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Delta Division
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Contract Number 14-06-200-1072-LTR1

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 WEST STANISLAUS IRRIGATION 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 WEST STANISLAUS IRRIGATION DISTRICT,
18 hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,
19 existing, and acting pursuant to the laws thereof, with its principal place of business in Westley,
20 California;

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

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

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

33 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
34 to California law for operation of the Project; and

35 [4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-
36 200-1072, as amended, hereinafter referred to as the Existing Contract, (for binding agreement
37 contractors) which established terms for the delivery to the Contractor of Project Water from the
38 Delta Division Facilities from February 14 1953 through February 28, 1994; and

39 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection

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40 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
41 interim renewal contract(s) identified as Contract No(s). 14-06-200-1072A-IR1, 14-06-200-1072-
42 IR1, 14-06-200-1072-IR2, 14-06-200-1072-IR3, 14-06-200-1072-IR4, 14-06-200-1072-IR5, 14-06-
43 200-1072-IR6, 14-06-200-1072-IR7, 14-06-200-1072-IR8, and 14-06-200-1072-IR9 the current of
44 which is hereinafter referred to as the Existing Contract, which provided for the continued water
45 service to the Contractor from March 1, 1995 through February 29, 2004; and

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

52 [6.1] Contractor Specific Issue recognizing partial assignment of the contract to a third
53 party or the acquisition of Project Water through assignment(s), if such acquired water is being
54 covered under this Contract

55 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
56 environmental review necessary to provide for long-term renewal of the Existing Contract; and

57 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing

58 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
59 State of California, for water service from the Project; and

60 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
61 its obligations under the Existing Contract; and

62 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
63 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
64 beneficial use and/or has demonstrated projected future demand for water use such that the
65 Contractor has the capability¹ and expects to utilize fully for reasonable and beneficial use the
66 quantity of Project Water to be made available to it pursuant to this Contract; and [Contractor
67 Specific]

68 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
69 agricultural areas within California for more than fifty (50) years, and is considered by the Contractor
70 as an essential portion of its water supply; and

71 [12th] WHEREAS, the economies of regions within the Project, including the Contractor[s],
72 depend upon the continued availability of water, including water service from the Project; and

73 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships

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

74 to pursue measures to improve water supply, water quality, and reliability of the Project for all
75 Project purposes; and

76 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
77 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
78 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
79 reasonable balance among competing demands for use of Project Water; and to comply with all
80 applicable environmental statutes, all consistent with the legal obligations of the United States
81 relative to the Project; and

82 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
83 relationship in order to achieve their mutual goals; and

84 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
85 rescheduling and conveyance of non-Project Water under this Contract as tools to minimize the
86 impacts of Conditions of Shortage and to maximize the beneficial use of Project Water; and

87 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
88 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
89 immediately above; and

90 [16th] WHEREAS, the United States and the Contractor are willing to enter into this long-
91 term renewal Contract pursuant to Federal Reclamation law on the terms and conditions set forth

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92 below;

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

95 DEFINITIONS

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

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

100 (b) "Charges" shall mean the payments required by Federal Reclamation law in
101 addition to the Rates and Tiered Pricing Components specified in this Contract as determined
102 annually by the Contracting Officer pursuant to this Contract;

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

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

2 Contractor specific/ Unit specific issue

109 (e) [Contract Total] shall mean the maximum amount of water to which the
110 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

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

115 (g) [CVPIA] shall mean the Central Valley Project Improvement Act, Title
116 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

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

122 (h) [Eligible Lands] shall mean all lands to which irrigation water may be
123 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96
124 Stat. 1263), as amended, hereinafter referred to as RRA;

125 (i) [Excess Lands] shall mean all lands in excess of the limitations contained in

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

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126 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal

127 Reclamation law;

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

138 (k) **“Ineligible Lands” shall mean all lands to which irrigation water may not be**
139 **delivered in accordance with Section 204 of the RRA;**

140 (l) **“Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to**
141 **the delivery of Irrigation Water;**

142 (m) **“Irrigation Water” shall mean water made available from the Project that is**
143 **used primarily in the production of agricultural crops or livestock, including domestic use incidental**

144 thereto, and watering of livestock;

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

147 (o) Omitted;

148 (p) Omitted.;

