

AG and M&I
T. O. Draft 09/29-2004
T. O. Draft 08/16-2004
T. O. Draft 08/06-2004
T. O. Final Delta Division Form 09/14-2004
R. O. Final Delta Division Form 07/23-2004
R.O. Draft 07/22-2004
CVP-Wide Form 05/23-2004
Delta Division
Contract No.
14-06-200-785-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
BYRON-BETHANY IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

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8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this _____ day of _____, 2005, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
17 OF AMERICA, hereinafter referred to as the United States, and BYRON-BETHANY
18 IRRIGATION 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:

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EXPLANATORY RECITALS

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

[2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

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

[5th] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No(s). 14-06-200-785-IR1, 14-06-200-785-IR2, 14-06-200-785-IR3, 14-06-200-785-IR4, 14-06-200-785-IR5, 14-06-200-785-IR6, 14-06-200-785-IR7, 14-06-200-785-IR8, 14-06-200-785-IR9, and 14-06-200-785-IR10, the current of which is hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor from March 1, 1994, through February 28, 2006; and

44 [5.1] WHEREAS, Plain View Water District and Byron-Bethany Irrigation District have
45 determined that consolidation of the two districts will improve the administrative efficiency of the
46 districts and will enhance the districts’ stability; and

47 [5.2] WHEREAS, San Joaquin Local Agency Formation Commission approved
48 consolidation of Plain View Water District and Byron-Bethany Irrigation District on August 12,
49 2004, by dissolving Plain View Water District and reorganizing the territory to Byron-Bethany
50 Irrigation District; and

51 [5.3] WHEREAS, the consolidation referred to in the preceding two explanatory recitals
52 did not, in any manner, change the area to which Project Water may be delivered pursuant to the
53 Existing Contract; and

54 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
55 Existing Contract following completion of appropriate environmental documentation, including a
56 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
57 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
58 CVPIA and the potential renewal of all existing contracts for Project Water; and

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

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

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

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

71 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
72 agricultural areas within California for more than 50 years, and is considered by the Contractor as
73 an essential portion of its water supply; and

74 [12th] WHEREAS, the economies of regions within the Project, including the Contractor’s,
75 depend upon the continued availability of water, including water service from the Project; and

76 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
77 partnerships to pursue measures to improve water supply, water quality, and reliability of the
78 Project for all Project purposes; and

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

85 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
86 relationship in order to achieve their mutual goals; and

87 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract
88 assignments, rescheduling and conveyance of Project Water and non-Project water under this

89 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
90 use of water; and

91 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a
92 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
93 Explanatory Recital immediately above; and

94 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
95 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

98 DEFINITIONS

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

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

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

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

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

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

114 (f) “Contractor's Service Area” shall mean the area to which the Contractor is
115 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,
116 which may be modified from time to time in accordance with Article 35 of this Contract without
117 amendment of this Contract;

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

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

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

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

131 (j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting
132 Officer that shall amortize the expenditures for construction properly allocable to the Project
133 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits
134 funded, less payments, over such periods as may be required under Federal Reclamation law, or

135 applicable contract provisions. Interest will accrue on both the construction expenditures and
136 funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date
137 incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in
138 accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual
139 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and
140 Regulations for the RRA;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

195 TERM OF CONTRACT

196 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,
197 and supersedes the Existing Contract. In the event the Contractor wishes to renew this Contract
198 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the
199 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
200 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
201 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
202 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

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

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

221 (3) The terms and conditions of the renewal contract described in
222 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
223 consistent with the parties’ respective legal rights and obligations, and in consideration of all
224 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
225 without limitation, the Contractor’s need for continued delivery of Project Water; environmental

226 conditions affected by implementation of the Contract to be renewed, and specifically changes in
227 those conditions that occurred during the life of the Contract to be renewed; the Secretary’s progress
228 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the
229 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region
230 served by the Contractor.

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

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

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

271 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

272 3. (a) During each Year, consistent with all applicable State water rights, permits,
273 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
274 Contract, the Contracting Officer shall make available for delivery to the Contractor 20,600 acre-
275 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in
276 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
277 Articles 4 and 7 of this Contract.

278 (b) Because the capacity of the Project to deliver Project Water has been
279 constrained in recent years and may be constrained in the future due to many factors including
280 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
281 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in
282 any given Year is uncertain. The Contracting Officer’s modeling referenced in the PEIS projected
283 that the Contract Total set forth in this Contract will not be available to the Contractor in many
284 years. During the most recent five years, the Recent Historic Average of Water Made Available to
285 the Contractor was 13,555 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights
286 and obligations of the parties under any provision of this Contract.

