

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
WESTLANDS WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
SAN LUIS UNIT AND DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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 WESTLANDS WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE FROM
9 SAN LUIS UNIT AND DELTA DIVISION

10 THIS CONTRACT, made this ____ day of _____, 2006, 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 3, 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
16 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE
17 UNITED STATES OF AMERICA, hereinafter referred to as the United States, and WESTLANDS
18 WATER DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
19 California, duly organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

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

28 [2nd] WHEREAS, the United States constructed the Delta Division Facilities, including the
29 San Luis Unit facilities (which include the San Luis Canal, Coalinga Canal, Pleasant Valley Pumping
30 Plant, and Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the
31 Contractor pursuant to the terms of this Contract; and

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

34 [4th] WHEREAS, the terms and conditions pursuant to which Project Water is to be
35 delivered to the Contractor through December 31, 2007, are addressed in the Contract Between the
36 United States and Westlands Water District Providing for Water Service, dated June 5, 1963, and the
37 Stipulated Judgment in the lawsuit entitled Barcellos and Wolfsen, Inc., v. Westlands Water District,
38 Civ. No. F-79-106-EDP (E.D. Cal.), as consolidated with Westlands Water District v. United States
39 of America, Civ. No. F-81-245-EDP (E.D. Cal.), entered on December 30, 1986, hereinafter referred
40 to as the Existing Contract; and

41 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection

42 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
43 binding agreements identified as Binding Agreement No. 14-06-200-495A-BA, and Binding
44 Agreement No. CV 79-106-EDP-BA, which set out the terms pursuant to which the Contractor
45 agreed to renew the Existing Contract before the expiration date after completion of the
46 Programmatic Environmental Impact Statement (PEIS) and other appropriate environmental
47 documentation and negotiation of a renewal contract; and which also set out the consequences of
48 subsequent decisions not to renew; and

49 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
50 Existing Contract following completion of appropriate environmental documentation, including a
51 PEIS, pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and indirect
52 impacts and benefits of implementing the CVPIA and the potential renewal of all existing contracts
53 for Project Water; and

54 [6.1] WHEREAS, the Contractor has been assigned the rights and interests to Project Water
55 under certain other contracts providing for Project Water service and the quantity of Project Water so
56 assigned are incorporated into this Contract; and

57 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
58 environmental review necessary to provide for long-term renewal of the Existing Contract; and

59 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
60 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
61 State of California, for water service from the Project; and

62 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
63 its obligations under the Existing Contract; and

64 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
65 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
66 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project
67 Water to be made available to it pursuant to this Contract; and

68 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
69 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
70 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 [12.1] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that
74 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to
75 provide drainage service to the San Luis Unit; and

76 [12.2] WHEREAS, the Contractor and the Contracting Officer recognize that adequate
77 drainage service is required to maintain agricultural production within certain areas served with
78 Project Water made available under this Contract and all renewals thereof; and

79 [12.3] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are
80 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

81 [12.4] WHEREAS, the Contracting Officer and the Contractor acknowledge that such
82 drainage solutions may involve actions not originally contemplated and/or the construction or use of
83 facilities, other than the San Luis Drain; that the Contractor is investing in drainage solutions for
84 lands within its boundaries that should be considered by the Contracting Officer in determining
85 drainage solutions; and that the existing ratesetting policy as it relates to the allocation and collection

86 of drainage costs may require amendment to recognize those investments by the Contractor and other
87 relevant circumstances; and

88 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
89 to pursue measures to improve water supply, water quality, and reliability of the Project for all
90 Project purposes; and

91 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
92 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
93 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
94 reasonable balance among competing demands for use of Project Water; and to comply with all
95 applicable environmental statutes, all consistent with the legal obligations of the United States
96 relative to the Project; and

97 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
98 relationship in order to achieve their mutual goals; and

99 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
100 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
101 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

102 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
103 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
104 immediately above; and

105 [16th] WHEREAS, the United States and the Contractor are willing to enter into this

106 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

109 DEFINITIONS

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

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

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

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

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

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

125 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
126 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,

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

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

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

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

139 (i) “Excess Lands” shall mean all lands in excess of the limitations contained in
140 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
141 Reclamation law;

142 (j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting
143 Officer that shall amortize the expenditures for construction properly allocable to the Project
144 irrigation or M&I functions, as appropriate, of facilities in service including all Operation and
145 Maintenance (O&M) deficits funded, less payments, over such periods as may be required under
146 Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the
147 construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at
148 that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and

149 shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost
150 Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of
151 the Rules and Regulations for the RRA;

