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Delta Division
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Contract No. 14-06-200-785R

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 PLAIN VIEW WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM DELTA DIVISION

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

20 WITNESSETH, That:

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EXPLANATORY RECITALS

21 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
22 Project, California, for diversion, storage, carriage, distribution and beneficial use, for flood control,
23 irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration,
24 generation and distribution of electric energy, salinity control, navigation and other beneficial uses,
25 of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River
26 and their tributaries; and

27 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
28 facilities, hereinafter collectively referred to as the Delta Division Facilities, which will be used in
29 part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and
30 [Contractor specific issue w/respect to additional facilities]

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

33 [4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-
34 200-785, *as amended, which in Part A thereof*, established terms for the delivery to the Contractor of
35 Project Water from the Delta Division Facilities from May 22, 1953 through February 28, 1994; and

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36 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
37 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
38 interim renewal contract(s) identified as Contract No(s). 14-06-200-785-IR1, 14-06-200-785-IR2, 14-
39 06-200-785-IR3, 14-06-200-785-IR4, 14-06-200-785-IR5, 14-06-200-785-IR6, 14-06-200-785-IR7,
40 14-06-200-785-IR8, 14-06-200-785-IR9, 14-06-200-785-IR10 the current of which is hereinafter
41 referred to as the Existing Contract, which provided for the continued water service to the Contractor
42 from March 1, 1995 through February 29, 2004; and

43 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of interim
44 and existing long-term Project Water service contracts following completion of appropriate
45 environmental documentation, including a programmatic environmental impact statement (PEIS)
46 pursuant to the National Environmental Policy Act analyzing the direct and indirect impacts and
47 benefits of implementing the CVPIA and the potential renewal of all existing contracts for Project
48 Water; and [Contractor specific issue]

49 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
50 environmental review necessary to provide for long-term renewal of the Existing Contract; and

51 [8th] WHEREAS, the Contractor has requested the long-term renewal of *Part A* of the
52 Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the
53 laws of the State of California, for water service from the Project; and

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54 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
55 its obligations under *Part A* of the Existing Contract; and

56 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
57 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
58 beneficial use and/or has demonstrated projected future demand for water use such that the
59 Contractor has the capability¹ and expects to utilize fully for reasonable and beneficial use the
60 quantity of Project Water to be made available to it pursuant to this Contract; [Contractor Specific]

61 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
62 agricultural areas within California for more than fifty (50) years, and is considered by the Contractor
63 as an essential portion of its water supply; and

64 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
65 depend upon the continued availability of water, including water service from the Project; and

66 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
67 to pursue measures to improve water supply, water quality, and reliability of the Project for all
68 Project purposes; and

69 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to

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

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70 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
71 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
72 reasonable balance among competing demands for use of Project Water; and to comply with all
73 applicable environmental statutes, all consistent with the legal obligations of the United States
74 relative to the Project; and

75 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
76 relationship in order to achieve their mutual goals; and

77 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
78 rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the
79 impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

80 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
81 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
82 immediately above; and

83 [16th] WHEREAS, the United States and the Contractor are willing to enter into long-term
84 renewal of *Part A of the existing* contract pursuant to Federal Reclamation law on the terms and
85 conditions set forth below;

86 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein

87 contained, it is hereby mutually agreed by the parties hereto as follows:

88 DEFINITIONS

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

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

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

96 (c) "Condition of Shortage" shall mean a condition respecting the Project during
97 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract
98 Total;²

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

102 (e) "Contract Total" shall mean the maximum amount of Project Water to which
103 the Contractor is entitled under subdivision (a) of Article 3 of this Contract;

2 Contractor specific/ Unit specific issue

104 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
105 permitted to provide Project Water under this Contract as described in Exhibit [A] attached hereto,
106 which may be modified from time to time in accordance with Article 35 of this Contract without
107 amendment of this Contract;³

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

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

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

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

121 (j) "Full Cost Rate" shall mean an annual rate, determined by the Contracting
122 Officer that amortizes the expenditures for construction properly allocable to the Project irrigation or
123 M&I functions, as appropriate, of facilities in service including O&M deficits funded, less payments,
124 over such periods as may be required under Federal Reclamation law, or applicable contract
125 provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from
126 October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs
127 arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections
128 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual O&M and replacement costs
129 consistent with Section 426.2 of the Rules and Regulations for the RRA;⁴

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

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

134 (m) "Irrigation Water" shall mean Water Made Available from the Project that is
135 used primarily in the production of agricultural crops or livestock, including domestic use incidental
136 thereto, and watering of livestock;