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

289 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor)
290 that receives Project Water through the Delta Division Facilities obtains a contractual agreement
291 that the Contracting Officer shall make Project Water available at a point or points of delivery in or
292 north of the Delta, at the request of the Contractor and upon completion of any required
293 environmental documentation, this Contract shall be amended to provide for deliveries in or north

294 of the Delta on mutually agreeable terms. Such amendments to the Contract shall be limited solely
295 to those changes made necessary by the addition of such alternate points of delivery in or north of
296 the Delta; Provided, That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to
297 deliver Project Water does not trigger this right of amendment.

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

314 (e) The Contractor shall comply with requirements applicable to the Contractor
315 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
316 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as

317 amended, that are within the Contractor’s legal authority to implement. The Existing Contract,
318 which evidences in excess of 50 years of diversions for irrigation and/or M&I purposes of the
319 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
320 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and
321 any other needed environmental review. Nothing herein shall be construed to prevent the
322 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
323 respect to any biological opinion or other environmental documentation referred to in this Article.

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

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

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

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

357 (j) The Contracting Officer shall make reasonable efforts to protect the water
358 rights necessary for the Project and to provide the water available under this Contract. The
359 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
360 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
361 that the Contracting Officer retains the right to object to the substance of the Contractor’s position

362 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall
363 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

364 TIME FOR DELIVERY OF WATER

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

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

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

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

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

388 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

401 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
402 measured and recorded with equipment furnished, installed, operated, and maintained by the
403 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
404 Non-Federal Entity, unless undertaken by the Contractor with the consent of the Contracting
405 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.
406 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause
407 to be investigated by the appropriate Operating Non-Federal Entity, the accuracy of such

408 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
409 period of time when accurate measurements have not been made, the Contracting Officer shall
410 consult with the Contractor and the appropriate Operating Non-Federal Entity, if any, prior to
411 making a final determination of the quantity delivered for that period of time.

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

428 MEASUREMENT OF WATER WITHIN THE CONTRACTOR’S SERVICE AREA

429 6. (a) The Contractor has established a measuring program satisfactory to the
430 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation

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

444 (b) To the extent the information has not otherwise been provided, upon
445 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report
446 describing the measurement devices or water measuring methods being used or to be used to
447 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
448 service connections or alternative measurement programs approved by the Contracting Officer, at
449 which such measurement devices or water measuring methods are being used, and, if applicable,
450 identifying the locations at which such devices and/or methods are not yet being used including a
451 time schedule for implementation at such locations. The Contracting Officer shall advise the
452 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the
453 measuring devices or water measuring methods identified in the Contractor's report and if the

454 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
455 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,
456 the parties shall within 60 days following the Contracting Officer’s response, negotiate in good faith
457 the earliest practicable date by which the Contractor shall modify said measuring devices and/or
458 measuring methods as required by the Contracting Officer to ensure compliance with subdivision
459 (a) of this Article.

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

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

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

469 RATES AND METHOD OF PAYMENT FOR WATER

470 7. (a) The Contractor shall pay the United States as provided in this Article for all
471 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
472 with: (i) the Secretary’s ratesetting policy for Irrigation Water adopted in 1988 and the Secretary’s
473 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
474 modified, or superseded only through a public notice and comment procedure; (ii) applicable
475 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
476 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,

477 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting
478 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
479 execution of this Contract are set forth in Exhibit “B,” as may be revised annually.

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

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

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

497 (c) At the time the Contractor submits the initial schedule for the delivery of
498 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
499 shall make an advance payment to the United States equal to the total amount payable pursuant to

500 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
501 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
502 of the first month and before the end of each calendar month thereafter, the Contractor shall make
503 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
504 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
505 following. Adjustments between advance payments for Water Scheduled and payments at Rates
506 due for Water Delivered shall be made before the end of the following month; Provided, That any
507 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases
508 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied
509 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not
510 delivered to the Contractor in advance of such payment. In any month in which the quantity of
511 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled
512 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
513 unless and until an advance payment at the Rates then in effect for such additional Project Water is
514 made. Final adjustment between the advance payments for the Water Scheduled and payments for
515 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon
516 as practicable but no later than April 30th of the following Year, or 60 days after the delivery of
517 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not
518 delivered by the last day of February.

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

523 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
524 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
525 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no
526 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
527 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
528 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
529 adjustment of payments due to the United States for Charges for the next month. Any amount to be
530 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
531 pursuant to Article 20 of this Contract.