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

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

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

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

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

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

169 (q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable
170 care, control, operation, repair, replacement (other than capital replacement), and maintenance of

171 Project facilities;

172 (r) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)
173 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
174 Delta Division Facilities pursuant to written agreement(s) with the United States. When this Contract
175 was entered into, the Operating Non-Federal Entities were the San Luis & Delta-Mendota Water
176 Authority and, with respect to San Luis Unit facilities, the California Department of Water
177 Resources, and the Contractor;

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

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

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

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

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

191 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed

192 successor, or an authorized representative acting pursuant to any authority of the Secretary and
193 through any agency of the Department of the Interior;

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

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

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

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

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

206 TERM OF CONTRACT

207 2. (a) This Contract shall be effective March 1, 2006, through February 28, 2031,
208 and supersedes the Existing Contract. In the event the Contractor wishes to renew this Contract
209 beyond February 28, 2031, the Contractor shall submit a request for renewal in writing to the
210 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
211 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
212 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
213 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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

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

232 (3) The terms and conditions of the renewal contract described in
233 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
234 with the parties’ respective legal rights and obligations, and in consideration of all relevant facts and
235 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the

236 Contractor's need for continued delivery of Project Water; environmental conditions affected by
237 implementation of the Contract to be renewed, and specifically changes in those conditions that
238 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
239 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
240 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

241 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
242 Contractor, shall be renewed successive periods of up to 40 years each, which periods shall be
243 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
244 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
245 the opportunity to comment to the Contracting Officer on the proposed adoption and application of
246 any revised policy applicable to the delivery of M&I Water that would limit the term of any
247 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
248 years.

249 (d) The Contracting Officer shall make a determination ten years after the date of
250 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
251 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
252 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat
253 483). The Contracting Officer shall also make a determination ten years after the date of execution
254 of this Contract and every five years thereafter during the term of this Contract of whether a
255 conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
256 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this

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

279 provision that carries forth in substantially identical terms the provisions of this subdivision.

280 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

281 3. (a) During each Year, consistent with all applicable State water rights permits, and
282 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
283 Contracting Officer shall make available for delivery to the Contractor 1,150,000¹ acre-feet of
284 Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
285 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
286 this Contract.

¹ "This amount may increase before this Contract is executed due to contract assignments. The expected maximum increase in the Contract total is 38,490 acre-feet."

287 (b) Because the capacity of the Project to deliver Project Water has been
288 constrained in recent years and may be constrained in the future due to many factors including
289 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
290 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
291 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
292 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
293 the most recent five years, the Recent Historic Average of Water Made Available to the Contractor
294 was 756,700 acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and
295 obligations of the parties under any provision of this Contract.

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

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

307 (d) The Contractor shall make reasonable and beneficial use of all water furnished

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

323 (e) The Contractor shall comply with requirements applicable to the Contractor in
324 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
325 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
326 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
327 excess of 38 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water
328 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
329 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other

330 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
331 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
332 biological opinion or other environmental documentation referred to in this Article.

333 (f) Following the declaration of Water Made Available under Article 4 of this
334 Contract, the Contracting Officer will make a determination whether Project Water, or other water
335 available to the Project, can be made available to the Contractor in addition to the Contract Total
336 under this Article during the Year without adversely impacting other Project Contractors. At the
337 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
338 such a determination. If the Contracting Officer determines that Project Water, or other water
339 available to the Project, can be made available to the Contractor, the Contracting Officer will
340 announce the availability of such water and shall so notify the Contractor as soon as practical. The
341 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
342 taking such water to determine the most equitable and efficient allocation of such water. If the
343 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
344 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
345 and policies. Subject to existing long-term contractual commitments, water rights and operational
346 constraints, long-term Project Contractors shall have a first right to acquire such water, including
347 Project Water made available pursuant to Section 215 of the RRA.

348 (g) The Contractor may request permission to reschedule for use during the
349 subsequent Year some or all of the Water Made Available to the Contractor during the current Year,
350 referred to as “rescheduled water.” The Contractor may request permission to use during the current

351 Year a quantity of Project Water which may be made available by the United States to the Contractor
352 during the subsequent Year referred to as “preuse.” The Contracting Officer’s written approval may
353 permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

365 (j) The Contracting Officer shall make reasonable efforts to protect the water
366 rights necessary for the Project and to provide the water available under this Contract. The
367 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
368 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
369 that the Contracting Officer retains the right to object to the substance of the Contractor’s position in
370 such a proceeding; Provided, further, That in such proceedings the Contracting Officer shall
371 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

372 TIME FOR DELIVERY OF WATER

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

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

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

391 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
392 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial

393 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
394 revision(s) thereto satisfactory to the Contracting Officer, submitted within a reasonable time prior to
395 the date(s) on which the requested change(s) is/are to be implemented.