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

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

- 137 (n) “Landholder” shall mean a party that directly or indirectly owns or leases
138 nonexempt land, as provided in 43 CFR 426.2;
- 139 (o) “Municipal and Industrial (M&I) Water”⁵ shall mean Project Water, other than
140 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
141 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are
142 kept for personal enjoyment or Water Delivered to landholdings operated in units of less than five (5)
143 acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of
144 Water Delivered to any such landholding is a use described in subdivision (m) of this Article;
145 [Contractor Specific]
- 146 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
147 delivery of M&I Water;
- 148 (q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable
149 care, control, operation, repair, replacement (other than capital replacement), and maintenance of
150 Project facilities;
- 151 (r) “Operating Non-Federal Entity”⁶ shall mean the San Luis & Delta-Mendota
152 Water Authority, a Non-Federal entity which has the obligation to operate and maintain all or a

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

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

153 portion of the Delta Division Facilities pursuant to an agreement with the United States, and which
154 may have funding obligations with respect thereto;

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

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

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

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

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

168 (x) "Secretary" shall mean the Secretary of the Interior, a duly appointed
169 successor, or an authorized representative acting pursuant to any authority of the Secretary and

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170 through any agency of the Department of the Interior;

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

173 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for
174 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;⁷

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

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

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

183 TERM OF CONTRACT

184 2. (a) This Contract shall be effective March 1, 200 , through February 28, 2029. In
185 the event the Contractor wishes to renew this Contract beyond February 28, 2029, the Contractor
186 shall submit a request for renewal in writing to the Contracting Officer no later than two (2) years

⁷ Contractor specific

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187 prior to the date this Contract expires. The renewal of this Contract insofar as it pertains to the
188 furnishing of Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article,
189 and the renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the
190 Contractor shall be governed by subdivision (c) of this Article. [Contractor Specific]

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

196 (2) The conditions which must be met for this Contract to be renewed are:
197 (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting
198 Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria
199 for evaluating such plans established under Federal law; (ii) the Contractor is implementing an
200 effective water conservation and efficiency program based on the Contractor's water conservation
201 plan as required by Article 26 of this Contract; (iii) the Contractor is operating and maintaining all
202 water measuring devices and implementing all water measurement methods as approved by the
203 Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and

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204 beneficially used the Project Water supplies made available to it and, based on projected demands, is
205 reasonably anticipated and expects fully to utilize for reasonable and beneficial use the quantity of
206 Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying
207 with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal
208 ability to deliver Project Water⁸

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

218 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
219 Contractor, shall be renewed for successive periods of up to forty (40) years each, which periods
220 shall be consistent with the then-existing Reclamation-wide policy, under terms and conditions

⁸ Refer to footnote 1 with respect to contractor capability to take delivery of water

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221 mutually agreeable to the parties and consistent with Federal and State law. [Contractor Specific].

222 The Contractor shall be afforded the opportunity to comment to the Contracting Officer on the

223 proposed adoption and application of any revised Reclamation-wide policy applicable to the delivery

224 of M&I Water that would limit the term of any subsequent renewal contract with the Contractor for

225 the furnishing of M&I Water to less than forty (40) years.

226 (d) The Contracting Officer shall make a determination ten (10) years after the

227 date of execution of this Contract, and every five (5) years thereafter during the term of this Contract,

228 of whether a conversion to a contract under subsection 9(d) of the Reclamation Project Act of 1939

229 can be accomplished pursuant to the Act of July 2, 1956 (Public Law 643). Notwithstanding any

230 provision of this Contract, the Contractor reserves and shall have all rights and benefits under Public

231 Law 643. [M&I contractor issue; conversion of M&I to ag] The Contracting Officer anticipates that

232 during the term of this Contract, all authorized Project construction expected to occur will have

233 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs

234 that are properly assignable to the Contractor, and agrees further that, at any time after such

235 allocation is made, and subject to satisfaction of the condition set out in this subdivision, this

236 Contract shall, at the request of the Contractor, be converted to a contract under said subsection 9(d) ,

237 subject to applicable Federal law and under stated terms and conditions mutually agreeable to the

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238 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
239 determination by the Contracting Officer that, account being taken of the amount credited to return
240 by the Contractor as provided for under Federal Reclamation law, the remaining amount of
241 construction costs assignable for ultimate return by the Contractor can probably be repaid to the
242 United States within the term of a contract under said subsection (d). If the remaining amount of
243 costs that are properly assignable to the Contractor cannot be determined during the term of this
244 Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a
245 determination could not be made. Further, the Contracting Officer shall make such a determination
246 as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the
247 conditions set out above, conversion to a contract under said subsection (d). In the event such
248 determination of costs has not been made at a time which allows conversion of this Contract during
249 the term of this Contract or the Contractor has not requested conversion of this Contract within such
250 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)
251 of this Article a provision that carries forth in substantially identical terms the provisions of this
252 subdivision.

