

AG and M&I
R. O. Final CVP-Wide Draft 4/19-2004
Kanawha WD Draft 7/22-2003
Kanawha WD Draft 6/26-2003
Kanawha WD Draft 6/25-2003
R.O. Final CVP-Wide 6/10-2003
Sac. Valley Division Draft 5/28-2003
CVP-Wide Draft 5/23-2003
Contract No.
14-06-200-466-A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
KANAWHA WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE SACRAMENTO RIVER DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-4
1	Definitions.....	4-8
2	Term of Contract.....	8-11
3	Water to be Made Available and Delivered to the Contractor.....	11-14
4	Time for Delivery of Water	14-15
5	Point of Diversion and Responsibility for Distribution of Water	15-17
6	Measurement of Water Within the Contractor's Boundaries	17-18
7	Rates and Method of Payment for Water.....	18-24
8	Non-Interest Bearing Operation and Maintenance Deficits.....	24
9	Sales, Transfers, or Exchanges of Water	25-26
10	Application of Payments and Adjustments.....	26-27
11	Temporary Reductions--Return Flows	27-28
12	Constraints on the Availability of Water	28
13	Unavoidable Groundwater Percolation.....	29
14	Rules and Regulations.....	29
15	Water and Air Pollution Control.....	29
16	Quality of Water	29-30
17	Water Acquired by the Contractor Other Than From the United States.....	30-32
18	Opinions and Determinations	32-33
19	Coordination and Cooperation.....	33-34
20	Charges for Delinquent Payments	34-35

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
21	Equal Opportunity.....	35-36
22	General Obligation--Benefits Conditioned Upon Payment	36
23	Compliance With Civil Rights Laws and Regulations	36-37
24	Privacy Act Compliance	37
25	Contractor to Pay Certain Miscellaneous Costs.....	38
26	Water Conservation	38-39
27	Existing or Acquired Water or Water Rights.....	39
28	Operation and Maintenance by Operating Non-Federal Entity	40-41
29	Contingent on Appropriation or Allotment of Funds	41
30	Books, Records, and Reports	41-42
31	Assignment Limited--Successors and Assigns Obligated	42
32	Severability	42
33	Resolution of Disputes.....	42
34	Officials Not to Benefit.....	43
35	Changes in Contractor's Boundaries	43-44
36	Federal Laws	44
37	Notices	44
38	Confirmation of Contract.....	44
	Signature Page	45

Exhibit A - Map of Contractor's Boundaries

Exhibit B - Rates and Charges

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LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
KANAWHA WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE SACRAMENTO RIVER DIVISION

10 THIS CONTRACT, made this ____ day of _____, 20__, in
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as
13 amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2,
14 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986
15 (100 Stat. 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 KANAWHA WATER DISTRICT,
18 hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,
19 existing, and acting pursuant to the laws thereof;

20

WITNESSETH, That:

EXPLANATORY RECITALS

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

28 [2nd] WHEREAS, the United States constructed the Red Bluff Diversion Dam, and the
29 Tehama-Colusa Canal and related delivery facilities including pumping plants, hereinafter
30 collectively referred to as the Canal Facilities, which will be used in part for the furnishing of
31 water to the Contractor pursuant to the terms of this Contract; and

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

34 [4th] WHEREAS, the Contractor and the United States entered into Contract
35 No. 14-06-200-466-A, as amended on May 18, 1972, and April 15, 1977, which established
36 terms for the delivery to the Contractor of Project Water from the Canal Facilities from April 19,
37 1963, through February 28, 1995, and under which the initial date of water delivery to the
38 Contractor was January 1, 1976; and

39 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
40 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
41 interim renewal contract(s) identified as Contract No(s). 14-06-200-466-A-IR1, 14-06-200-466-
42 A-IR2, 14-06-200-466-A-IR3, 14-06-200-466-A-IR4, 14-06-200-466-A-IR5, 14-06-200-466-A-
43 IR6, 14-06-200-466-A-IR7, and 14-06-200-466-A-IR8, the current of which is hereinafter
44 referred to as the Existing Contract, which provided for the continued water service to the
45 Contractor from March 1, 2004, through February 28, 2006; and

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

51 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
52 environmental review necessary to provide for long-term renewal of the Existing Contract; and

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

56 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
57 of its obligations under the Existing Contract; and

58 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
59 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
60 reasonable and beneficial use and, based upon a needs analysis cooperatively prepared by the
61 Contracting Officer and the Contractor, has demonstrated projected future demand for water use
62 that exceeds the Contract Total to be made available to it pursuant to this Contract; and

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

66 [12th] WHEREAS, the economies of regions within the Project, including the
67 Contractor's, depend upon the continued availability of water, including water service from the
68 Project; and

69 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
70 partnerships to pursue measures to improve water supply, water quality, and reliability of the
71 Project for all Project purposes; and

72 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
73 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
74 repayment of the Project as required by law; to guard reasonably against Project Water
75 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
76 and to comply with all applicable environmental statutes, all consistent with the legal obligations
77 of the United States relative to the Project; and

78 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
79 relationship in order to achieve their mutual goals; and