396 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

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

420 (e) Absent a separate contrary written agreement with the Contractor, neither the
421 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
422 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
423 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
424 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
425 account of damage or claim of damage of any nature whatsoever for which there is legal
426 responsibility, including property damage, personal injury, or death arising out of or connected with
427 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
428 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
429 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
430 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)
431 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
432 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
433 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a
434 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
435 Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns, including
436 the Operating Non-Federal Entity(ies), to provide drainage service.

437 MEASUREMENT OF WATER WITHIN THE CONTRACTOR’S SERVICE AREA

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

453 (b) To the extent the information has not otherwise been provided, upon execution
454 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
455 the measurement devices or water measuring methods being used or to be used to implement
456 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
457 connections or alternative measurement programs approved by the Contracting Officer, at which such
458 measurement devices or water measuring methods are being used, and, if applicable, identifying the

459 locations at which such devices and/or methods are not yet being used including a time schedule for
460 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
461 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
462 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
463 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
464 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
465 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
466 which the Contractor shall modify said measuring devices and/or measuring methods as required by
467 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

477 RATES AND METHOD OF PAYMENT FOR WATER

478 7. (a) The Contractor shall pay the United States as provided in this Article for all
479 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance

480 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
481 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
482 modified, or superseded only through a public notice and comment procedure; (ii) applicable Federal
483 Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
484 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or
485 any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer.
486 The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of
487 this Contract are set forth in Exhibit “B,” as may be revised annually.

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

490 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
491 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
492 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
493 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
494 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
495 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
496 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
497 such notification shall revise Exhibit “B.”

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

502 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
503 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
504 upcoming Year, and such notification shall revise Exhibit “B.”

505 (c) At the time the Contractor submits the initial schedule for the delivery of
506 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
507 shall make an advance payment to the United States equal to the total amount payable pursuant to the
508 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
509 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
510 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
511 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
512 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
513 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
514 for Water Delivered shall be made before the end of the following month; Provided, That any revised
515 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
516 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
517 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
518 to the Contractor in advance of such payment. In any month in which the quantity of Water
519 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
520 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
521 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
522 adjustment between the advance payments for the Water Scheduled and payments for the quantities
523 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable

524 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water
525 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
526 last day of February.

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

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

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

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

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

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

567 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed

568 80 percent of the Contract Total, then before the end of the month following the month of delivery
569 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
570 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
571 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
572 one-half of the difference between the Rate established under subdivision (a) of this Article and the
573 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
574 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract
575 Total shall equal the difference between (i) the Rate established under subdivision (a) of this Article
576 and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable.
577 For all Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of
578 80 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation
579 Water and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total
580 Water Delivered. Solely for the purpose of calculating the Tiered Pricing Component, the Full Cost
581 Rate shall not include the interest component of the Contractor's water distribution system
582 constructed by the United States and covered by Repayment Contract No. 14-06-200-2020A entered
583 into pursuant to 43 USC 485h(d).

584 (2) Subject to the Contracting Officer's written approval, the Contractor
585 may request and receive an exemption from such Tiered Pricing Component for Project Water
586 delivered to produce a crop which the Contracting Officer determines will provide significant and
587 quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced;
588 Provided, That the exemption from the Tiered Pricing Component for Irrigation Water shall apply
589 only if such habitat values can be assured consistent with the purposes of the CVPIA through binding

590 agreements executed with or approved by the Contracting Officer prior to use of such water.

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

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

604 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
605 the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates, in
606 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
607 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project
608 Water to the transferee’s point of delivery. If the Contractor is receiving lower Rates and Charges
609 because of inability to pay and is transferring Project Water to another entity whose Rates and
610 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water

611 shall not be adjusted to reflect the Contractor’s inability to pay.

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

614 (n) Omitted.

615 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

619 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

630 (b) In order to facilitate efficient water management by means of water transfers of

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

644 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
645 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for
646 M&I use, groundwater recharge, groundwater banking, or similar groundwater activities, surface
647 water storage, or fish and wildlife resources; not lead to land conversion; and be delivered to
648 established cropland, wildlife refuges, groundwater basins, or M&I use; (ii) occur within a single
649 Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing
650 facilities with no new construction or modifications to facilities and be between existing Project
651 Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply
652 with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of

653 the environment and Indian Trust Assets, as defined under Federal law.