253 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

254 3. (a) During each Year, consistent with all applicable State water rights, permits,
255 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this

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256 Contract, the Contracting Officer shall make available for delivery to the Contractor 20,600 acre-feet
257 of Project Water for irrigation and M&I purposes. The quantity of Water Delivered to the Contractor
258 in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
259 Articles 4 and 7 of this Contract.

260 (b) Because the capacity of the Project to deliver Project Water has been
261 constrained in recent years and may be constrained in the future due to many factors including
262 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
263 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
264 Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected
265 that the Contract Total set forth in this Contract will not be available to the Contractor in many years.
266 During the most recent five (5) years, the Recent Historic Average of Water Made Available to the
267 Contractor was 11,501 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and
268 obligations of the parties under any provision of this Contract.

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

271 (d) The Contractor shall make reasonable and beneficial use of all Project Water
272 or other water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect,
273 or in lieu), groundwater banking programs, surface water storage programs, and other similar

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274 programs utilizing Project Water or other water furnished pursuant to this Contract conducted within
275 the Contractor's Service Area which are consistent with applicable State law and result in use
276 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
277 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
278 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
279 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the
280 quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with
281 Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface
282 water storage programs, and other similar programs utilizing Project Water or other water furnished
283 pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon
284 written approval of the Contracting Officer, which approval will be based upon environmental
285 documentation, Project Water rights, and Project operational concerns. The Contracting Officer will
286 address such concerns in regulations, policies, or guidelines.

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287 (e) The Contractor shall comply with requirements applicable to the Contractor in
288 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
289 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
290 the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of
291 ___ years of diversions for irrigation and/or municipal and industrial purposes⁹ of the quantities of
292 water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
293 appropriate baseline for the biological assessments prepared pursuant to the Endangered Species Act,
294 and any other needed environmental review. Nothing herein shall be construed to prevent the
295 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
296 respect to any biological opinion or other environmental documentation referred to in this Article.¹⁰

297 (f) Following the declaration of Water Made Available under Article 4 of this
298 Contract, the Contracting Officer will make a determination whether Project Water, or other water
299 available to the Project, can be made available to the Contractor in addition to the Contract Total
300 under this Article during the Year without adversely impacting other Project Contractors. At the
301 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
302 such a determination. If the Contracting Officer determines that Project Water, or other water

⁹ Contractor Specific Issue. The type of water diverted will be addressed on a contractor specific basis

¹⁰ Contractor Specific Issue. Land use authority

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303 available to the Project, can be made available to the Contractor, the Contracting Officer will
304 announce the availability of such water and shall so notify the Contractor as soon as practical. The
305 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
306 taking such water to determine the most equitable and efficient allocation of such water. If the
307 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
308 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
309 and policies. Subject to existing long-term contractual commitments, water rights and operational
310 constraints, long-term Project Contractors shall have a first right to acquire such water, including
311 Project Water made available pursuant to Section 215 of the RRA.

312 (g) The Contractor may request permission to reschedule for use during the
313 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
314 referred to as "rescheduled water." The Contractor may request permission to use during the current
315 Year a quantity of Project Water which may be made available by the United States to the Contractor
316 during the subsequent Year referred to as "preuse." The Contracting Officer's written approval may
317 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

318 (h) The Contractor's right pursuant to Federal Reclamation law and applicable
319 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the

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320 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
321 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
322 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the
323 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
324 this Contract or applicable provisions of any subsequent renewal contracts.

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

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

336 TIME FOR DELIVERY OF WATER

337 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer shall

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338 announce the Contracting Officer's expected declaration of the Water Made Available. Such
339 declaration of Project operations will be expressed in terms of both Water Made Available and the
340 Recent Historic Average and will be updated monthly, and more frequently if necessary, based on
341 then-current operational and hydrologic conditions and a new declaration with changes, if any, to the
342 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
343 operations and the basis of the estimate, with relevant supporting information, upon the written
344 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
345 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

346 (b)¹¹ On or before each March 1 and at such other times as necessary, the Contractor
347 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
348 showing the monthly quantities of Project Water to be delivered by the United States to the
349 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
350 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
351 for the Year commencing on such March 1.

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

¹¹ Contractor Specific with respect to binding agreement contractors

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

360 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

365 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
366 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
367 the Delta-Mendota Canal¹² to deliver Project Water to the Contractor at specific turnouts established
368 pursuant to subdivision (a) of this Article.

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

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372 approved in advance by the Contracting Officer.

373 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
374 measured and recorded with equipment furnished, installed, operated, and maintained by the United
375 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting
376 Officer (hereafter “other appropriate entity”) at the point or points of delivery established pursuant to
377 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
378 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal
379 Entity, the accuracy of such measurements and shall take any necessary steps to adjust any errors
380 appearing therein. For any period of time when accurate measurements have not been made, the
381 Contracting Officer shall consult with the Contractor and the responsible Operating Non-Federal
382 Entity prior to making a final determination of the quantity delivered for that period of time.