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

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

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

544 (h) The Contracting Officer shall keep its accounts pertaining to the
545 administration of the financial terms and conditions of its long-term contracts, in accordance with

546 applicable Federal standards, so as to reflect the application of Project costs and revenues. The
547 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a
548 detailed accounting of all Project and Contractor expense allocations, the disposition of all Project
549 and Contractor revenues, and a summary of all water delivery information. The Contracting Officer
550 and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes
551 relating to accountings, reports, or information.

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

559 (j) (1) Beginning at such time as deliveries of Project Water in a Year
560 exceed 80 percent of the Contract Total, then before the end of the month following the month of
561 delivery the Contractor shall make an additional payment to the United States equal to the
562 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
563 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
564 Contract Total, shall equal one-half of the difference between the Rate established under
565 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
566 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
567 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established
568 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost

569 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article
570 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be
571 deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual
572 deliveries of each bear to the cumulative total Water Delivered.

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

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

586 (k) For the term of this Contract, Rates applied under the respective ratesetting
587 policies will be established to recover only reimbursable O&M (including any deficits) and capital
588 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and
589 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
590 with the relevant Project ratesetting policy. Changes of significance in practices which implement
591 the Contracting Officer’s ratesetting policies will not be implemented until the Contracting Officer

592 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
593 change.

594 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
595 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
596 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect
597 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred
598 Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and
599 Charges because of inability to pay and is transferring Project Water to another entity whose Rates
600 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project
601 Water shall not be adjusted to reflect the Contractor's inability to pay.

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

604 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not
605 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
606 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
607 Contractor does not waive any legal rights or remedies that it may have with respect to such
608 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the
609 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,
610 computation, or imposition of any deficit charges accruing during the term of the Existing Contract
611 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such
612 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by
613 the United States of payments made by the Contractor under its Existing Contract and any
614 preceding interim renewal contracts if applicable; and (5) the application of such payments in the

615 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any
616 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and
617 credits for payments heretofore made, provided that the basis for such ruling is applicable to the
618 Contractor.

619 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

623 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

635 (b) In order to facilitate efficient water management by means of water transfers
636 of the type historically carried out among Project Contractors located within the same geographical
637 area and to allow the Contractor to participate in an accelerated water transfer program during the

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

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

659 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

676 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

699 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

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

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

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

751 UNAVOIDABLE GROUNDWATER PERCOLATION

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

756 RULES AND REGULATIONS

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

761 WATER AND AIR POLLUTION CONTROL

762 15. The Contractor, in carrying out this Contract, shall comply with all applicable water
763 and air pollution laws and regulations of the United States and the State of California, and shall
764 obtain all required permits or licenses from the appropriate Federal, State, or local authorities.
765

766 QUALITY OF WATER

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

775 (b) The O&M of Project facilities shall be performed in such manner as is
776 practicable to maintain the quality of raw water made available through such facilities at the highest
777 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be

778 responsible for compliance with all State and Federal water quality standards applicable to surface
779 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
780 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

781 (c) Omitted.

782 WATER ACQUIRED BY THE CONTRACTOR
783 OTHER THAN FROM THE UNITED STATES

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

802 total irrigable acreage within the Contractor’s Service Area. The incremental fee per acre is the
803 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the
804 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
805 excess or full cost land within the Contractor’s Service Area that receives non-Project water through
806 Federally financed or constructed facilities. The incremental fee calculation methodology will
807 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide
808 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review
809 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is
810 adopted it shall supersede this provision.

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

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

822 (2) Delivery of such non-Project water in and through Project facilities
823 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes
824 as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to

825 other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any
826 other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

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

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

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

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OPINIONS AND DETERMINATIONS

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

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

COORDINATION AND COOPERATION

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

869 provided for hereunder shall extend to all provisions of this Contract. Each party shall retain
870 exclusive decision making authority for all actions, opinions, and determinations to be made by the
871 respective party.

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

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

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

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

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

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

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

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

900 CHARGES FOR DELINQUENT PAYMENTS

901 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
902 on delinquent installments or payments. When a payment is not received by the due date, the
903 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
904 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
905 charge to cover additional costs of billing and processing the delinquent payment. When a payment
906 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
907 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
908 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
909 payment.