654 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

671 TEMPORARY REDUCTIONS--RETURN FLOWS

672 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
673 requirements of Federal law, and (ii) the obligations of the United States under existing contracts, or
674 renewals thereof, providing for water deliveries from the Project, the Contracting Officer shall make

675 all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in this
676 Contract.

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

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

694 CONSTRAINTS ON THE AVAILABILITY OF WATER

695 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable

696 means to guard against a Condition of Shortage in the quantity of water to be made available to the
697 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a
698 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said
699 determination as soon as practicable.

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

705 (c) In any Year in which there may occur a Condition of Shortage for any of the
706 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
707 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
708 Project M&I Water Shortage Policy in its form on the effective date of this Contract for determining
709 the amount of Project Water available for delivery to the Project Contractors. Subject to the
710 foregoing allocation, in any year in which there may occur a Condition of Shortage, the Contracting
711 Officer shall then apportion Project Water among the Contractor and others entitled to Project Water
712 from Delta Division Facilities under long-term water service or repayment contracts (or renewals
713 thereof or binding commitments therefore) in force on February 28, 2005, as follows:

714 (1) The Contracting Officer shall make an initial and subsequent
715 determination as necessary of the total quantity of Project Water estimated to be scheduled or actually
716 scheduled under subdivision (b) of Article 4 of this Contract and under all other long-term water
717 service or repayment contracts then in force for the delivery of Project Water by the United States

718 from Delta Division Facilities during the relevant Year, the quantity so determined being hereinafter
719 referred to as the scheduled total;

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

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

727 (4) The available supply shall be multiplied by the Contractor's
728 proportionate share and the result shall be the quantity of Project Water made available by the United
729 States to the Contractor for the relevant Year in accordance with the schedule developed by the
730 Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such amount
731 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
732 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
733 Division Facilities to long-term water service and repayment Contractors during the relevant Year,
734 such additions or reductions to the available supply shall be apportioned consistent with
735 subparagraphs (1) through (4), inclusive.

736 (d) By entering into this Contract, the Contractor does not waive any legal rights
737 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
738 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of

739 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is
740 implemented in order to allocate Project Water between municipal and industrial and irrigation
741 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
742 administrative procedures necessary to institute any judicial challenge within six months of the policy
743 becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal
744 defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall
745 be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

746 UNAVOIDABLE GROUNDWATER PERCOLATION

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

751 RULES AND REGULATIONS

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

756 WATER AND AIR POLLUTION CONTROL

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

760 QUALITY OF WATER

782 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
783 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
784 be simultaneously transported through the same distribution facilities of the Contractor subject to the
785 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
786 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
787 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
788 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
789 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
790 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
791 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
792 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
793 Water and non-Project water are/were constructed with funds made available pursuant to Federal
794 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
795 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
796 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
797 cost to the Federal Government, including interest, of storing or delivering non-Project water, which
798 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
799 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
800 The incremental fee per acre is the mathematical result of such quotient times the interest rate
801 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
802 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
803 receives non-Project water through Federally financed or constructed facilities. The incremental fee

804 calculation methodology will continue during the term of this Contract absent the promulgation of a
805 contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded
806 the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule,
807 regulation, or policy is adopted it shall supersede this provision.

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

813 (1) The Contractor may introduce non-Project water into Project facilities
814 and deliver said water to lands within the Contractor’s Service Area, including Ineligible Lands,
815 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an
816 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project
817 use power policy, if such Project use power policy is applicable, each as amended, modified, or
818 superseded from time to time.

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

824 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
825 shall be responsible for control, care or distribution of the non-Project water before it is introduced

826 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
827 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
828 respective officers, agents, and employees, from any claim for damage to persons or property, direct
829 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in
830 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
831 into Project facilities.

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

835 (5) After Project purposes are met, as determined by the Contracting
836 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
837 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
838 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
839 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
840 have a second priority to any remaining capacity of facilities declared to be available by the
841 Contracting Officer for conveyance and transportation of non-Project water prior to any such
842 remaining capacity being made available to non-Project contractors.

843 OPINIONS AND DETERMINATIONS

844 18. (a) Where the terms of this Contract provide for actions to be based upon the
845 opinion or determination of either party to this Contract, said terms shall not be construed as
846 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
847 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

848 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
849 unreasonable opinion or determination. Each opinion or determination by either party shall be
850 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
851 affect or alter the standard of judicial review applicable under Federal law to any opinion or
852 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

858 COORDINATION AND COOPERATION

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

868 (b) Within 120 days following the effective date of this Contract, the Contractor,
869 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested

870 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
871 amended as necessary separate and apart from this Contract. The goal of this process shall be to
872 provide, to the extent practicable, the means of mutual communication and interaction regarding
873 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

890 (d) Without limiting the contractual obligations of the Contracting Officer under
891 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the

892 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
893 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
894 the physical integrity of structures or facilities.

