

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

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

10 THIS CONTRACT, made this \_\_\_\_ day of \_\_\_\_\_, 2004, in pursuance  
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,  
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and  
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.  
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.  
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all  
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES  
17 OF AMERICA, hereinafter referred to as the United States, and \_\_\_\_\_,  
18 hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,  
19 existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for  
24 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
25 restoration, generation and distribution of electric energy, salinity control, navigation and other

26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the  
27 San Joaquin River and their tributaries; and

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

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

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

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

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

43 [5<sup>th</sup>] **[For binding agreement contractors]** WHEREAS, the United States and the  
44 Contractor have, pursuant to Subsection 3404 (c)(3) of the Central Valley Project Improvement Act  
45 (CVPIA), subsequently entered into a binding agreement, identified as Binding Agreement No.  
46 \_\_\_\_\_ which sets out the terms pursuant to which the Contractor agreed to renew the  
47 Existing Contract before its expiration date after completion of a programmatic environmental

48 impact statement and other appropriate environmental documentation and negotiation of a renewal  
49 contract, and which also sets out the consequences of a subsequent decision not to renew; and

50 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the  
51 Existing Contract following completion of appropriate environmental documentation, including a  
52 programmatic environmental impact statement (PEIS) pursuant to the National Environmental  
53 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the  
54 CVPIA and the potential renewal of all existing contracts for Project Water; and [**Contractor**  
55 **specific issue**]

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

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

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

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

66 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
67 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
68 beneficial use and/or has demonstrated projected future demand for water use such that the  
69 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the

70 quantity of Project Water to be made available to it pursuant to this Contract; and [**Contractor**  
71 **Specific]**

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

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

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

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

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

88 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract  
89 assignments, rescheduling and conveyance of Project Water and non-Project water under this  
90 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial  
91 use of water; and

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

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

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

99 DEFINITIONS

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

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

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

107 (c) "Condition of Shortage" shall mean a condition respecting the Project during  
108 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract  
109 Total;

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

113 (e) "Contract Total" shall mean the maximum amount of water to which the

114 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

115 (f) “Contractor's Service Area” shall mean the area to which the Contractor is

116 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,

117 which may be modified from time to time in accordance with Article 35 of this Contract without  
118 amendment of this Contract;

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

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

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

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

132 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting  
133 Officer that shall amortize the expenditures for construction properly allocable to the Project  
134 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits  
135 funded, less payments, over such periods as may be required under Federal Reclamation law, or  
136 applicable contract provisions. Interest will accrue on both the construction expenditures and  
137 funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date  
138 incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in

139 accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual  
140 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and  
141 Regulations for the RRA;

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

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

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

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

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

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

160 (q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable

161 care, control, operation, repair, replacement (other than capital replacement), and maintenance of  
162 Project facilities;

163 (r) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)  
164 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the  
165 Delta Division Facilities pursuant to written agreement(s) with the United States. When this  
166 Contract was entered into, the Operating Non-Federal Entity(ies) was (were) \_\_\_\_\_.

167 **[Contractor Specific]**

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

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

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

175 (v) “Rates” shall mean the payments determined annually by the Contracting  
176 Officer in accordance with the then current applicable water ratesetting policies for the Project, as  
177 described in subdivision (a) of Article 7 of this Contract;

178 (w) “Recent Historic Average” shall mean the most recent five year average of  
179 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its  
180 preceding contract(s);

181 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed  
182 successor, or an authorized representative acting pursuant to any authority of the Secretary and

183 through any agency of the Department of the Interior;

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

186 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted  
187 for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

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

194 (cc) “Year” shall mean the period from and including March 1 of each Calendar  
195 Year through the last day of February of the following Calendar Year.

196 TERM OF CONTRACT

197 2. (a) This Contract shall be effective March 1, 200\_, through February 28, 20\_\_,  
198 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract  
199 beyond February 28 (29), \_\_\_\_\_, the Contractor shall submit a request for renewal in writing to the  
200 Contracting Officer no later than two (2) years prior to the date this Contract expires. The renewal  
201 of this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be  
202 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to  
203 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

204 **[Contractor Specific]**

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

210                   (2)     The conditions which must be met for this Contract to be renewed are:  
211 (i) the Contractor has prepared a water conservation plan that has been determined by the  
212 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and  
213 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is  
214 implementing an effective water conservation and efficiency program based on the Contractor's  
215 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating  
216 and maintaining all water measuring devices and implementing all water measurement methods as  
217 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has  
218 reasonably and beneficially used the Project Water supplies made available to it and, based on  
219 projected demands, is reasonably anticipated and expects to fully utilize for reasonable and  
220 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)  
221 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor  
222 has the physical and legal ability to deliver Project Water.