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

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

918 EQUAL OPPORTUNITY

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

920 (a) The Contractor will not discriminate against any employee or applicant for
921 employment because of race, color, religion, sex, or national origin. The Contractor will take
922 affirmative action to ensure that applicants are employed, and that employees are treated during
923 employment, without regard to their race, color, religion, sex, or national origin. Such action shall

924 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
925 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
926 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
927 conspicuous places, available to employees and applicants for employment, notices to be provided
928 by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

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

962 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

975 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

976 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
977 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
978 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
979 as well as with their respective implementing regulations and guidelines imposed by the U.S.
980 Department of the Interior and/or Bureau of Reclamation.

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

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

994 PRIVACY ACT COMPLIANCE

995 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
996 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
997 seq.) in maintaining Landholder acreage certification and reporting records, required to be

998 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform
999 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1000 (b) With respect to the application and administration of the criminal penalty
1001 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1002 for maintaining the certification and reporting records referenced in (a) above are considered to be
1003 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1004 (c) The Contracting Officer or a designated representative shall provide the
1005 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1006 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1007 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1008 contained in the Landholder's certification and reporting records.

1009 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1010 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1011 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1012 authorized to grant requests by individuals for access to their own records.

1013 (e) The Contractor shall forward promptly to the System Manager each proposed
1014 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1015 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1016 information and records necessary to prepare an appropriate response to the requester. These
1017 requirements do not apply to individuals seeking access to their own certification and reporting
1018 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the
1019 Privacy Act as a basis for the request.

1020 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1021 25. In addition to all other payments to be made by the Contractor pursuant to this
1022 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1023 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1024 direct cost incurred by the United States for work requested by the Contractor associated with this
1025 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1026 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1027 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1028 administration.

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WATER CONSERVATION

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

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

1052 (c) The Contractor shall submit to the Contracting Officer a report on the status
1053 of its implementation of the water conservation plan on the reporting dates specified in the then
1054 existing conservation and efficiency criteria established under Federal law.

1055 (d) At five-year intervals, the Contractor shall revise its water conservation plan
1056 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1057 plans established under Federal law and submit such revised water management plan to the
1058 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the
1059 water conservation plan meets Reclamation’s then current conservation and efficiency criteria for
1060 evaluating water conservation plans established under Federal law.

1061 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1062 shall be described in the Contractor’s water conservation plan.

1063 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1064 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1065 Contract shall not be applicable to or affect non-project water or water rights now owned or
1066 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1067 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1068 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1069 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1070 Federal Reclamation law.

1071 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1072 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1073 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San
1074 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement

1075 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis
1076 & Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the
1077 rights or obligations of the Contractor or the United States hereunder.

1078 (b) The Contracting Officer has previously notified the Contractor in writing that
1079 the Operation and Maintenance of a portion of the Project facilities which serve the Contractor has
1080 been transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
1081 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
1082 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under the
1083 terms and conditions of the separate agreement between the United States and the Operating Non-
1084 Federal Entity San Luis & Delta-Mendota Water Authority described in subdivision (a) of this
1085 Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds,
1086 which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such
1087 successor determines, sets, or establishes for the O&M of the portion of the Project facilities
1088 operated and maintained by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1089 Authority or such successor. Such direct payments to the Operating Non-Federal Entity San Luis &
1090 Delta-Mendota Water Authority or such successor shall not relieve the Contractor of its obligation
1091 to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered
1092 Pricing Component except to the extent the Operating Non-Federal Entity San Luis & Delta-
1093 Mendota Water Authority collects payments on behalf of the United States in accordance with the
1094 separate agreement identified in subdivision (a) of this Article.

1095 (c) For so long as the O&M of any portion of the Project facilities serving the
1096 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1097 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the

1098 Rates for Water Delivered under this Contract representing the cost associated with the activity
1099 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1100 or its successor.

1101 (d) In the event the O&M of the Project facilities operated and maintained by the
1102 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1103 United States during the term of this Contract, the Contracting Officer shall so notify the
1104 Contractor, in writing, and present to the Contractor a revised Exhibit “B” which shall include the
1105 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing
1106 the O&M costs of the portion of such Project facilities which have been re-assumed. The
1107 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the
1108 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit
1109 “B” directly to the United States in compliance with Article 7 of this Contract.

1110 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1111 29. The expenditure or advance of any money or the performance of any obligation of
1112 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1113 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1114 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1115 or allotted.

1116 BOOKS, RECORDS, AND REPORTS

1117 30. (a) The Contractor shall establish and maintain accounts and other books and
1118 records pertaining to administration of the terms and conditions of this Contract, including: the
1119 Contractor's financial transactions, water supply data, and Project land and right-of-way
1120 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1121 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1122 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1123 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1124 the right during office hours to examine and make copies of the other party's books and records
1125 relating to matters covered by this Contract.