383 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
384 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
385 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
386 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
387 employees, agents, and assigns on account of damage or claim of any nature whatsoever for which
388 there is legal responsibility, including property damage, personal injury, or death arising out of or

¹² Contractor specific/Unit specific issue with respect to including other appropriate facilities

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389 connected with the control, carriage, handling, use, disposal, or distribution of such Project Water
390 beyond such delivery points, except for any damage or claim arising out of: (i) acts of omissions of
391 the Contracting Officer or any of its officers, employees, agents, or assigns, including any Operating
392 Non-Federal Entity, with the intend of creating the situation resulting in any damage or claim; (ii)
393 willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns,
394 including any responsible Operating Non-Federal Entity; (iii) negligence of the Contracting Officer
395 or any of its officers, employees, agents, or assigns including any responsible Operating Non-Federal
396 Entity; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by
397 the United States or responsible Operating Non-Federal Entity that owned or operated the
398 malfunctioning facility(ies) from which the damage claim arose.

399 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA¹³

400 6. (a) The Contractor has established a measuring program satisfactory to the
401 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
402 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
403 water delivered for M&I purposes is measured at each M&I service connection. The water
404 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
405 the Contracting Officer. The Contractor shall be responsible for installing, operating, and

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406 maintaining and repairing all such measuring devices and implementing all such water measuring
407 methods at no cost to the United States. The Contractor shall use the information obtained from such
408 water measuring devices or water measuring methods to ensure its proper management of the water,
409 to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered
410 for M&I purposes by customer class as defined in the Contractor's water conservation plan provided
411 for in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
412 from establishing and collecting any charges, assessments, or other revenues authorized by California
413 law. The Contractor shall include a summary of all its annual surface water deliveries in the annual
414 report described in subdivision (c) of Article 26.

415 (b) To the extent the information has not otherwise been provided, upon execution
416 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
417 the measurement devices or water measuring methods being used or to be used to implement
418 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
419 connections or alternative measurement programs approved by the Contracting Officer, at which such
420 measurement devices or water measuring methods are being used, and, if applicable, identifying the
421 locations at which such devices and/or methods are not yet being used including a time schedule for
422 implementation of such locations. The Contracting Officer shall advise the Contractor in writing

13 Contractor specific issue which may require additional language

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423 within sixty (60) days as to the adequacy of, and necessary modifications, if any, of the measuring
424 devices or water measuring methods identified in the Contractor's report and if the Contracting
425 Officers does not respond in such time they shall be deemed adequate. If the Contracting Officer
426 notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within
427 sixty (60) days following the Contracting Officer's response, negotiate in good faith the earliest
428 practicable date by which the Contractor shall modify said measuring devices and/or measuring
429 methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this
430 Article.

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

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

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

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440 RATES AND METHOD OF PAYMENT FOR WATER

441 7. (a) The Contractor shall pay the United States as provided in this Article for all
442 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
443 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
444 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
445 modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal
446 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
447 provisions of this Contract. Payment shall be made by cash transaction, wire, or any other mechanism
448 as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges,
449 and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set
450 forth in Exhibit "B", as may be revised annually.

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

453 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
454 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
455 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
456 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review
457 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting

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458 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
459 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
460 notification shall revise Exhibit "B."

461 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
462 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project
463 Water for the following Year and the computations and cost allocations upon which those Rates are
464 based. The Contractor shall be allowed not less than two (2) months to review and comment on such
465 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
466 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for
467 the upcoming Year, and such notification shall revise Exhibit [B].

468 (c) At the time the Contractor submits the initial schedule for the delivery of
469 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
470 shall make an advance payment to the United States equal to the total amount payable pursuant to the
471 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
472 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
473 end of the first month and before the end of each calendar month thereafter, the Contractor shall
474 make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article,
475 for the Water Scheduled to be delivered pursuant to this Contract during the second month

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476 immediately following. Adjustments between advance payments for Water Scheduled and payments
477 at Rates due for Water Delivered shall be made before the end of the following month; Provided,
478 That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
479 increases the amount of Water Delivered pursuant to this Contract during any month shall be
480 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
481 Water is not delivered to the Contractor in advance of such payment. In any month in which the
482 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water
483 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the
484 Contractor unless and until an advance payment at the Rates then in effect for such additional Project
485 Water is made. Final adjustment between the advance payments for the Water Scheduled and
486 payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be
487 made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days
488 after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if
489 such water is not delivered by the last day of February.

490 (d) The Contractor shall also make a payment in addition to the Rate(s) in
491 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
492 appropriate Tiered Pricing Component then in effect, before the end of the month following the
493 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered

494 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
495 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
496 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no Operating
497 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
498 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.

499 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
500 payments due to the United States for Charges for the next month. Any amount to be paid for past
501 due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20
502 of this Contract.