895 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

912 EQUAL OPPORTUNITY

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

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

923 (b) The Contractor will, in all solicitations or advertisements for employees placed

924 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
925 employment without discrimination because of race, color, religion, sex, or national origin.

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

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

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

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

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

956 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

969 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

988 PRIVACY ACT COMPLIANCE

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

994 (b) With respect to the application and administration of the criminal penalty

995 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
996 for maintaining the certification and reporting records referenced in (a) above are considered to be
997 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

998 (c) The Contracting Officer or a designated representative shall provide the
999 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1000 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1001 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1002 contained in the Landholder's certification and reporting records.

1003 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1004 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1005 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1006 authorized to grant requests by individuals for access to their own records.

1007 (e) The Contractor shall forward promptly to the System Manager each proposed
1008 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1009 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1010 information and records necessary to prepare an appropriate response to the requester. These
1011 requirements do not apply to individuals seeking access to their own certification and reporting forms
1012 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
1013 Act as a basis for the request.

1014 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1015 25. In addition to all other payments to be made by the Contractor pursuant to this
1016 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1017 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1018 direct cost incurred by the United States for work requested by the Contractor associated with this
1019 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1020 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1021 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1022 administration.

WATER CONSERVATION

1023
1024 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1025 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1026 implementing an effective water conservation and efficiency program based on the Contractor's water
1027 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1028 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1029 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1030 economically feasible water conservation measures, and time schedules for meeting those objectives.
1031 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1032 continued implementation of such water conservation program. In the event the Contractor's water
1033 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1034 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to
1035 circumstances which the Contracting Officer determines are beyond the control of the Contractor,
1036 water deliveries shall be made under this Contract so long as the Contractor diligently works with the
1037 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the
1038 Contractor immediately begins implementing its water conservation and efficiency program in
1039 accordance with the time schedules therein.

1040 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1041 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1042 the Best Management Practices identified by the time frames issued by the California Urban Water
1043 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1044 Officer to be inappropriate for the Contractor.

1045 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1046 its implementation of the water conservation plan on the reporting dates specified in the then-existing
1047 conservation and efficiency criteria established under Federal law.

1048 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1049 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1050 established under Federal law and submit such revised water management plan to the Contracting
1051 Officer for review and evaluation. The Contracting Officer will then determine if the water
1052 conservation plan meets Reclamation’s then-current conservation and efficiency criteria for
1053 evaluating water conservation plans established under Federal law.

1054 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1055 be described in the Contractor’s water conservation plan.

1056 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1057 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1058 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1059 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1060 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1061 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1062 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1063 Reclamation law.

1064 OPERATION AND MAINTENANCE BY
1065 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1066 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and

1067 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1068 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1069 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1070 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations
1071 of the Contractor or the United States hereunder.

1072 (b) The Contracting Officer has previously notified the Contractor in writing that
1073 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1074 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1075 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1076 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1077 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1078 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1079 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1080 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1081 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1082 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1083 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1084 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1085 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1086 Non-Federal Entity collects payments on behalf of the United States in accordance with subdivision
1087 (a) of this Article.

1088 (c) For so long as the O&M of any portion of the Project facilities serving the

1089 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1090 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1091 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1092 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1093 successor.

1094 (d) In the event the O&M of the Project facilities operated and maintained by
1095 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1096 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1097 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1098 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1099 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1100 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1101 Charges, and the Tiered Pricing Component specified in the revised Exhibit "B" directly to the
1102 United States in compliance with Article 7 of this Contract.

1103 OPERATION AND MAINTENANCE BY
1104 CALIFORNIA DEPARTMENT OF WATER RESOURCES

1105 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1106 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1107 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1108 200-9755) between the United States and Operating Non-Federal Entity California Department of
1109 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1110 of the Contractor or the United States hereunder.

1111 (b) The Contracting Officer has previously notified the Contractor in writing that
1112 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1113 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1114 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1115 successor approved by the Contracting Officer under the terms and conditions of the separate
1116 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1117 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1118 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1119 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1120 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1121 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1122 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1123 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1124 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
1125 Non-Federal Entity collects payments on behalf of the United States in accordance with the separate
1126 agreement identified in subdivision (a) of Article 28 of this Contract.