223                   (3)     The terms and conditions of the renewal contract described in  
224 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed  
225 consistent with the parties' respective legal rights and obligations, and in consideration of all  
226 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,

227 without limitation, the Contractor's need for continued delivery of Project Water; environmental  
228 conditions affected by implementation of the Contract to be renewed, and specifically changes in  
229 those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress  
230 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the  
231 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region  
232 served by the Contractor.

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

241 (d) The Contracting Officer shall make a determination ten years after the date of  
242 execution of this Contract, and every five years thereafter during the term of this Contract, of  
243 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of  
244 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70  
245 Stat 483). The Contracting Officer shall also make a determination ten years after the date of  
246 execution of this Contract and every five years thereafter during the term of this Contract of whether  
247 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the  
248 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this

249 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956  
250 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all  
251 authorized Project construction expected to occur will have occurred, and on that basis the  
252 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to  
253 the Contractor, and agrees further that, at any time after such allocation is made, and subject to  
254 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the  
255 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable of  
256 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and  
257 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such  
258 conversion to occur shall be a determination by the Contracting Officer that, account being taken of  
259 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the  
260 remaining amount of construction costs assignable for ultimate return by the Contractor can  
261 probably be repaid to the United States within the term of a contract under subsection 9(d) or  
262 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to  
263 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall  
264 notify the Contractor, and provide the reason(s) why such a determination could not be made.  
265 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as  
266 to permit, upon request of the Contractor and satisfaction of the conditions set out above,  
267 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such  
268 determination of costs has not been made at a time which allows conversion of this Contract during  
269 the term of this Contract or the Contractor has not requested conversion of this Contract within such  
270 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)

271 of this Article a provision that carries forth in substantially identical terms the provisions of this  
272 subdivision.

273 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

274 3. (a) During each Year, consistent with all applicable State water rights, permits,  
275 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this  
276 Contract, the Contracting Officer shall make available for delivery to the Contractor \_\_\_\_\_ acre-  
277 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in  
278 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of  
279 Articles 4 and 7 of this Contract.

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

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

291 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)  
292 that receives Project Water through the Delta Division Facilities obtains a contractual agreement

293 that the Contracting Officer shall make Project Water available at a point or points of delivery in or  
294 north of the Delta, at the request of the Contractor and upon completion of any required  
295 environmental documentation, this Contract shall be amended to provide for deliveries in or north  
296 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely  
297 to those changes made necessary by the addition of such alternate points of delivery in or north of  
298 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to  
299 deliver Project Water does not trigger this right of amendment.

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

315 will address such concerns in regulations, policies, or guidelines.

316           (e)     The Contractor shall comply with requirements applicable to the Contractor  
317 in biological opinion(s) prepared as a result of a consultation regarding the execution of this  
318 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as  
319 amended, that are within the Contractor's legal authority to implement. The Existing Contract,  
320 which evidences in excess of \_\_\_\_\_ years of diversions for irrigation and/or M&I purposes of the  
321 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in  
322 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and  
323 any other needed environmental review. Nothing herein shall be construed to prevent the  
324 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with  
325 respect to any biological opinion or other environmental documentation referred to in this Article.

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

337 such water available to the Contractor in accordance with applicable statutes, regulations,  
338 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and  
339 operational constraints, long-term Project Contractors shall have a first right to acquire such water,  
340 including Project Water made available pursuant to Section 215 of the RRA.

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

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

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

359 (j) The Contracting Officer shall make reasonable efforts to protect the water  
360 rights necessary for the Project and to provide the water available under this Contract. The  
361 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the  
362 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,  
363 That the Contracting Officer retains the right to object to the substance of the Contractor's position  
364 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall  
365 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

366 TIME FOR DELIVERY OF WATER

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

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

381 for the Year commencing on such March 1.