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

152 (r) "Operating Non-Federal Entity"⁴ shall mean the San Luis & Delta-Mendota
153 Water Authority, a Non-Federal entity which has the obligation to operate and maintain all or a
154 portion of the Delta Division Facilities pursuant to an agreement with the United States, and which
155 may have funding obligations with respect thereto;

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

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

160 (u) "Project Water" shall mean all water that is developed, diverted, stored, or

⁴ Contractor specific issue with respect to additional operating non-federal entities

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161 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
162 with the terms and conditions of water rights acquired pursuant to California law;

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

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

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

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

174 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted
175 for use by the Contractor at the point(s) of delivery approved by the Contracting Officer;⁵

176 (aa) "Water Made Available" shall mean the estimated amount of Project Water
177 that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,

⁵ Contractor specific

178 pursuant to subdivision (a) of Article 4 of this Contract;

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

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

184 TERM OF CONTRACT

185 2. (a) This Contract shall be effective March 1, 200_, through February 28, 202_. In
186 the event the Contractor wishes to renew this Contract beyond February 28, _____, the Contractor
187 shall submit a request for renewal in writing to the Contracting Officer no later than two (2) years
188 prior to the date this Contract expires. The renewal of this Contract insofar as it pertains to the
189 furnishing of Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article,
190 and the renewal of this Contract. [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.

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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

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 Water⁶.

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

⁶ Refer to footnote 1 with respect to contractor capability to take delivery of water

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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) Omitted.

219 (d) **The Contracting Officer shall make a determination 10 years after the**
220 **date of execution of this Contract, and every 5 years thereafter during the term of this**
221 **Contract, of whether a conversion to a contract under said subsection 9(d) can be accomplished**
222 **pursuant to the Act of July 2, 1956 (Public Law 643). ~~The Contracting Officer shall also make a~~**
223 **~~determination ten years after the date of execution of this Contract, and every five years~~**
224 **~~thereafter during the term of this Contract, of whether a conversion to a contract under~~**
225 **~~subsection 9 (e)(1) of the Reclamation Project Act of 1939 can be accomplished.~~**

226 **Notwithstanding any provision of this Contract, the Contractor reserves and shall have all**
227 **rights and benefits under Public Law 643. The Contracting Officer anticipates that during the**
228 **term of this contract, all authorized Project construction expected to occur will have occurred,**
229 **and on that basis the Contracting Officer agrees upon such completion to allocate all costs that**
230 **are properly assignable to the Contractor, and agrees further that, at any time after such**
231 **allocation is made, and subject to satisfaction of the condition set out in this subdivision, this**
232 **Contract shall, at the request of the Contractor, be converted to a contract under subsection**

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233 **9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to**
234 **applicable Federal law and under stated terms and conditions mutually agreeable to the**
235 **Contractor and the Contracting Officer. A condition for such conversion to occur shall be a**
236 **determination by the Contracting Officer that, account being taken of the amount credited to**
237 **return by the Contractor as provided for under Reclamation law, the remaining amount of**
238 **construction costs assignable for ultimate return by the Contractor can probably be repaid to**
239 **the United States within the term of a contract under said subsection 9(d) or 9(c)(1), whichever**
240 **is applicable. If the remaining amount of costs that are properly assignable to the Contractor**
241 **cannot be determined during the term of this Contract, the Contracting Officer shall notify the**
242 **Contractor, and provide the reason(s) why such a determination could not be made. Further,**
243 **the Contracting Officer shall make such a determination as soon thereafter as possible so as to**
244 **permit, upon request of the Contractor and satisfaction of the condition set out above,**
245 **conversion to a contract under said subsection 9(d) or 9(c)(1), whichever is applicable. In the**
246 **event such determination of costs has not been made at a time which allows conversion of this**
247 **Contract during the term of this Contract or the Contractor has not requested conversion of**
248 **this Contract within such term, the parties shall incorporate in any subsequent renewal**
249 **contract as described in subdivision (b) of this Article a provision that carries forth in**
250 **substantially identical terms the provisions of this subdivision.**

251
252 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

253 3. (a) During each Year, consistent with all applicable State water rights, permits,

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254 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
255 Contract, the Contracting Officer shall make available for delivery to the Contractor **50,000** acre-feet
256 of Project Water for irrigation purposes. The quantity of Water Delivered to the Contractor in
257 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
258 Articles 4 and 7 of this Contract.