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

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

511 (g) All revenues received by the United States from the Contractor relating to the

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512 delivery of Project Water or the delivery of non-Project water through Project facilities shall be
513 allocated and applied in accordance with Federal Reclamation law and the associated rules or
514 regulations, and the then current Project ratesetting policies for M&I Water or Irrigation Water.

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

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

530 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
531 eighty (80%) percent of the Contract Total, then before the end of the month following the month of
532 delivery the Contractor shall make an additional payment to the United States equal to the applicable
533 Tiered Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in
534 excess of eighty (80%) percent of the Contract Total, but less than or equal to ninety (90%) percent
535 of the Contract Total, shall equal the one-half of the difference between the Rate established under
536 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
537 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
538 exceeds ninety (90%) percent of the Contract Total shall equal the difference between (i) the Rate
539 established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I
540 Full Cost Water Rate, whichever is applicable.

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

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

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

559 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
560 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted
561 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water
562 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy.
563 If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring
564 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
565 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges

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566 unadjusted for inability to pay.

567 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
568 Officer is authorized to adjust determinations of ability to pay every five (5) years. The Contractor
569 asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have
570 accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into
571 this Contract, the Contractor does not waive any legal rights or remedies that it may have with
572 respect to such disputed issues. Notwithstanding the execution of this Contract and payments made
573 hereunder, the Contractor may challenge in the appropriate administrative or judicial forums: (1) the
574 existence, the computation, or imposition of any deficit charges accruing during the term of the
575 Existing Contract; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit
576 charges or interest in the Rates; (4) the application by the United States of payments made by the
577 Contractor under its Existing Contract; and (5) the application of such payments in the Rates. The
578 Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or
579 judicial ruling in favor of any other Project M&I contractor on any of these issues, and credits for
580 payments heretofore made, provided that the basis for such ruling is applicable to the Contractor.

581 [Contractor Specific]

582 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS¹⁴

| 14 Contractor specific.

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583 8. The Contractor and the Contracting Officer concur that, as of the effective date of this
584 Contract, the Contractor has no non-interest bearing operation and maintenance deficits and shall
585 have no further liability therefore.

586 [Or,]

587 The Contractor and the Contracting Officer have entered into a written agreement
588 specifying a mutually acceptable mechanism through which the Contractor will retire its outstanding
589 non-interest bearing Operation and Maintenance deficits.

SALES, TRANSFERS, OR EXCHANGES OF WATER

590 9. (a) The right to receive Project Water provided for in this Contract may be sold,
591 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
592 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
593 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
594 Contract may take place without the prior written approval of the Contracting Officer, except as
595 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
596 approved absent all appropriate environmental documentation, including but not limited to,
597 documents prepared pursuant to the National Environmental Policy Act and the Endangered Species
598 Act. Such environmental documentation should include, as appropriate, an analysis of groundwater

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599 impacts and economic and social effects, including environmental justice, of the proposed water
600 transfers on both the transferor and transferee.

601 (b) In order to facilitate efficient water management by means of water transfers of
602 the type historically carried out among Project Contractors located within the same geographical area
603 and to allow the Contractor to participate in an accelerated water transfer program during the term of
604 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
605 documentation, required by Federal law, including but not limited to, the National Environmental
606 Policy Act and the Endangered Species Act analyzing annual transfers within such geographical
607 areas and the Contracting Officer shall determine whether such transfers comply with applicable law.
608 Following the completion of the environmental documentation, such transfers addressed in such
609 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
610 require prior written approval by the Contracting Officer. Such environmental documentation and
611 the Contracting Officer's compliance determination shall be reviewed every five (5) years and
612 updated, as necessary, prior to the expiration of the then existing five (5) year period. All subsequent
613 environmental documentation shall include an alternative to evaluate not less than the quantity of
614 Project Water historically transferred within the same geographical area.

615 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
616 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for

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617 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface
618 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
619 established cropland, wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur
620 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
621 through existing facilities with no new construction or modifications to facilities and be between
622 existing Project Contractors and/or the Contractor and the United States, Department of the Interior;
623 and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed
624 for protection of the environment and Indian Trust Assets, as defined under Federal law.

625 APPLICATION OF PAYMENTS AND ADJUSTMENTS

626 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
627 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
628 the Contractor arising out of this Contract then due and payable. Overpayments of more than one
629 thousand dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
630 amount of such overpayment at the option of the Contractor, may be credited against amounts to
631 become due to the United States by the Contractor. With respect to overpayment, such refund or
632 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
633 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of
634 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as

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635 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
636 finalized the accounts for the Year in which the overpayment was made.

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

TEMPORARY REDUCTIONS--RETURN FLOWS

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

647 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
648 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
649 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
650 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far
651 as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due

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652 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
653 which case no notice need be given; Provided, That the United States shall use its best efforts to
654 avoid any discontinuance or reduction in such service. Upon resumption of service after such
655 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
656 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
657 such discontinuance or reduction.