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

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

390 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

403                   (d)     All Water Delivered to the Contractor pursuant to this Contract shall be  
404 measured and recorded with equipment furnished, installed, operated, and maintained by the  
405 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating  
406 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting  
407 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.  
408 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause  
409 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such  
410 measurements and shall take any necessary steps to adjust any errors appearing therein. For any  
411 period of time when accurate measurements have not been made, the Contracting Officer shall  
412 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to  
413 making a final determination of the quantity delivered for that period of time.

414                   (e)     Absent a separate contrary written agreement with the Contractor, neither the  
415 Contracting Officer nor any Operating Non-Federal Entity (ies) shall be responsible for the control,  
416 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to  
417 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this  
418 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and  
419 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal  
420 responsibility, including property damage, personal injury, or death arising out of or connected with  
421 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such  
422 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of  
423 the Contracting Officer or any of its officers, employees, agents, and assigns, including the  
424 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage

425 or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,  
426 and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting  
427 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal  
428 Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the  
429 Operating Non-Federal Entity(ies).

430 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

431 6. (a) The Contractor has established a measuring program satisfactory to the  
432 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation  
433 purposes within the Contractor's Service Area is measured at each agricultural turnout and such  
434 water delivered for M&I purposes is measured at each M&I service connection. The water  
435 measuring devices or water measuring methods of comparable effectiveness must be acceptable to  
436 the Contracting Officer. The Contractor shall be responsible for installing, operating, and  
437 maintaining and repairing all such measuring devices and implementing all such water measuring  
438 methods at no cost to the United States. The Contractor shall use the information obtained from  
439 such water measuring devices or water measuring methods to ensure its proper management of the  
440 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water  
441 delivered for M&I purposes by customer class as defined in the Contractor's water conservation  
442 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude  
443 the Contractor from establishing and collecting any charges, assessments, or other revenues  
444 authorized by California law. The Contractor shall include a summary of all its annual surface  
445 water deliveries in the annual report described in subdivision (c) of Article 26.

446 (b) To the extent the information has not otherwise been provided, upon

447 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report  
448 describing the measurement devices or water measuring methods being used or to be used to  
449 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I  
450 service connections or alternative measurement programs approved by the Contracting Officer, at  
451 which such measurement devices or water measuring methods are being used, and, if applicable,  
452 identifying the locations at which such devices and/or methods are not yet being used including a  
453 time schedule for implementation at such locations. The Contracting Officer shall advise the  
454 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the  
455 measuring devices or water measuring methods identified in the Contractor's report and if the  
456 Contracting Officer does not respond in such time, they shall be deemed adequate. If the  
457 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,  
458 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith  
459 the earliest practicable date by which the Contractor shall modify said measuring devices and/or  
460 measuring methods as required by the Contracting Officer to ensure compliance with subdivision  
461 (a) of this Article.

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

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

468 (e) The Contractor shall inform the Contracting Officer and the Operating Non-

469 Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation Water  
470 and M&I Water taken during the preceding month.

471 RATES AND METHOD OF PAYMENT FOR WATER

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

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

484 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall  
485 provide the Contractor an estimate of the Charges for Project Water that will be applied to the  
486 period October 1, of the current Calendar Year, through September 30, of the following Calendar  
487 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to  
488 review and comment on such estimates. On or before September 15 of each Calendar Year, the  
489 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the  
490 period October 1 of the current Calendar Year, through September 30, of the following Calendar

491 Year, and such notification shall revise Exhibit “B.”

492 (2) Prior to October 1 of each Calendar Year, the Contracting Officer  
493 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component for  
494 Project Water for the following Year and the computations and cost allocations upon which those  
495 Rates are based. The Contractor shall be allowed not less than two months to review and comment  
496 on such computations and cost allocations. By December 31 of each Calendar Year, the  
497 Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Component  
498 to be in effect for the upcoming Year, and such notification shall revise Exhibit “B.”