259 (b) Because the capacity of the Project to deliver Project Water has been
260 constrained in recent years and may be constrained in the future due to many factors including
261 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
262 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
263 Year is uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected
264 that the Contract Total set forth in this Contract will not be available to the Contractor in many
265 years. During the most recent five (5) years, the Recent Historic Average of Water Made Available
266 to the Contractor was **36,100** acre-feet. Nothing in subdivision (b) of this Article shall affect the
267 rights and obligations of the parties under any provision of this Contract.

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

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

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

286 (e) The Contractor shall comply with requirements applicable to the Contractor in
287 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
288 undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as amended, that are within
289 the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of

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290 | **40**⁷ years of diversions for irrigation and/or municipal and industrial purposes⁸ of the quantities of
291 | water provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
292 | appropriate baseline for the biological assessments prepared pursuant to the Endangered Species Act,
293 | and any other needed environmental review. Nothing herein shall be construed to prevent the
294 | Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
295 | respect to any biological opinion or other environmental documentation referred to in this Article.⁹

296 | (f) Following the declaration of Water Made Available under Article 4 of this
297 | Contract, the Contracting Officer will make a determination whether Project Water, or other water
298 | available to the Project, can be made available to the Contractor in addition to the Contract Total
299 | under this Article during the Year without adversely impacting other Project Contractors. At the
300 | request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
301 | such a determination. If the Contracting Officer determines that Project Water, or other water
302 | available to the Project, can be made available to the Contractor, the Contracting Officer will
303 | announce the availability of such water and shall so notify the Contractor as soon as practical. The
304 | Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
305 | taking such water to determine the most equitable and efficient allocation of such water. If the

7 Contractor took initial diversion of irrigation water March 1, 1954.

⁸ Contractor Specific Issue. The type of water diverted will be addressed on a contractor specific basis

⁹ Contractor Specific Issue. Land use authority

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306 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
307 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
308 and policies. Subject to existing long-term contractual commitments, water rights and operational
309 constraints, long-term Project Contractors shall have a first right to acquire such water, including
310 Project Water made available pursuant to Section 215 of the RRA

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

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

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323 this Contract or applicable provisions of any subsequent renewal contracts.

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

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

335 TIME FOR DELIVERY OF WATER

336 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
337 announce the Contracting Officer's expected declaration of the Water Made Available. Such
338 declaration of Project operations will be expressed in terms of both Water Made Available and the
339 Recent Historic Average and will be updated monthly, and more frequently if necessary, based on
340 then-current operational and hydrologic conditions and a new declaration with changes, if any, to the

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341 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
342 operations and the basis of the estimate, with relevant supporting information, upon the written
343 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
344 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

345 (b)¹⁰ On or before each March 1 and at such other times as necessary, the Contractor
346 shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer,
347 showing the monthly quantities of Project Water to be delivered by the United States to the
348 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
349 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
350 for the Year commencing on such March 1.

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

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

¹⁰ Contractor Specific with respect to binding agreement contractors

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

359 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

364 (b) The Contracting Officer, the Operating Non-Federal Entity, or other
365 appropriate entity shall make all reasonable efforts to maintain sufficient flows and levels of water in
366 the Delta-Mendota Canal¹¹ to deliver Project Water to the Contractor at specific turnouts established
367 pursuant to subdivision (a) of this Article.

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

372 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
373 measured and recorded with equipment furnished, installed, operated, and maintained by the United
374 States, the Operating Non-Federal Entity or other appropriate entity as designated by the Contracting

¹¹ Contractor specific/Unit specific issue with respect to including other appropriate facilities

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375 Officer (hereafter [other appropriate entity]) at the point or points of delivery established pursuant to
376 subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting
377 Officer shall investigate, or cause to be investigated by the responsible Operating Non-Federal
378 Entity, the accuracy of such measurements and shall take any necessary steps to adjust any errors
379 appearing therein. For any period of time when accurate measurements have not been made, the
380 Contracting Officer shall consult with the Contractor and the responsible Operating Non-Federal
381 Entity prior to making a final determination of the quantity delivered for that period of time.