1127 (c) For so long as the O&M of any portion of the Project facilities serving the
1128 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1129 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1130 Water Delivered under this Contract representing the cost associated with the activity being
1131 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1132 successor.

1133 (d) In the event the O&M of the Project facilities operated and maintained by
 1134 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
 1135 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
 1136 in writing, and present to the Contractor a revised Exhibit “B” which shall include the portion of the
 1137 Rates, Charges, and the Tiered Pricing Component to be paid by the Contractor for Project Water
 1138 under this Contract representing the O&M costs of the portion of such Project facilities which have
 1139 been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the
 1140 Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s)
 1141 specified in the revised Exhibit “B” directly to the United States in compliance with Article 7 of this
 1142 Contract.

1143 OPERATION AND MAINTENANCE BY THE CONTRACTOR

1144 28.2 (a) During the term of this Contract, the Contractor shall act as the Operating
 1145 Non-Federal Entity for a portion of the Project facilities which serves the Department of Fish and
 1146 Game, the City of Huron, and the City of Coalinga, including but not limited to the Coalinga Canal
 1147 System, which consists in part of the Coalinga Canal and turnouts and Pleasant Valley Pumping
 1148 Plant. The Contractor, without expense to the United States, shall care for, operate, and maintain
 1149 such portion of the Project facilities for the furnishing of water to the Department of Fish and Game,
 1150 the City of Huron, and the City of Coalinga in full compliance with Federal Reclamation law and in
 1151 such manner that they will remain in good and efficient condition; Provided, That the United States
 1152 shall finance the costs of all major replacements of such facilities that the Contracting Officer
 1153 determines are needed; Provided further, That if the Department of Fish and Game, the City of
 1154 Huron, or the City of Coalinga fails to pay to the Contractor in advance such entity’s share of the

1155 O&M costs, consistent with any agreements between the Contractor and the Department of Fish and
1156 Game, the City of Huron, or the City of Coalinga, respectively, the Contractor shall be relieved of its
1157 obligation to the O&M of such facilities for the benefit of the non-paying entity.

1158 (b) The Contracting Officer previously notified the Department of Fish and Game,
1159 the City of Huron, and the City of Coalinga in writing that the O&M of a portion of the Project
1160 facilities which serves the Department of Fish and Game, the City of Huron, and the City of Coalinga
1161 has been transferred to the Contractor. Therefore, the Department of Fish and Game and the City of
1162 Huron have entered, and the City of Coalinga is expected to enter, separate agreements with the
1163 Contractor providing the terms and conditions pursuant to which the Contractor will operate and
1164 maintain a portion of the Project facilities which serves the Department of Fish and Game, the City of
1165 Huron, and the City of Coalinga, including the amount(s) the Department of Fish and Game, the City
1166 of Huron, and the City of Coalinga are to pay the Contractor for that service. Consistent with any
1167 such agreements, the Department of Fish and Game, the City of Huron, and the City of Coalinga shall
1168 pay directly to the Contractor all rates, charges, or assessments of any kind, including any assessment
1169 for reserve funds, which the Contractor sets, or establishes for a portion of the Project facilities which
1170 serves the Department of Fish and Game, the City of Huron, and the City of Coalinga and is operated
1171 and maintained by the Contractor. Such direct payments to the Contractor shall not relieve the
1172 Contractor of its obligation to pay directly to the United States the Department of Fish and Game, the
1173 City of Huron, and the City of Coalinga its share of the Project Rates, Charges, and Tiered Pricing
1174 Components referred to in this Contract.

1175 (c) For so long as the O&M for a portion of the Project facilities which serves the
1176 Department of Fish and Game, the City of Huron, and the City of Coalinga is performed by the

1177 Contractor, the Contracting Officer shall adjust those components of the Rates for Water Delivered
1178 under the Contracts representing the cost associated with the activity being performed by the
1179 Contractor.

1180 (d) The United States may re-assume O&M for a portion of the Project facilities
1181 which serves the Department of Fish and Game, the City of Huron, and the City of Coalinga. In that
1182 event, the Contracting Officer shall so notify the Department of Fish and Game, the City of Huron,
1183 and the City of Coalinga, in writing, and present to the Contractor a revised Exhibit “B” which shall
1184 include the portion of the Rates, Charges, and Tiered Pricing Component(s) to be paid by the
1185 Department of Fish and Game, the City of Huron, and the City of Coalinga for Project Water under
1186 this Contract representing the O&M costs for a portion of the Project facilities which serves the
1187 Department of Fish and Game, the City of Huron, and the City of Coalinga. The Department of Fish
1188 and Game, the City of Huron, and the City of Coalinga shall, thereafter, in the absence of written
1189 notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing
1190 Component(s) specified in the revised Exhibit “B” directly to the United States in compliance with
1191 Article 7 of their contracts. The Contractor shall, thereafter, be relieved of all of its obligations under
1192 this Article 28.2.