499 (c) At the time the Contractor submits the initial schedule for the delivery of  
500 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
501 shall make an advance payment to the United States equal to the total amount payable pursuant to  
502 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
503 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
504 of the first month and before the end of each calendar month thereafter, the Contractor shall make  
505 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for  
506 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
507 following. Adjustments between advance payments for Water Scheduled and payments at Rates  
508 due for Water Delivered shall be made before the end of the following month; Provided, That any  
509 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases  
510 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied  
511 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not  
512 delivered to the Contractor in advance of such payment. In any month in which the quantity of

513 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled  
514 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor  
515 unless and until an advance payment at the Rates then in effect for such additional Project Water is  
516 made. Final adjustment between the advance payments for the Water Scheduled and payments for  
517 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon  
518 as practicable but no later than April 30th of the following Year, or sixty days after the delivery of  
519 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not  
520 delivered by the last day of February.

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

534 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f),

535 or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
536 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;  
537 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall  
538 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision  
539 (a) of this Article.

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

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

546 (h) The Contracting Officer shall keep its accounts pertaining to the  
547 administration of the financial terms and conditions of its long-term contracts, in accordance with  
548 applicable Federal standards, so as to reflect the application of Project costs and revenues. The  
549 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a  
550 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project  
551 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer  
552 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes  
553 relating to accountings, reports, or information.

554 (i) The parties acknowledge and agree that the efficient administration of this  
555 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,  
556 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,

557 and/or for making and allocating payments, other than those set forth in this Article may be in the  
558 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to  
559 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in  
560 effect without amending this Contract.

561 (j) (1) Beginning at such time as deliveries of Project Water in a Year  
562 exceed 80 percent of the Contract Total, then before the end of the month following the month of  
563 delivery the Contractor shall make an additional payment to the United States equal to the  
564 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water  
565 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the  
566 Contract Total, shall equal one-half of the difference between the Rate established under  
567 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,  
568 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which  
569 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established  
570 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost  
571 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article  
572 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be  
573 deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual  
574 deliveries of each bear to the cumulative total Water Delivered. [Deletion of the last sentence or  
575 alternate language may be negotiated by individual districts.]

576 (2) Subject to the Contracting Officer's written approval, the Contractor  
577 may request and receive an exemption from such Tiered Pricing Component for Project Water  
578 delivered to produce a crop which the Contracting Officer determines will provide significant and

579 quantifiable habitat values for waterfowl in fields where the water is used and the crops are  
580 produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water  
581 shall apply only if such habitat values can be assured consistent with the purposes of the CVPIA  
582 through binding agreements executed with or approved by the Contracting Officer prior to use of  
583 such water.

584 (3) For purposes of determining the applicability of the Tiered Pricing  
585 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor  
586 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it  
587 include the additional water provided to the Contractor under the provisions of subdivision (f) of  
588 Article 3 of this Contract.

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

597 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,  
598 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in  
599 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect  
600 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred

601 Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and  
602 Charges because of inability to pay and is transferring Project Water to another entity whose Rates  
603 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project  
604 Water shall not be adjusted to reflect the Contractor's inability to pay.

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

607 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not  
608 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the  
609 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the  
610 Contractor does not waive any legal rights or remedies that it may have with respect to such  
611 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the  
612 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,  
613 computation, or imposition of any deficit charges accruing during the term of the Existing Contract  
614 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such  
615 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by  
616 the United States of payments made by the Contractor under its Existing Contract and any  
617 preceding interim renewal contracts if applicable; and (5) the application of such payments in the  
618 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any  
619 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and  
620 credits for payments heretofore made, provided that the basis for such ruling is applicable to the  
621 Contractor. [**Contractor Specific**]

622                   NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

626 [Or,]

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

630                   SALES, TRANSFERS, OR EXCHANGES OF WATER

631           9.       (a)     The right to receive Project Water provided for in this Contract may be sold,  
632 transferred, or exchanged to others for reasonable and beneficial uses within the State of California  
633 if such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable  
634 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this  
635 Contract may take place without the prior written approval of the Contracting Officer, except as  
636 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be  
637 approved absent all appropriate environmental documentation, including but not limited to,  
638 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should  
639 include, as appropriate, an analysis of groundwater impacts and economic and social effects,  
640 including environmental justice, of the proposed water transfers on both the transferor and  
641 transferee.