658 (c) The United States reserves the right to all seepage and return flow water
659 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
660 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
661 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
662 Contract within the Contractor's Service Area¹⁵ by the Contractor or those claiming by, through, or
663 under the Contractor.

¹⁵Refer to footnote 3

664

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

675 (c) In any Year in which there may occur a Condition of Shortage for any of the
676 reasons specified in subdivision (b) of this Article, the Contracting Officer shall apportion Irrigation
677 Water among the Contractor and others entitled to Irrigation Water from Delta Division Facilities
678 under long-term water service or repayment contracts as follows:

679 (1) A determination shall be made of the total quantity of Irrigation Water
680 estimated to be scheduled or actually scheduled under subdivision (b) of Article 3 of this Contract
681 and under all other long-term water service or repayment contracts then in force for the delivery of

682 Irrigation Water by the United States from Delta Division Facilities during the relevant Year, the
683 quantity so determined being hereinafter referred to as the contractual commitments;

684 (2) A determination shall be made of the total quantity of Irrigation Water
685 that is available for meeting the contractual commitments; the quantity so determined being
686 hereinafter referred to as the available supply;

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

691 (4) The available supply shall be multiplied by the Contractor's
692 proportionate entitlement and the result shall be the quantity of Irrigation Water required to be
693 delivered by the United States to the Contractor for the relevant Year, but in no event shall such
694 amount exceed the Contract Total. In the event the Contracting Officer subsequently determines that
695 the Contracting Officer can increase the available supply for delivery from Delta Division Facilities
696 to long-term water service and repayment Contractors during the relevant Year, such additional
697 Irrigation Water shall be apportioned consistent with subparagraphs (1) through (4), inclusive.

698 (d) Project Water furnished under this long-term renewal contract for M&I
699 purposes will be allocated in accordance with the then existing Project M&I Water Shortage Policy.

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700 Such policy shall be [promulgated?] amended, modified, or superseded only through a public notice
701 and comment procedure. [Contractor Specific]

702 (e) By entering into this Contract, the Contractor does not waive any legal rights
703 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
704 (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy adopted after the
705 effective date of this Contract was promulgated; (ii) the substance of such a policy; or (iii) the
706 applicability of such a policy. By agreeing to the foregoing, the Contracting Officer does not waive
707 any legal defenses or remedies that it may then have to assert in such a proceeding.

708 UNAVOIDABLE GROUNDWATER PERCOLATION

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

713 RULES AND REGULATIONS

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

718
719 WATER AND AIR POLLUTION CONTROL

720
721 15. The Contractor, in carrying out this Contract, shall comply with all applicable water

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722 and air pollution laws and regulations of the United States and the State of California, and shall
723 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

724

725

QUALITY OF WATER¹⁶

726

727

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to

728

this Contract shall be operated and maintained to enable the United States to deliver Project Water to

729

the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act

730

of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.

731

3050) or other existing Federal laws. The United States is under no obligation to construct or furnish

732

water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor

733

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

734

Contractor pursuant to this Contract.

¹⁶ Contractor specific.

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

742 WATER ACQUIRED BY THE CONTRACTOR
743 OTHER THAN FROM THE UNITED STATES

744 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
745 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
746 be simultaneously transported through the same distribution facilities of the Contractor subject to the
747 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
748 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
749 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
750 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
751 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
752 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
753 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity

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754 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
755 Water and non-Project water are/were constructed with funds made available pursuant to Federal
756 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
757 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
758 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
759 cost to the Federal Government, including interest of storing or delivering non-Project water, which
760 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
761 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
762 The incremental fee per acre is the mathematical result of such quotient times the interest rate
763 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
764 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
765 receives non-Project water through Federally financed or constructed facilities. The incremental fee
766 calculation methodology will continue during the term of this Contract absent the promulgation of a
767 contrary Reclamation-wide rule, regulation or policy adopted after the Contractor has been afforded
768 the opportunity to review and comment on the proposed rule, regulation or policy. If such rule,
769 regulation or policy is adopted it shall supersede this provision.

770 (b) Water or water rights now owned or hereafter acquired by the Contractor,
771 other than from the United States may be stored, conveyed and/or diverted through Project facilities,

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772 subject to the completion of appropriate environmental documentation, with the approval of the
773 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
774 necessary, consistent with the following provisions:

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

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

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788 (3) Neither the United States nor the Operating Non-Federal Entity shall be
789 responsible for control, care or distribution of the non-project water before it is introduced into or
790 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
791 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
792 agents, and employees, from any claim for damage to persons or property, direct or indirect, arising
793 out of or relating to the Contractor's or its officer's employee's agent's or assigns, act of (i)
794 extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
795 into Project facilities.