80 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
81 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

84 DEFINITIONS

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

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

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

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

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

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

100 (f) “Contractor’s Boundaries” shall mean the area to which the Contractor is
101 permitted to provide Project Water under this Contract as described in Exhibit “A” attached
102 hereto, which may be modified from time to time in accordance with Article 35 of this Contract
103 without amendment of this Contract;

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

106 (h) “Eligible Lands” shall mean all lands to which Irrigation Water may be
107 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
108 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

112 (j) “Full Cost Rate” shall mean an annual rate as determined by the
113 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
114 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
115 deficits funded, less payments, over such periods as may be required under Federal Reclamation
116 law, or applicable contract provisions. Interest will accrue on both the construction expenditures
117 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
118 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
119 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes
120 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules
121 and Regulations for the RRA;

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

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

126 (m) "Irrigation Water" shall mean water made available from the Project that
127 is used primarily in the production of agricultural crops or livestock, including domestic use
128 incidental thereto, and watering of livestock;

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

131 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other
132 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
133 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
134 which are kept for personal enjoyment or water delivered to land holdings operated in units of
135 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer
136 that the use of water delivered to any such landholding is a use described in subdivision (m) of
137 this Article;

138 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to
139 the delivery of M&I Water;

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

143 (r) "Operating Non-Federal Entity" shall mean the Tehama-Colusa Canal
144 Authority, its successors or assigns, a non-Federal entity which has the obligation to operate and
145 maintain all or a portion of the Canal Facilities pursuant to an agreement with the United States,
146 and which may have funding obligations with respect thereto;

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

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

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

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

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

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

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

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

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

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

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

177 TERM OF CONTRACT

178 2. (a) This Contract shall be effective March 1, 20___, through February 28,
179 20___, supercedes the Existing Contract. In the event the Contractor wishes to renew this
180 Contract beyond February 28, 20___, the Contractor shall submit a request for renewal in writing
181 to the Contracting Officer no later than two years prior to the date this Contract expires. The
182 renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the
183 Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract
184 insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by
185 subdivision (c) of this Article.

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

191 (2) The conditions which must be met for this Contract to be renewed
192 are: (i) the Contractor has prepared a water conservation plan that has been determined by the
193 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and
194 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is
195 implementing an effective water conservation and efficiency program based on the Contractor's
196 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is
197 maintaining all water measuring devices and implementing all water measurement methods as
198 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor
199 has reasonably and beneficially used the Project Water supplies made available to it and, based
200 on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and

201 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal;
202 (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the
203 Contractor has the physical and legal ability to deliver Project Water.

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

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

222 (d) The Contracting Officer shall make a determination ten years after the
223 date of execution of this Contract, and every five years thereafter during the term of this
224 Contract, of whether a conversion of the relevant portion of this Contract to a contract under
225 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act
226 of July 2, 1956 (70 Stat. 483). The Contracting Officer shall also make a determination ten years

227 after the date of execution of this Contract and every five years thereafter during the term of this
228 Contract of whether a conversion of the relevant portion of this Contract to a contract under
229 subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.

230 Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights
231 and benefits under the Act of July 2, 1956 (70 Stat. 483). The Contracting Officer anticipates
232 that during the term of this Contract, all authorized Project construction expected to occur will
233 have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate
234 all costs that are properly assignable to the Contractor, and agrees further that, at any time after
235 such allocation is made, and subject to satisfaction of the condition set out in this subdivision,
236 this Contract shall, at the request of the Contractor, be converted to a contract under subsection
237 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to
238 applicable Federal law and under stated terms and conditions mutually agreeable to the
239 Contractor and the Contracting Officer. A condition for such conversion to occur shall be a
240 determination by the Contracting Officer that, account being taken of the amount credited to
241 return by the Contractor as provided for under Federal Reclamation law, the remaining amount
242 of construction costs assignable for ultimate return by the Contractor can probably be repaid to
243 the United States within the term of a contract under subsection 9(d) or 9(c)(1), whichever is
244 applicable. If the remaining amount of costs that are properly assignable to the Contractor
245 cannot be determined during the term of this Contract, the Contracting Officer shall notify the
246 Contractor, and provide the reason(s) why such a determination could not be made. Further, the
247 Contracting Officer shall make such a determination as soon thereafter as possible so as to
248 permit, upon request of the Contractor and satisfaction of the condition set out above, conversion
249 to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such
250 determination of costs has not been made at a time which allows conversion of this Contract
251 during the term of this Contract or the Contractor has not requested conversion of this Contract
252 within such term, the parties shall incorporate in any subsequent renewal contract as described in

253 subdivision (b) of this Article a provision that carries forth in substantially identical terms the
254 provisions of this subdivision.

255 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

256 3. (a) During each Year, consistent with all applicable State water rights,
257 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
258 this Contract, the Contracting Officer shall make available for delivery to the Contractor 45,000
259 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in
260 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
261 Articles 4 and 7 of this Contract.