642                   (b)     In order to facilitate efficient water management by means of water transfers  
643 of the type historically carried out among Project Contractors located within the same geographical

644 area and to allow the Contractor to participate in an accelerated water transfer program during the  
645 term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary  
646 environmental documentation, including but not limited to documents prepared pursuant to NEPA  
647 and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer  
648 shall determine whether such transfers comply with applicable law. Following the completion of  
649 the environmental documentation, such transfers addressed in such documentation shall be  
650 conducted with advance notice to the Contracting Officer, but shall not require prior written  
651 approval by the Contracting Officer. Such environmental documentation and the Contracting  
652 Officer's compliance determination shall be reviewed every five years and updated, as necessary,  
653 prior to the expiration of the then existing five year period. All subsequent environmental  
654 documentation shall include an alternative to evaluate not less than the quantity of Project Water  
655 historically transferred within the same geographical area.

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

666 APPLICATION OF PAYMENTS AND ADJUSTMENTS

667 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
668 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
669 the Contractor arising out of this Contract then due and payable. Overpayments of more than  
670 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such  
671 overpayment at the option of the Contractor may be credited against amounts to become due to the  
672 United States by the Contractor. With respect to overpayment, such refund or adjustment shall  
673 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the  
674 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments  
675 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or  
676 refund such overpayment in response to the notice to the Contractor that it has finalized the  
677 accounts for the Year in which the overpayment was made.

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

683 TEMPORARY REDUCTIONS--RETURN FLOWS

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

688 Contract.

689 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may  
690 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein  
691 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of  
692 the Project facilities or any part thereof necessary for the delivery of Project Water to the  
693 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will  
694 give the Contractor due notice in advance of such temporary discontinuance or reduction, except in  
695 case of emergency, in which case no notice need be given; Provided, That the United States shall  
696 use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of  
697 service after such reduction or discontinuance, and if requested by the Contractor, the United States  
698 will, if possible, deliver the quantity of Project Water which would have been delivered hereunder  
699 in the absence of such discontinuance or reduction.

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

706 CONSTRAINTS ON THE AVAILABILITY OF WATER

707 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable  
708 means to guard against a Condition of Shortage in the quantity of water to be made available to the  
709 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a

710 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said  
711 determination as soon as practicable.

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

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

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

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

735                           (3)     The total quantity of Project Water estimated to be scheduled or  
736 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4  
737 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred  
738 to as the Contractor's proportionate share; and

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

748                           (d)     By entering into this Contract, the Contractor does not waive any legal rights  
749 or remedies it may have to file or participate in any administrative or judicial proceeding contesting  
750 (i) the sufficiency of the *[title of policy named in subdivision c]*; (ii) the substance of such a policy;  
751 (iii) the applicability of such a policy; or (iv) the manner in which such policy is implemented in  
752 order to allocate Project Water between municipal and industrial and irrigation purposes; Provided,  
753 that the Contractor has commenced any such judicial challenge or any administrative procedures

754 necessary to institute any judicial challenge within 6 months of the policy becoming final. By  
755 agreeing to the foregoing, the Contracting Officer does not waive any legal defenses or remedies  
756 that it may have to assert in such a proceeding. **[Contractor Specific]** Nothing contained herein  
757 shall be interpreted to validate or invalidate the *[title of policy named in subdivision (c)]*.

758 UNAVOIDABLE GROUNDWATER PERCOLATION

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

763 RULES AND REGULATIONS

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

768 WATER AND AIR POLLUTION CONTROL

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

772 QUALITY OF WATER

773 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
774 this Contract shall be operated and maintained to enable the United States to deliver Project Water  
775 to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the  
776 Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100  
777 Stat. 3050) or other existing Federal laws. The United States is under no obligation to construct or  
778 furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the  
779

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

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

788 (c) Omitted.

789 WATER ACQUIRED BY THE CONTRACTOR  
790 OTHER THAN FROM THE UNITED STATES

791 17. (a) Water or water rights now owned or hereafter acquired by the Contractor  
792 other than from the United States and Irrigation Water furnished pursuant to the terms of this  
793 Contract may be simultaneously transported through the same distribution facilities of the  
794 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and  
795 non-Project water were constructed without funds made available pursuant to Federal Reclamation  
796 law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands  
797 which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be  
798 established through the certification requirements as specified in the Acreage Limitation Rules and  
799 Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the  
800 Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is  
801 less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities  
802 utilized for commingling Irrigation Water and non-Project water are/were constructed with funds