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

799 (5) After Project purposes are met, as determined by the Contracting
800 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of
801 the facilities declared to be available by the Contracting Officer for conveyance and transportation of
802 non-project water prior to any such remaining capacity being made available to non-Project
803 contractors.

804 OPINIONS AND DETERMINATIONS

805 18. (a) Where the terms of this Contract provide for actions to be based upon the

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806 opinion or determination of either party to this Contract, said terms shall not be construed as
807 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
808 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
809 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
810 unreasonable opinion or determination. Each opinion or determination by either party shall be
811 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
812 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
813 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

819 COORDINATION AND COOPERATION

820 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
821 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
822 affected Project Contractors, in order to improve the operation and management of the Project. The
823 communication, coordination, and cooperation regarding operations and management shall include,

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824 but not be limited to, any action which will or may materially affect the quantity or quality of Project
825 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
826 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
827 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
828 authority for all actions, opinions, and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

857

CHARGES FOR DELINQUENT PAYMENTS

858 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
859 on delinquent installments or payments. When a payment is not received by the due date, the
860 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
861 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
862 charge to cover additional costs of billing and processing the delinquent payment. When a payment
863 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
864 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
865 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
866 payment.

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

872
873 (c) When a partial payment on a delinquent account is received, the amount
874 received shall be applied, first to the penalty, second to the administrative charges, third to the
875 accrued interest, and finally to the overdue payment.

876

EQUAL OPPORTUNITY

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

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

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

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

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

899
900 (e) The Contractor will furnish all information and reports required by said
901 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
902 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
903 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
904 regulations, and orders.

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

912 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
913 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
914 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
915 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
916 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
917 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That
918 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor

919 or vendor as a result of such direction, the Contractor may request the United States to enter into such
920 litigation to protect the interests of the United States.

921

922

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

927 (b) The payment of charges becoming due hereunder is a condition precedent to
928 receiving benefits under this Contract. The United States shall not make water available to the
929 Contractor through Project facilities during any period in which the Contractor may be in arrears in
930 the advance payment of water Rates due the United States. The Contractor shall not furnish water
931 made available pursuant to this Contract for lands or parties which are in arrears in the advance
932 payment of water Rates levied or established by the Contractor.

933

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

936

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

PRIVACY ACT COMPLIANCE

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

960
961 (b) With respect to the application and administration of the criminal penalty
962 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
963 for maintaining the certification and reporting records referenced in (a) above are considered to be
964 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

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

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

974 (e) The Contractor shall forward promptly to the System Manager each proposed
975 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
976 2.71; notify the requester accordingly of such referral; and provide the System Manager with
977 information and records necessary to prepare an appropriate response to the requester. These

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978 requirements do not apply to individuals seeking access to their own certification and reporting forms
979 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
980 Act as a basis for the request.

981

982 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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984

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

985

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

986

and detailed statement submitted by the Contracting Officer to the Contractor for such specific items

987

of direct cost incurred by the United States for work requested by the Contractor associated with this

988

Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and

989

procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in

990

writing in advance by the Contractor. This Article shall not apply to costs for routine contract

991

administration.

992

WATER CONSERVATION

993

26. (a) Prior to the delivery of water provided from or conveyed through Federally

994

constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be

995

implementing an effective water conservation and efficiency program based on the Contractor's water

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conservation plan that has been determined by the Contracting Officer to meet the conservation and

997

efficiency criteria for evaluating water conservation plans established under Federal law. The water

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conservation and efficiency program shall contain definite water conservation objectives, appropriate

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999 economically feasible water conservation measures, and time schedules for meeting those objectives.
1000 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1001 continued implementation of such water conservation program. In the event the Contractor's water
1002 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1003 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1004 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1005 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1006 works with the Contracting Officer to obtain such determination at the earliest practicable date, and
1007 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1008 program in accordance with the time schedules therein.

1009 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1010 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the Contractor
1011 shall implement the Best Management Practices identified by the time frames issued by the
1012 California Urban Water Conservation Council for such M&I Water unless any such practice is
1013 determined by the Contracting Officer to be inappropriate for the Contractor.

1014 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1015 its implementation of the water conservation plan on the reporting dates specified in the then existing
1016 conservation and efficiency criteria established under Federal law.

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1017 (d) At five (5) year intervals, the Contractor shall revise its water conservation
1018 plan to reflect the then current conservation and efficiency criteria for evaluating water conservation
1019 plans established under Federal law and submit such revised water management plan to the
1020 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1021 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1022 evaluating water conservation plans established under Federal law.

1023 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1024 be described in the Contractor's water conservation plan.

1025 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1026 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1027 Contract shall not be applicable to or affect non-project water or water rights now owned or hereafter
1028 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1029 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1030 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1031 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1032 Reclamation law.