382 (e) Neither the Contracting Officer nor any Operating Non-Federal Entity shall be
383 responsible for the control, carriage, handling, use, disposal, or distribution of Project Water
384 Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
385 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
386 employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever
387 for which there is legal responsibility, including property damage, personal injury, or death arising
388 out of or connected with the control, carriage, handling, use, disposal, or distribution of such Project
389 Water beyond such delivery points, except for any damage or claim arising out of: (i) acts or
390 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including
391 any responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in
392 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,

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393 employees, agents, or assigns, including any responsible Operating Non-Federal Entity; (iii)
394 negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including
395 any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from a malfunction
396 of facilities owned and/or operated by the United States or responsible Operating Non-Federal Entity;
397 Provided, That the Contractor is not the 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 AREA¹²

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. The water
403 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
404 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
405 maintaining and repairing all such measuring devices and implementing all such water measuring
406 methods at no cost to the United States. The Contractor shall use the information obtained from such
407 water measuring devices or water measuring methods to ensure its proper management of the water,
408 to bill water users for water delivered by the Contractor; Nothing herein contained, however, shall
409 preclude the Contractor from establishing and collecting any charges, assessments, or other revenues

12 Contractor specific issue which may require additional language

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410 authorized by California law. The Contractor shall include a summary of all its annual surface water
411 deliveries in the annual report described in subdivision (c) of Article 26.

412 (b) To the extent the information has not otherwise been provided, upon execution
413 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
414 the measurement devices or water measuring methods being used or to be used to implement
415 subdivision (a) of this Article and identifying the agricultural turnouts or alternative measurement
416 programs approved by the Contracting Officer, at which such measurement devices or water
417 measuring methods are being used, and, if applicable, identifying the locations at which such devices
418 and/or methods are not yet being used including a time schedule for implementation at such
419 locations. The Contracting Officer shall advise the Contractor in writing within sixty (60) days as to
420 the adequacy of, and necessary modifications, if any, of the measuring devices or water measuring
421 methods identified in the Contractor's report and if the Contracting Officer does not respond in such
422 time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the
423 measuring devices or methods are inadequate, the parties shall within sixty (60) days following the
424 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the
425 Contractor shall modify said measuring devices and/or measuring methods as required by the
426 Contracting Officer to ensure compliance with subdivision (a) of this Article.

427 (c) All new surface water delivery systems installed within the Contractor's

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428 Service Area after the effective date of this Contract shall also comply with the measurement
429 provisions described in subdivision (a) of this Article.

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

433 (e) The Contractor shall inform the Contracting Officer and the Operating Non-
434 Federal Entity on or before the twentieth (20th) calendar day of each month of the quantity of
435 Irrigation Water taken during the preceding month.

436 RATES AND METHOD OF PAYMENT FOR WATER

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

- 446 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
447 Tiered Pricing Components as follows:
- 448 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
449 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
450 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
451 the basis for such estimate. The Contractor shall be allowed not less than two (2) months to review
452 and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
453 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October
454 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such
455 notification shall revise Exhibit B.
- 456 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
457 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project
458 Water for the following Year and the computations and cost allocations upon which those Rates are
459 based. The Contractor shall be allowed not less than two (2) months to review and comment on such
460 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
461 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for
462 the upcoming Year, and such notification shall revise Exhibit B.
- 463 (c) At the time the Contractor submits the initial schedule for the delivery of

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464 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
465 shall make an advance payment to the United States equal to the total amount payable pursuant to the
466 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
467 delivered pursuant to this Contract during the first two (2) calendar months of the Year. Before the
468 end of the first month and before the end of each calendar month thereafter, the Contractor shall
469 make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article,
470 for the Water Scheduled to be delivered pursuant to this Contract during the second month
471 immediately following. Adjustments between advance payments for Water Scheduled and payments
472 at Rates due for Water Delivered shall be made before the end of the following month; Provided,
473 That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
474 increases the amount of Water Delivered pursuant to this Contract during any month shall be
475 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
476 Water is not delivered to the Contractor in advance of such payment. In any month in which the
477 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water
478 Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the
479 Contractor unless and until an advance payment at the Rates then in effect for such additional Project
480 Water is made. Final adjustment between the advance payments for the Water Scheduled and
481 payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be

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482 made as soon as practicable but no later than April 30th of the following Year, or sixty (60) days
483 after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if
484 such water is not delivered by the last day of February.

485 (d) The Contractor shall also make a payment in addition to the Rate(s) in
486 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
487 appropriate Tiered Pricing Component then in effect, before the end of the month following the
488 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
489 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
490 with the quantities of Irrigation Water Delivered as shown in the water delivery report for the subject
491 month prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity,
492 by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of
493 Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for
494 overpayment or underpayment of Charges shall be made through the adjustment of payments due to
495 the United States for Charges for the next month. Any amount to be paid for past due payment of
496 Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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500 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
501 be no more than the otherwise applicable Rate for Irrigation Water under subdivision (a) of this
502 Article.