1126 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1127 records, or other information shall be requested from the Contractor by the Contracting Officer
1128 unless such books, records, or information are reasonably related to the administration or
1129 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1130 time within which to provide the requested books, records, or information.

1131 (c) At such time as the Contractor provides information to the Contracting
1132 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1133 the Operating Non-Federal Entity.

1134 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1135 31. (a) The provisions of this Contract shall apply to and bind the successors and
1136 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1137 therein shall be valid until approved in writing by the Contracting Officer.

1138 (b) The assignment of any right or interest in this Contract by either party shall
1139 not interfere with the rights or obligations of the other party to this Contract absent the written
1140 concurrence of said other party.

1141 (c) The Contracting Officer shall not unreasonably condition or withhold
1142 approval of any proposed assignment.

1143 SEVERABILITY

1144 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1145 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1146 association or other form of organization whose primary function is to represent parties to Project
1147 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1148 enforceability of a provision included in this Contract and said person, entity, association, or
1149 organization obtains a final court decision holding that such provision is legally invalid or

1150 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1151 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1152 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1153 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1154 specified above may be extended by mutual agreement of the parties. Pending the completion of
1155 the actions designated above, to the extent it can do so without violating any applicable provisions
1156 of law, the United States shall continue to make the quantities of Project Water specified in this
1157 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1158 found to be legally invalid or unenforceable in the final court decision.

1159 RESOLUTION OF DISPUTES

1160 33. Should any dispute arise concerning any provisions of this Contract, or the parties’
1161 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1162 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1163 any matter to the Department of Justice, the party shall provide to the other party 30 days’ written
1164 notice of the intent to take such action; Provided, That such notice shall not be required where a
1165 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1166 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1167 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1168 waive or abridge any right or remedy that the Contractor or the United States may have.

1169 OFFICIALS NOT TO BENEFIT

1170 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1171 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1172 manner as other water users or landowners.

1173 CHANGES IN CONTRACTOR’S SERVICE AREA

1174 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1175 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1176 except upon the Contracting Officer's written consent.

1177 (b) Within 30 days of receipt of a request for such a change, the Contracting
1178 Officer will notify the Contractor of any additional information required by the Contracting Officer
1179 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1180 timely completion of the process. Such process will analyze whether the proposed change is likely
1181 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability
1182 of the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1183 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1184 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply
1185 with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the
1186 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this
1187 Contract.

1188 FEDERAL LAWS

1189 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1190 validity or application in connection with the performance of the terms and conditions of this
1191 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1192 terms and conditions of this Contract unless and until relief from application of such Federal law or
1193 regulation to the implementing provision of the Contract is granted by a court of competent
1194 jurisdiction.

1195 NOTICES

1196 37. Any notice, demand, or request authorized or required by this Contract shall be
1197 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered

1198 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California
1199 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board
1200 of Directors of the Byron-Bethany Irrigation District, P. O. Box 160, Byron, California 94514. The
1201 designation of the addressee or the address may be changed by notice given in the same manner as
1202 provided in this Article for other notices.

1203 CONFIRMATION OF CONTRACT

1204 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1205 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1206 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1207 validation proceedings, and all pertinent supporting records of the court approving and confirming
1208 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1209 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1210 year first above written.

1211 THE UNITED STATES OF AMERICA

1212 By: _____
1213 Regional Director, Mid-Pacific Region
1214 Bureau of Reclamation

1215 (SEAL)

1216 BYRON-BETHANY IRRIGATION DISTRICT

1217 By: _____
1218 President of the Board of Directors

1219 Attest:

1220 By: _____
1221 Secretary of the Board of Directors

1222 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-29-04 Byron Bethany WD Final Draft
1223 LTRC with exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
BYRON BETHANY IRRIGATION DISTRICT
Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the Contract to reflect current Rates and Charges.

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&I</u> <u>Water</u>
Capital Rates	\$10.41	\$14.44
O&M Rates:		
Water Marketing	7.59	5.01
Storage	5.83	6.38
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
CFO/PFR Adj. Rate 1/	<u>1.61</u>	<u>1.46</u>
TOTAL COST-OF-SERVICE-RATES	<u>25.44</u>	<u>27.30</u>
 <u>FULL-COST RATES</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$38.57</u>	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	<u>\$46.56</u>	
 <u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 2/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>

1/ Rate represents Chief Financial Officers (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

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