803 made available pursuant to Federal Reclamation law, the non-Project water will be subject to the  
804 acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United  
805 States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the  
806 Contracting Officer will calculate annually the cost to the Federal Government, including interest of  
807 storing or delivering non-Project water, which for purposes of this Contract shall be determined as  
808 follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable  
809 acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical  
810 result of such quotient times the interest rate determined using Section 202 (3) of the Act of October  
811 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost  
812 land within the Contractor's Service Area that receives non-Project water through Federally  
813 financed or constructed facilities. The incremental fee calculation methodology will continue  
814 during the term of this Contract absent the promulgation of a contrary Reclamation-wide rule,  
815 regulation or policy adopted after the Contractor has been afforded the opportunity to review and  
816 comment on the proposed rule, regulation or policy. If such rule, regulation or policy is adopted it  
817 shall supercede this provision.

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

823 (1) The Contractor may introduce non-Project water into Project facilities  
824 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,

825 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
826 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project  
827 use power policy, if such Project use power policy is applicable, each as amended, modified or  
828 superceded from time to time.

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

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

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

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

847 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be  
848 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
849 any such remaining capacity being made available to non-Project contractors. Other Project  
850 Contractors shall have a second priority to any remaining capacity of facilities declared to be  
851 available by the Contracting Officer for conveyance and transportation of non-Project water prior to  
852 any such remaining capacity being made available to non-Project contractors.

853 OPINIONS AND DETERMINATIONS

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

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

COORDINATION AND COOPERATION

868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889

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

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

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

(1) The Contracting Officer will, at the request of the Contractor, assist in the development of integrated resource management plans for the Contractor. Further, the

890 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to  
891 improve water supply, water quality, and reliability.

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

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

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

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

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

907 CHARGES FOR DELINQUENT PAYMENTS

908 20. (a) The Contractor shall be subject to interest, administrative and penalty charges  
909 on delinquent installments or payments. When a payment is not received by the due date, the  
910 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.  
911 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative  
912 charge to cover additional costs of billing and processing the delinquent payment. When a payment  
913 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six  
914 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the  
915 Contractor shall pay any fees incurred for debt collection services associated with a delinquent

916 payment.

917  
918 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
919 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
920 interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation  
921 Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due  
922 date and remain fixed for the duration of the delinquent period.

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

926  
927

EQUAL OPPORTUNITY

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

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

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

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

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

950 (e) The Contractor will furnish all information and reports required by said  
951 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or  
952 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting

953 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such  
954 rules, regulations, and orders.

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

962  
963 (g) The Contractor will include the provisions of paragraphs (a) through (g) in  
964 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
965 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such  
966 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action  
967 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a  
968 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,  
969 That in the event the Contractor becomes involved in, or is threatened with, litigation with a  
970 subcontractor or vendor as a result of such direction, the Contractor may request the United States  
971 to enter into such litigation to protect the interests of the United States.

972 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

985 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

986 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
987 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the  
988 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,

989 as well as with their respective implementing regulations and guidelines imposed by the U.S.  
990 Department of the Interior and/or Bureau of Reclamation.

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

997 (c) The Contractor makes this agreement in consideration of and for the purpose  
998 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal  
999 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,  
1000 including installment payments after such date on account of arrangements for Federal financial  
1001 assistance which were approved before such date. The Contractor recognizes and agrees that such  
1002 Federal assistance will be extended in reliance on the representations and agreements made in this  
1003 Article, and that the United States reserves the right to seek judicial enforcement thereof.

1004 PRIVACY ACT COMPLIANCE

1005 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)  
1006 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et  
1007 seq.) in maintaining Landholder acreage certification and reporting records, required to be  
1008 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform  
1009 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1010 (b) With respect to the application and administration of the criminal penalty  
1011 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible  
1012 for maintaining the certification and reporting records referenced in (a) above are considered to be  
1013 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1014 (c) The Contracting Officer or a designated representative shall provide the  
1015 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of  
1016 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,  
1017 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information  
1018 contained in the Landholder's certification and reporting records.

1020 (d) The Contracting Officer shall designate a full-time employee of the Bureau of  
1021 Reclamation to be the System Manager who shall be responsible for making decisions on denials  
1022 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is  
1023 authorized to grant requests by individuals for access to their own records.