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

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

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

517 (i) The parties acknowledge and agree that the efficient administration of this

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518 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
519 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,
520 and/or for making and allocating payments, other than those set forth in this Article may be in the
521 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to
522 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in
523 effect without amending this Contract.

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

534 (2) Subject to the Contracting Officer's written approval, the Contractor
535 may request and receive an exemption from such Tiered Pricing Components for Project Water

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536 delivered to produce a crop which the Contracting Officer determines will provide significant and
537 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
538 Provided, That the exemption from the Tiered Pricing Components for Irrigation Water shall apply
539 only if such habitat values can be assured consistent with the purposes of CVPIA through binding
540 agreements executed with or approved by the Contracting Officer prior to use of such water.

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

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

552 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
553 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted

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554 upward or downward to reflect the changed costs of delivery (if any) of the transferred Project Water
555 to the transferee's point of delivery in accordance with the then applicable CVP Ratesetting Policy.
556 If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring
557 Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the
558 Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges
559 unadjusted for inability to pay.

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

562 (n) **The Contractor asserts that it is not legally obligated to pay any Project**
563 **deficits claimed by the United States to have accrued as of the date of this Contract or deficit-**
564 **related interest charges thereon.** By entering into this Contract, the Contractor does not waive
565 **any legal rights or remedies that it may have with respect to such disputed issues.**
566 **Notwithstanding the execution of this Contract and payments made hereunder, the Contractor**
567 **may challenge in the appropriate administrative or judicial forums: (1) the existence, the**
568 **computation, or imposition of any deficit charges accruing during the term of the Existing**
569 **Contract; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges**
570 **or interest in the Rates; (4) the application by the United States of payments made by the**
571 **Contractor under its Existing Contract; and (5) the application of such payments in the Rates.**

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572 **The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any**
573 **administrative or judicial ruling in favor of any other **Project** M&I contractor on any of these**
574 **issues, **and credits for payments heretofore made**, provided that the basis for such ruling is**
575 **applicable to the Contractor. [Contractor Specific]**

576 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS¹³

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

580 SALES, TRANSFERS, OR EXCHANGES OF WATER

581 9. (a) The right to receive Project Water provided for in this Contract may be sold,
582 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
583 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
584 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
585 Contract may take place without the prior written approval of the Contracting Officer, except as
586 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
587 approved absent all appropriate environmental documentation, including but not limited to,
588 documents prepared pursuant to the National Environmental Policy Act and the Endangered Species

13 Contractor specific.

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589 Act. Such environmental documentation should include, as appropriate, an analysis of groundwater
590 impacts and economic and social effects, including environmental justice, of the proposed water
591 transfers on both the transferor and transferee.

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

606 (c) For a water transfer to qualify under subdivision (b) of this Article, such water

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607 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3) years, for
608 groundwater recharge, groundwater banking, or similar groundwater activities, surface water storage,
609 or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland,
610 wildlife refuges, groundwater basins or municipal and industrial use; (ii) occur within a single Year;
611 (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities
612 with no new construction or modifications to facilities and be between existing Project Contractors
613 and/or the Contractor and the United States, Department of the Interior; and (v) comply with all
614 applicable Federal, State, and local or tribal laws and requirements imposed for protection of the
615 environment and Indian Trust Assets, as defined under Federal law.

616 APPLICATION OF PAYMENTS AND ADJUSTMENTS

617 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
618 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
619 the Contractor arising out of this Contract then due and payable. Overpayments of more than One
620 Thousand Dollars (\$1,000) shall be refunded at the Contractor's request. In lieu of a refund, any
621 amount of such overpayment at the option of the Contractor, may be credited against amounts to
622 become due to the United States by the Contractor. With respect to overpayment, such refund or
623 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have
624 the right to the use of any of the Project Water supply provided for herein. All credits and refunds of

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625 overpayments shall be made within thirty (30) days of the Contracting Officer obtaining direction as
626 to how to credit or refund such overpayment in response to the notice to the Contractor that it has
627 finalized the accounts for the Year in which the overpayment was made.

