY WATER DISTRICT

1285
1286

By: _____
President of the Board of Directors

1287 Attest:

1288 By: _____
1289 Secretary of the Board of Directors

1290
1291
1292

WESTLANDS WATER DISTRICT DISTRIBUTION DISTRICT NO. 1

1293
1294

By: _____
President of the Board of Directors

1295 Attest:

1296 By: _____
1297 Secretary of the Board of Directors

T.O. Draft 9/27/04
T.O. Draft 12/2-2003
R.O. Draft Final Delta Division Form 9/14/04
Delta Division Form 7/30/04
R.O. Draft 7/22/04
CVP-Wide Form 5/23/04
Delta Division

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EXHIBIT A
[Map or Description of Service Area]

T.O. Draft 9/27/04
T.O. Draft 12/2-2003
R.O. Draft Final Delta Division Form 9/14/04
Delta Division Form 7/30/04
R.O. Draft 7/22/04
CVP-Wide Form 5/23/04
Delta Division

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EXHIBIT B
[Initial Rates and Charges]

(I:\1113DeltaDivision.wpd)