1024 (e) The Contractor shall forward promptly to the System Manager each proposed  
1025 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR

1026 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
1027 information and records necessary to prepare an appropriate response to the requester. These  
1028 requirements do not apply to individuals seeking access to their own certification and reporting  
1029 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the  
1030 Privacy Act as a basis for the request.

1031 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1032 25. In addition to all other payments to be made by the Contractor pursuant to this  
1033 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and  
1034 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of  
1035 direct cost incurred by the United States for work requested by the Contractor associated with this  
1036 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and  
1037 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in  
1038 writing in advance by the Contractor. This Article shall not apply to costs for routine contract  
1039 administration.

1040 WATER CONSERVATION

1041 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
1042 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
1043 implementing an effective water conservation and efficiency program based on the Contractor's  
1044 water conservation plan that has been determined by the Contracting Officer to meet the  
1045 conservation and efficiency criteria for evaluating water conservation plans established under  
1046 Federal law. The water conservation and efficiency program shall contain definite water  
1047 conservation objectives, appropriate economically feasible water conservation measures, and time  
1048 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract  
1049 shall be contingent upon the Contractor's continued implementation of such water conservation

1050 program. In the event the Contractor's water conservation plan or any revised water conservation  
1051 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been  
1052 determined by the Contracting Officer to meet such criteria, due to circumstances which the  
1053 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be  
1054 made under this Contract so long as the Contractor diligently works with the Contracting Officer to  
1055 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately  
1056 begins implementing its water conservation and efficiency program in accordance with the time  
1057 schedules therein.

1058           (b)     Should the amount of M&I Water delivered pursuant to subdivision (a) of  
1059 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement  
1060 the Best Management Practices identified by the time frames issued by the California Urban Water  
1061 Conservation Council for such M&I Water unless any such practice is determined by the  
1062 Contracting Officer to be inappropriate for the Contractor.

1063           (c)     The Contractor shall submit to the Contracting Officer a report on the status  
1064 of its implementation of the water conservation plan on the reporting dates specified in the then  
1065 existing conservation and efficiency criteria established under Federal law.

1066           (d)     At 5 year intervals, the Contractor shall revise its water conservation plan to  
1067 reflect the then current conservation and efficiency criteria for evaluating water conservation plans  
1068 established under Federal law and submit such revised water management plan to the Contracting  
1069 Officer for review and evaluation. The Contracting Officer will then determine if the water  
1070 conservation plan meets Reclamation's then current conservation and efficiency criteria for  
1071 evaluating water conservation plans established under Federal law.

1072                   (e)     If the Contractor is engaged in direct groundwater recharge, such activity  
1073 shall be described in the Contractor's water conservation plan.

1074                                   EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1075                   27.     Except as specifically provided in Article 17 of this Contract, the provisions of this  
1076 Contract shall not be applicable to or affect non-Project water or water rights now owned or  
1077 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.  
1078 Any such water shall not be considered Project Water under this Contract. In addition, this Contract  
1079 shall not be construed as limiting or curtailing any rights which the Contractor or any water user  
1080 within the Contractor's Service Area acquires or has available under any other contract pursuant to  
1081 Federal Reclamation law.

1082                                   OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1083                   28.     (a)     The O&M of a portion of the Project facilities which serve the Contractor,  
1084 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San  
1085 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement  
1086 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &  
1087 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the  
1088 rights or obligations of the Contractor or the United States hereunder.

1089                   (b)     The Contracting Officer has previously notified the Contractor in writing that  
1090 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the  
1091 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the  
1092 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1093 Authority, or to any successor approved by the Contracting Officer under the terms and conditions

1094 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis  
1095 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or  
1096 assessments of any kind, including any assessment for reserve funds, which the Operating Non-  
1097 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or  
1098 establishes for the O&M of the portion of the Project facilities operated and maintained by the  
1099 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such  
1100 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or  
1101 such successor shall not relieve the Contractor of its obligation to pay directly to the United States  
1102 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the  
1103 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects  
1104 payments on behalf of the United States in accordance with the separate agreement identified in  
1105 subdivision (a) of this Article.

1106 (c) For so long as the O&M of any portion of the Project facilities serving the  
1107 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1108 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1109 Rates for Water Delivered under this Contract representing the cost associated with the activity  
1110 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority  
1111 or its successor.