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

633 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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643 as feasible the Contracting Officer or Operating Non-Federal Entity will give the Contractor due
644 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
645 which case no notice need be given; Provided, That the United States shall use its best efforts to
646 avoid any discontinuance or reduction in such service. Upon resumption of service after such
647 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
648 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
649 such discontinuance or reduction.

650 (c) The United States reserves the right to all seepage and return flow water
651 derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
652 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United
653 States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this
654 Contract within the Contractor's Service Area¹⁴ by the Contractor or those claiming by, through, or
655 under the Contractor.

656 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

¹⁴Refer to footnote 3

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

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

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

671 (1) A determination shall be made of the total quantity of Irrigation Water
672 estimated to be scheduled or actually scheduled under subdivision (b) of Article 3 of this Contract
673 and under all other long-term water service or repayment contracts then in force for the delivery of
674 Irrigation Water by the United States from Delta Division Facilities during the relevant Year, the
675 quantity so determined being hereinafter referred to as the contractual commitments;

676 (2) A determination shall be made of the total quantity of Irrigation Water that is
677 available for meeting the contractual commitments, the quantity so determined being hereinafter

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678 referred to as the available supply;

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

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

690 (d) Omitted.

691 (e) Tracy Contractor's 7-24-03 Offer, Exhibit 03-09

692 UNAVOIDABLE GROUNDWATER PERCOLATION

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

696 the delivery of Irrigation Water by the Contractor to Eligible Lands.

697 RULES AND REGULATIONS

698 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
699 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the
700 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the
701 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.
702

703 WATER AND AIR POLLUTION CONTROL

704
705 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
706 and air pollution laws and regulations of the United States and the State of California, and shall
707 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

708 QUALITY OF WATER¹⁵

709 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
710 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
711 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
712 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
713 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
714 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
715 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
716 Contractor pursuant to this Contract.

15 Contractor specific.

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

724 WATER ACQUIRED BY THE CONTRACTOR
725 OTHER THAN FROM THE UNITED STATES

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

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

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

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754 subject to the completion of appropriate environmental documentation, with the approval of the

755 Contracting Officer and the execution of any contract determined by the Contracting Officer to be

756 necessary, consistent with the following provisions:

757 (1) The Contractor may introduce non-Project water into Project facilities

758 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,

759 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an

760 appropriate rate as determined by the CVP Ratesetting Policy and the RRA, each as amended,

761 modified or superceded from time to time. In addition, if electrical power is required to pump non-

762 Project water through the facilities, the Contractor shall be responsible for obtaining the necessary

763 power and paying the necessary charges therefore.

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

765 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as

766 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other

767 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to

768 any other Project water service contractors; or (iv) interfere with the physical maintenance of the

769 Project facilities.

770 (3) Neither the United States nor the Operating Non-Federal Entity shall be

771 responsible for control, care or distribution of the non-Project water before it is introduced into or

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772 after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend
773 and indemnify the United States and the Operating Non-Federal Entity, and their respective officers,
774 agents, and employees, from any claim for damage to persons or property, direct or indirect, arising
775 out of or relating to the Contractor's or its officer's employee's agent's or assigns, act of (i)
776 extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
777 into Project facilities.

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

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

786 OPINIONS AND DETERMINATIONS

787 18. (a) Where the terms of this Contract provide for actions to be based upon the
788 opinion or determination of either party to this Contract, said terms shall not be construed as
789 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or

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790 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
791 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
792 unreasonable opinion or determination. Each opinion or determination by either party shall be
793 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to
794 or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or
795 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

801 COORDINATION AND COOPERATION

802 19. (a) In order to further their mutual goals and objectives, the Contracting Officer
803 and the Contractor shall communicate, coordinate, and cooperate with each other, and with other
804 affected Project Contractors, in order to improve the operation and management of the Project. The
805 communication, coordination, and cooperation regarding operations and management shall include,
806 but not be limited to, any action which will or may materially affect the quantity or quality of Project
807 Water supply, the allocation of Project Water supply, and Project financial matters including, but not

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808 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
809 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
810 authority for all actions, opinions, and determinations to be made by the respective party.

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

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

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

824 (2) The Secretary will, as appropriate, pursue program and project
825 implementation and authorization in coordination with Project Contractors to improve the water

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826 supply, water quality, and reliability of the Project for all Project purposes.