1193 PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER
1194 OF OPERATION AND MAINTENANCE TO THE CONTRACTOR

1195 28.3. (a) The United States shall furnish and install pumping plants and furnish the
1196 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1197 the Contractor from the Delta-Mendota, San Luis, and Coalinga Canals, including the Pleasant
1198 Valley Pumping Plant, at the point(s) of delivery identified pursuant to subdivision (a) of Article 5 of

1199 this Contract at heads and elevations sufficient to irrigate by gravity the areas within the Contractor's
1200 Service Area below 700 feet mean sea level elevation.

1201 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1202 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1203 divert and deliver Project Water from the Delta-Mendota, San Luis, and Coalinga Canals and the
1204 Pleasant Valley Pumping Plant before the United States furnishes and installs all the pumping plants
1205 referred to in subdivision (a) of this Article. The United States shall furnish the amount of Project
1206 power needed to operate such pumping facilities; Provided, That the Contractor maintains an
1207 agreement with an entity to convey such power to such facilities, and the Contractor agrees to pay
1208 any and all charges assessed by that entity for such service.

1209 (c) The furnishing of power by the United States shall be in conformance with
1210 operating criteria, rules, and regulations, including the project use power policy, established by the
1211 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the
1212 project use power policy, established by the Contracting Officer shall not excuse the United States
1213 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and
1214 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1215 irrigation management practices and the power generation capacity available to the United States for
1216 the furnishing of Project water to the Contractor.

1217 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1218 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1219 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1220 of all major replacements that the Contracting Officer determines are needed.

1221 (e) The Contracting Officer or his representative shall at all times have access to
1222 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1223 being kept in safe and proper operating condition.

1224 (f) No change in any of the pumping facilities, which in the opinion of the
1225 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1226 consent of the Contracting Officer. The Contractor shall promptly make any and all repairs and
1227 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.
1228 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1229 operation by the United States of the pumping facilities pursuant to subdivision (g) of this Article,
1230 the United States may cause the repairs and replacements to be made and the cost thereof, as
1231 determined by the Contracting Officer, shall be paid by the Contractor to the United States upon
1232 notice of the payment due but not later than April 1 of the year following that during which such
1233 work was completed.

1234 (g) In the event the Contracting Officer determines that the Contractor has not
1235 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any
1236 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1237 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1238 the Contractor of such election and the effective date thereof. Thereafter, during the period of
1239 operation by the United States, the Contractor shall pay to the United States in advance of the use of
1240 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1241 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate

1242 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1243 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1244 pay such amount on or before the date specified in said notice. Any amount of such advances
1245 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1246 credited upon amounts to become due to the United States from the Contractor under the provisions
1247 of this Contract in subsequent years. The pumping facilities so taken back by the United States may
1248 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1249 intention to retransfer.

1250 (h) The Contractor shall hold the United States, its officers, and employees
1251 harmless from every and all claim for damages to persons or property arising out of or connected
1252 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That
1253 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties
1254 other than the United States with respect to such matters.

1255 (i) During the time the pumping facilities are operated and maintained by the
1256 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the
1257 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the United
1258 States for work associated with the pumping facilities under this Contract normally charged by the
1259 United States to water users and properly and equitably chargeable to the Contractor.

1260 (j) The Contracting Officer may make review of any part or all of the pumping
1261 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in
1262 assessing the condition of facilities and the adequacy of the maintenance program(s). The
1263 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and

1264 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall
1265 reimburse the actual cost

1266 incurred by the United States in making O&M examinations, inspections, and audits, and preparing
1267 associated reports and recommendations.

1268 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,
1269 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1270 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1271 remedial measures required for their correction, and to assist the Contractor in solving specific
1272 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1273 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United
1274 States.

1275 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1276 29. The expenditure or advance of any money or the performance of any obligation of the
1277 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1278 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1279 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1280 or allotted.

1281 BOOKS, RECORDS, AND REPORTS

1282 30. (a) The Contractor shall establish and maintain accounts and other books and
1283 records pertaining to administration of the terms and conditions of this Contract, including: the
1284 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1285 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1286 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1287 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1288 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1289 during office hours to examine and make copies of the other party's books and records relating to
1290 matters covered by this Contract.