1112 (d) In the event the O&M of the Project facilities operated and maintained by the  
1113 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the  
1114 United States during the term of this Contract, the Contracting Officer shall so notify the  
1115 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the

1116 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing  
1117 the O&M costs of the portion of such Project facilities which have been re-assumed. The  
1118 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the  
1119 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit  
1120 “B” directly to the United States in compliance with Article 7 of this Contract.

1121 **[insertion of article 28.1 if needed for additional onfe’s. Contractor Specific]**

1122 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1123 29. The expenditure or advance of any money or the performance of any obligation of  
1124 the United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1125 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1126 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1127 or allotted.

1128 BOOKS, RECORDS, AND REPORTS

1129 30. (a) The Contractor shall establish and maintain accounts and other books and  
1130 records pertaining to administration of the terms and conditions of this Contract, including: the  
1131 Contractor's financial transactions, water supply data, and Project land and right-of-way  
1132 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use  
1133 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished  
1134 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may  
1135 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have  
1136 the right during office hours to examine and make copies of the other party's books and records  
1137 relating to matters covered by this Contract.

1138 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1139 records, or other information shall be requested from the Contractor by the Contracting Officer  
1140 unless such books, records, or information are reasonably related to the administration or  
1141 performance of this Contract. Any such request shall allow the Contractor a reasonable period of  
1142 time within which to provide the requested books, records, or information.

1143 (c) At such time as the Contractor provides information to the Contracting

1144 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to  
1145 the Operating Non-Federal Entity.

1146 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1147 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1148 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1149 therein shall be valid until approved in writing by the Contracting Officer.

1150 (b) The assignment of any right or interest in this Contract by either party shall  
1151 not interfere with the rights or obligations of the other party to this Contract absent the written  
1152 concurrence of said other party.

1153 (c) The Contracting Officer shall not unreasonably condition or withhold  
1154 approval of any proposed assignment.

1155 SEVERABILITY

1156 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1157 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1158 association or other form of organization whose primary function is to represent parties to Project  
1159 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1160 enforceability of a provision included in this Contract and said person, entity, association, or  
1161 organization obtains a final court decision holding that such provision is legally invalid or  
1162 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1163 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1164 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1165 within 3 months thereafter promptly agree on the appropriate revision(s). The time periods  
1166 specified above may be extended by mutual agreement of the parties. Pending the completion of

1167 the actions designated above, to the extent it can do so without violating any applicable provisions  
1168 of law, the United States shall continue to make the quantities of Project Water specified in this  
1169 Contract available to the Contractor pursuant to the provisions of this Contract which were not  
1170 found to be legally invalid or unenforceable in the final court decision.

1171 RESOLUTION OF DISPUTES

1172 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1173 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1174 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1175 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1176 notice of the intent to take such action; Provided, That such notice shall not be required where a  
1177 delay in commencing an action would prejudice the interests of the party that intends to file suit.  
1178 During the 30 day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1179 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1180 waive or abridge any right or remedy that the Contractor or the United States may have.

1181 OFFICIALS NOT TO BENEFIT

1182 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1183 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1184 manner as other water users or landowners.

1185 CHANGES IN CONTRACTOR'S SERVICE AREA

1186 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1187 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1188 except upon the Contracting Officer's written consent.

1189 (b) Within 30 days of receipt of a request for such a change, the Contracting  
1190 Officer will notify the Contractor of any additional information required by the Contracting Officer

1191 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1192 timely completion of the process. Such process will analyze whether the proposed change is likely  
1193 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability  
1194 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1195 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1196 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply  
1197 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the  
1198 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this  
1199 Contract.

1200 FEDERAL LAWS

1201 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1202 validity or application in connection with the performance of the terms and conditions of this  
1203 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1204 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1205 regulation to the implementing provision of the Contract is granted by a court of competent  
1206 jurisdiction.

1207 NOTICES

1208 37. Any notice, demand, or request authorized or required by this Contract shall be  
1209 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1210 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and  
1211 on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of  
1212 Directors/City Council of the \_\_\_\_\_ . The designation of the addressee  
1213 or the address may be changed by notice given in the same manner as provided in this Article for  
1214 other notices.



1233

1234

1235

EXHIBIT A

[Map or Description of Service Area]

1236  
1237

**EXHIBIT B**  
[Initial Rates and Charges]

(I:\1113DeltaDivision.wpd)