1033 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY¹⁷

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

1034 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1035 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1036 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1037 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1038 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1039 (b) The Contracting Officer has previously notified the Contractor in writing that
1040 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1041 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1042 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under
1043 the terms and conditions of the separate agreement between the United States and the Operating Non-
1044 Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any
1045 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1046 successor determines, sets, or establishes for the Operation and Maintenance of the portion of the
1047 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor.
1048 Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1049 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project
1050 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal

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1051 Entity collects payments on behalf of the United States in accordance with the separate agreement
1052 identified in subdivision (a) of this Article.

1053 (c) For so long as the Operation and Maintenance of any portion of the Project
1054 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1055 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1056 this Contract representing the cost associated with the activity being performed by the Operating
1057 Non-Federal Entity or its successor.

1058 (d) In the event the Operation and Maintenance of the Project facilities operated
1059 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the
1060 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1061 the Contractor a revised Exhibit [B] which shall include the portion of the Rates to be paid by the
1062 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of
1063 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in
1064 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1065 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit [B] directly to the United
1066 States in compliance with Article 7 of this Contract.

1067 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1068 29. The expenditure or advance of any money or the performance of any obligation of the
1069 United States under this Contract shall be contingent upon appropriation or allotment of funds.

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1070 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1071 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1072 or allotted.

1073 BOOKS, RECORDS, AND REPORTS

1074 30. (a) The Contractor shall establish and maintain accounts and other books and
1075 records pertaining to administration of the terms and conditions of this Contract, including: the
1076 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1077 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1078 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1079 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1080 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1081 during office hours to examine and make copies of the other party's books and records relating to
1082 matters covered by this Contract.

1083 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1084 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1085 such books, records, or information are reasonably related to the administration or performance of
1086 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1087 to provide the requested books, records, or information.

1088 (c) At such time as the Contractor provides information to the Contracting Officer
1089 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1090 Operating Non-Federal Entity.

1091 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1092 31. (a) The provisions of this Contract shall apply to and bind the successors and
1093 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest

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1094 therein shall be valid until approved in writing by the Contracting Officer.

1095 (b) The assignment of any right or interest in this Contract by either party shall not
1096 interfere with the rights or obligations of the other party to this Contract absent the written
1097 concurrence of said other party.

1098 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1099 of any proposed assignment.

1100 SEVERABILITY

1101 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1102 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1103 association or other form of organization whose primary function is to represent parties to Project
1104 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1105 enforceability of a provision included in this Contract and said person, entity, association, or
1106 organization obtains a final court decision holding that such provision is legally invalid or
1107 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1108 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such
1109 final court decision identify by mutual agreement the provisions in this Contract which must be
1110 revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The
1111 time periods specified above may be extended by mutual agreement of the parties. Pending the

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1112 completion of the actions designated above, to the extent it can do so without violating any
1113 applicable provisions of law, the United States shall continue to make the quantities of Project Water
1114 specified in this Contract available to the Contractor pursuant to the provisions of this Contract which
1115 were not found to be legally invalid or unenforceable in the final court decision.

1116 RESOLUTION OF DISPUTES

1117 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1118 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1119 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1120 any matter to the Department of Justice, the party shall provide to the other party thirty (30) days'
1121 written notice of the intent to take such action; Provided, That such notice shall not be required where
1122 a delay in commencing an action would prejudice the interests of the party that intends to file suit.
1123 During the thirty (30) day notice period, the Contractor and the Contracting Officer shall meet and
1124 confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is
1125 intended to waive or abridge any right or remedy that the Contractor or the United States may have.

1126 OFFICIALS NOT TO BENEFIT

1127 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1128 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1129 manner as other water users or landowners.

1130
1131 CHANGES IN CONTRACTOR'S SERVICE AREA

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1151 regulation to the implementing of the Contract is granted by a court of competent jurisdiction.

1152 NOTICES

1153 37. Any notice, demand, or request authorized or required by this Contract shall be
1154 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1155 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on
1156 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of
1157 the Plain View Water District, 6715 South Tracy Boulevard, Tracy CA 95376. The designation of
1158 the addressee or the address may be changed by notice given in the same manner as provided in this
1159 Article for other notices.

1160

1161 CONFIRMATION OF CONTRACT¹⁸

1162 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1163 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1164 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1165 validation proceedings, and all pertinent supporting records of the court approving and confirming
1166 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

¹⁸ Contractor Specific

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1167 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1168 year first above written.

1169 THE UNITED STATES OF AMERICA

1170 By: _____
1171 Regional Director, Mid-Pacific Region
1172 Bureau of Reclamation

1173 PLAIN VIEW WATER DISTRICT
1174

1175 By: _____
1176 President of the Board of Directors

1177 Attest:

1178 By: _____
1179 Secretary of the Board of Directors

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EXHIBIT A

[Map or Description of Service Area]

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EXHIBIT B
[Initial Rates and Charges]