1291 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1292 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1293 such books, records, or information are reasonably related to the administration or performance of
1294 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1295 to provide the requested books, records, or information.

1296 (c) At such time as the Contractor provides information to the Contracting Officer
1297 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1298 Operating Non-Federal Entity.

1299 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1300 31. (a) The provisions of this Contract shall apply to and bind the successors and
1301 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1302 therein shall be valid until approved in writing by the Contracting Officer.

1303 (b) The assignment of any right or interest in this Contract by either party shall not
1304 interfere with the rights or obligations of the other party to this Contract absent the written
1305 concurrence of said other party.

1306 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1307 of any proposed assignment.

1308 SEVERABILITY

1309 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1310 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1311 association or other form of organization whose primary function is to represent parties to Project
1312 contracts, brings an action in a court of competent jurisdiction challenging the legality or

1313 enforceability of a provision included in this Contract and said person, entity, association, or
1314 organization obtains a final court decision holding that such provision is legally invalid or
1315 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1316 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1317 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1318 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1319 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1320 actions designated above, to the extent it can do so without violating any applicable provisions of
1321 law, the United States shall continue to make the quantities of Project Water specified in this
1322 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1323 to be legally invalid or unenforceable in the final court decision.

1324 RESOLUTION OF DISPUTES

1325 33. Should any dispute arise concerning any provisions of this Contract, or the parties’
1326 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1327 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1328 any matter to the Department of Justice, the party shall provide to the other party 30 days’ written
1329 notice of the intent to take such action; Provided, That such notice shall not be required where a
1330 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1331 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1332 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1333 waive or abridge any right or remedy that the Contractor or the United States may have.

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OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR’S SERVICE AREA

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

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

FEDERAL LAWS

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

1358 jurisdiction.

1359 NOTICES

1360 37. Any notice, demand, or request authorized or required by this Contract shall be
1361 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1362 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1363 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1364 Directors of the Westlands Water District, P. O. Box 6056, Fresno, California 93703-6056. The
1365 designation of the addressee or the address may be changed by notice given in the same manner as
1366 provided in this Article for other notices.

1367 CONFIRMATION OF CONTRACT

1368 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1369 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1370 Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1371 validation proceedings, and all pertinent supporting records of the court approving and confirming
1372 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1373 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1374 year first above written.

1375
1376 THE UNITED STATES OF AMERICA

1377 By: _____
1378 Regional Director, Mid-Pacific Region
1379 Bureau of Reclamation

1380 (SEAL)

1381 WESTLANDS WATER DISTRICT

1382 By: _____
1383 President of the Board of Directors

1384 Attest:

1385 By: _____
1386 Secretary of the Board of Directors

1387 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\11-01-04 Westlands Water District Final
1388 Draft LTRC with exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
WESTLANDS WATER DISTRICT
2005 Water Rates and Charges

	<u>2005 Rates Per Acre-Foot</u>		
	<u>Irrigation Water</u>	<u>Irrigation Water</u>	<u>M&I Water</u>
COST-OF-SERVICE (COS) RATES:	SLC	DMC	
Capital Rates:	\$15.78	\$ 6.52	\$18.72
O&M Rates:			
Water Marketing	\$ 6.61	\$ 6.61	\$ 3.89
Storage	\$ 5.93	\$ 5.93	\$ 6.67
Conveyance	*		*
Direct Pumping (Project Use Energy)	\$ 2.60		\$ 2.39
Tracy Pumping	*		*
San Luis Drain	\$ 0.71		
Deficit Rates:			
Non-Interest Bearing			
Interest Bearing			
<u>TOTAL COS RATES:</u>	\$31.63	\$19.06	\$31.67
<u>M&I FULL-COST RATE:</u>			\$42.58
Tiered Pricing Component >80% <=90% of Contract			
Total [Full Cost Rate - COS Rate /2]:			
Tiered Pricing Component >90% of Contract			
Total [Full Cost Rate - COS Rate]:			
<u>FULL-COST RATES:</u>			
SECTION 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$55.20	\$43.32	
<u>205 FULL-COST RATES:</u>			
SECTION 205(a)(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$70.01	\$56.47	
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND**	\$ 7.93	\$ 7.93	\$15.87

* Conveyance and Conveyance Pumping Operation and maintenance costs were removed for ratesetting purposes and are to be billed directly to the water authorities.

** The surcharges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1-9/30).

Contract No. 14-06-200-495A-LTR1