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

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

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

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

839 CHARGES FOR DELINQUENT PAYMENTS

840 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
841 on delinquent installments or payments. When a payment is not received by the due date, the
842 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
843 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
844 charge to cover additional costs of billing and processing the delinquent payment. When a payment
845 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
846 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
847 Contractor shall pay any fees incurred for debt collection services associated with a delinquent

848 payment.

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

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

857 EQUAL OPPORTUNITY

858
859 21. During the performance of this Contract, the Contractor agrees as follows:

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

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

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

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

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

886
887 (f) In the event of the Contractor's noncompliance with the nondiscrimination
888 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
889 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
890 for further Government contracts in accordance with procedures authorized in said amended
891 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said
892 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided
893 by law.

894
895 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
896 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
897 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
898 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
899 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
900 means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That
901 in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor
902 or vendor as a result of such direction, the Contractor may request the United States to enter into such
903 litigation to protect the interests of the United States.

904 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

909 (b) The payment of charges becoming due hereunder is a condition precedent to

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910 receiving benefits under this Contract. The United States shall not make water available to the
911 Contractor through Project facilities during any period in which the Contractor may be in arrears in
912 the advance payment of water rates due the United States. The Contractor shall not furnish water
913 made available pursuant to this Contract for lands or parties which are in arrears in the advance
914 payment of water rates levied or established by the Contractor.

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

917 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

918
919 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42
920 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
921 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as
922 well as with their respective implementing regulations and guidelines imposed by the U.S.
923 Department of the Interior and/or Bureau of Reclamation.

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

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

937 PRIVACY ACT COMPLIANCE

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

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

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

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

956 (e) The Contractor shall forward promptly to the System Manager each proposed
957 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
958 2.71; notify the requester accordingly of such referral; and provide the System Manager with
959 information and records necessary to prepare an appropriate response to the requester. These
960 requirements do not apply to individuals seeking access to their own certification and reporting forms
961 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
962 Act as a basis for the request.

963 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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

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

972 WATER CONSERVATION

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

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984 to meet such criteria, due to circumstances which the Contracting Officer determines are beyond the
985 control of the Contractor, water deliveries shall be made under this Contract so long as the Contractor
986 diligently works with the Contracting Officer to obtain such determination at the earliest practicable
987 date, and thereafter the Contractor immediately begins implementing its water conservation and
988 efficiency program in accordance with the time schedules therein.

989 (b) Omitted;

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

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

999 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1000 be described in the Contractor's water conservation plan.

1001 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1002 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1003 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1004 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1005 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1006 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1007 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1008 Reclamation law.

1009 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY¹⁶

1010 28. (a) The Operation and Maintenance of a portion of the Project facilities which
1011 serve the Contractor, and responsibility for funding a portion of the costs of such Operation and
1012 Maintenance, have been transferred to the Operating Non-Federal Entity by separate agreement
1013 between the United States and the Operating Non-Federal Entity. That separate agreement shall not
1014 interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

1015 (b) The Contracting Officer has previously notified the Contractor in writing that
1016 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1017 been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly

¹⁶ Contractor/Unit specific. Other ONFE's may need to be referenced for each individual contractor

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1018 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under
1019 the terms and conditions of the separate agreement between the United States and the Operating Non-
1020 Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any
1021 kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1022 successor determines, sets, or establishes for the Operation and Maintenance of the portion of the
1023 Project facilities operated and maintained by the Operating Non-Federal Entity or such successor.
1024 Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the
1025 Contractor of its obligation to pay directly to the United States the Contractor's share of the Project
1026 Rates, Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal
1027 Entity collects payments on behalf of the United States in accordance with the separate agreement
1028 identified in subdivision (a) of this Article.

1029 (c) For so long as the Operation and Maintenance of any portion of the Project
1030 facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor
1031 thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under
1032 this Contract representing the cost associated with the activity being performed by the Operating
1033 Non-Federal Entity or its successor.

1034 (d) In the event the Operation and Maintenance of the Project facilities operated
1035 and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the

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1036 term of this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to
1037 the Contractor a revised Exhibit [B] which shall include the portion of the Rates to be paid by the
1038 Contractor for Project Water under this Contract representing the Operation and Maintenance costs of
1039 the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in
1040 the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1041 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit [B] directly to the United
1042 States in compliance with Article 7 of this Contract.

1043 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1044 29. The expenditure or advance of any money or the performance of any obligation of the
1045 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1046 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1047 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1048 or allotted.

1049 BOOKS, RECORDS, AND REPORTS

1050 30. (a) The Contractor shall establish and maintain accounts and other books and
1051 records pertaining to administration of the terms and conditions of this Contract, including: the
1052 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1053 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1054 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1055 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1056 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1057 during office hours to examine and make copies of the other party's books and records relating to
1058 matters covered by this Contract.

1059 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1060 records, or other information shall be requested from the Contractor by the Contracting Officer unless

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1061 such books, records, or information are reasonably related to the administration or performance of
1062 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1063 to provide the requested books, records, or information.

1064 (c) At such time as the Contractor provides information to the Contracting Officer
1065 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1066 Operating Non-Federal Entity.

1067 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1068 31. (a) The provisions of this Contract shall apply to and bind the successors and
1069 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1070 therein shall be valid until approved in writing by the Contracting Officer.

1071 (b) The assignment of any right or interest in this Contract by either party shall not
1072 interfere with the rights or obligations of the other party to this Contract absent the written
1073 concurrence of said other party.

1074 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1075 of any proposed assignment.

1076 SEVERABILITY

1077 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1078 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1079 association or other form of organization whose primary function is to represent parties to Project

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1080 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1081 enforceability of a provision included in this Contract and said person, entity, association, or
1082 organization obtains a final court decision holding that such provision is legally invalid or
1083 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1084 parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of such
1085 final court decision identify by mutual agreement the provisions in this Contract which must be
1086 revised and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The
1087 time periods specified above may be extended by mutual agreement of the parties. Pending the
1088 completion of the actions designated above, to the extent it can do so without violating any
1089 applicable provisions of law, the United States shall continue to make the quantities of Project Water
1090 specified in this Contract available to the Contractor pursuant to the provisions of this Contract which
1091 were not found to be legally invalid or unenforceable in the final court decision.

1092 RESOLUTION OF DISPUTES

1093 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1094 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1095 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1096 any matter to the Department of Justice, the party shall provide to the other party thirty (30) days
1097 written notice of the intent to take such action; Provided, That such notice shall not be required where

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1098 a delay in commencing an action would prejudice the interests of the party that intends to file suit.
1099 During the thirty (30) day notice period, the Contractor and the Contracting Officer shall meet and
1100 confer in an attempt to resolve the dispute. Except as specifically provided, nothing herein is
1101 intended to waive or abridge any right or remedy that the Contractor or the United States may have.

OFFICIALS NOT TO BENEFIT

1102 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1103 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1104 manner as other water users or landowners.

CHANGES IN CONTRACTOR'S SERVICE AREA

1105
1106 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1107 Service Area or boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger, or
1108 otherwise, except upon the Contracting Officer's written consent.
1109 (b) Within thirty (30) days of receipt of a request for such a change, the
1110 Contracting Officer will notify the Contractor of any additional information required by the
1111 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1112 agreeable schedule for timely completion of the process. Such process will analyze whether the
1113 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1114 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1115 Contract or to pay for any Federally-constructed facilities for which the Contractor is responsible;
1116 and (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,
1117 the Contracting Officer shall comply with the National Environmental Policy Act and the

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1118 Endangered Species Act. The Contractor will be responsible for all costs incurred by the Contracting
1119 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

FEDERAL LAWS

1120 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1121 validity or application in connection with the performance of the terms and conditions of this
1122 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1123 terms and conditions of this Contract unless and until relief from application of such Federal law or
1124 regulation to the implementing provision of the Contract is granted by a court of competent
1125 jurisdiction.

NOTICES

1127 37. Any notice, demand, or request authorized or required by this Contract shall be
1128 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1129 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on
1130 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors/City
1131 Council of the **West Stanislaus Irrigation District, P.O. Box 37, Westley, CA 95387**. The
1132 designation of the addressee or the address may be changed by notice given in the same manner as
1133 provided in this Article for other notices.

CONFIRMATION OF CONTRACT¹⁷

1136 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1137 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1138 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1139 validation proceedings, and all pertinent supporting records of the court approving and confirming

¹⁷ Contractor Specific

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1140 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

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1141 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1142 year first above written.

1143 THE UNITED STATES OF AMERICA

1144 By: _____
1145 Regional Director, Mid-Pacific Region
1146 Bureau of Reclamation

1147 **WEST STANISLAUS IRRIGATION**
1148 **DISTRICT**

1149 By: _____
1150 President of the Board of Directors

1151 Attest:

1152 By: _____
1153 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]

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