262 (b) Because the capacity of the Project to deliver Project Water has been
263 constrained in recent years and may be constrained in the future due to many factors including
264 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
265 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
266 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
267 PEIS projected that the Contract Total set forth in this Contract will not be available to the
268 Contractor in many years. During the most recent five years, the Recent Historic Average of
269 water made available to the Contractor was 41,400 acre-feet. Nothing in subdivision (b) of this
270 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

273 (d) The Contractor shall make reasonable and beneficial use of all water
274 furnished pursuant to this Contract. Ground-water recharge programs (direct, indirect, or in
275 lieu), ground-water banking programs, surface water storage programs, and other similar
276 programs utilizing Project Water or other water furnished pursuant to this Contract conducted
277 within the Contractor's Boundaries which are consistent with applicable State law and result in
278 use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge

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

289 (e) The Contractor shall comply with requirements applicable to the
290 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
291 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
292 as amended, that are within the Contractor's legal authority to implement. The Existing
293 Contract, which evidences in excess of 27 years of diversions for irrigation and/or M&I purposes
294 of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be
295 considered in developing an appropriate baseline for biological assessment(s) prepared pursuant
296 to the ESA, and any other needed environmental review. Nothing herein shall be construed to
297 prevent the Contractor from challenging or seeking judicial relief in a court of competent
298 jurisdiction with respect to any biological opinion or other environmental documentation referred
299 to in this Article.

300 (f) As soon as possible following each declaration of Water Made Available
301 under Article 4 of this Contract, the Contracting Officer will make a determination whether
302 Project Water, or other water available to the Project, can be made available to the Contractor in
303 addition to the Contract Total under Article 3 of this Contract during the Year without adversely
304 impacting other Project Contractors. At the request of the Contractor, the Contracting Officer

305 will consult with the Contractor prior to making such a determination. If the Contracting Officer
306 determines that Project Water, or other water available to the Project, can be made available to
307 the Contractor, the Contracting Officer will announce the availability of such water and shall so
308 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the
309 Contractor and other Project Contractors capable of taking such water to determine the most
310 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
311 quantity of such water, the Contracting Officer shall make such water available to the Contractor
312 in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

328 (i) Project Water furnished to the Contractor pursuant to this Contract may be
329 delivered for other than irrigation or M&I purposes upon written approval by the Contracting
330 Officer in accordance with the terms and conditions of such approval.

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

339 TIME FOR DELIVERY OF WATER

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

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

355 (c) The Contractor shall not schedule Project Water in excess of the quantity
356 of Project Water the Contractor intends to put to reasonable and beneficial use within the

357 Contractor's Boundaries or to sell, transfer, or exchange pursuant to Article 9 of this Contract
358 during any Year.

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

364 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

365 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
366 Contract shall be delivered to the Contractor at approved turnouts on the Canal Facilities and any
367 additional point or points of delivery either on Project facilities or another location or locations
368 mutually agreed to in writing by the Contracting Officer and the Contractor. The United States
369 shall furnish such power as may be necessary to pump Project Water at the existing Tehama-
370 Colusa Canal side pumping plants and at existing relift stations at heads and elevations sufficient
371 to irrigate by gravity all areas within the Contractor's Boundaries below elevation 300 (MSL).

372 (b) The Contracting Officer, directly or through its written agreement(s) with
373 the Operating Non-Federal Entity/Entities shall make all reasonable efforts to maintain sufficient
374 flows and levels of water in the Project facilities to deliver Project Water to the Contractor at
375 specific turnouts established pursuant to subdivision (a) of this Article. The parties acknowledge
376 that it may be necessary from time to time to shut down some or all of Project facilities for
377 maintenance or emergencies. Except in the case of emergency, the Contracting Officer shall
378 consult with the Contractor to schedule the shut down at such times and for such duration as will
379 allow for the work to be accomplished completely and efficiently, and with a minimum of
380 disruption of water service to the Contractor. In this regard, shut downs will, to the extent
381 reasonably possible, be limited to the months of December and January.

382 (c) The Contractor shall deliver Irrigation Water in accordance with any
383 applicable land classification provisions of Federal Reclamation law and the associated
384 regulations. The Contractor shall not deliver Project Water to land outside the Contractor's
385 Boundaries unless approved in advance by the Contracting Officer.

386 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
387 measured and recorded with equipment furnished, installed, operated, and maintained by the
388 United States or the Operating Non-Federal Entity/Entities at the point or points of delivery
389 established pursuant to subdivision (a) of this Article. Upon the request of either party to this
390 Contract, the Contracting Officer shall investigate, or cause to be investigated by the responsible
391 Operating Non-Federal Entity/Entities, the accuracy of such measurements and shall take any
392 necessary steps to adjust any errors appearing therein. For any period of time when accurate
393 measurements have not been made, the Contracting Officer shall consult with the Contractor and
394 the responsible Operating Non-Federal Entity/Entities prior to making a final determination of
395 the quantity delivered for that period of time.

396 (e) Neither the Contracting Officer nor any Operating Non-Federal
397 Entity/Entities shall be responsible for the control, carriage, handling, use, disposal, or
398 distribution of Water Delivered to the Contractor pursuant to this Contract beyond the delivery
399 points specified in subdivision (a) of this Article. The Contractor shall indemnify the United
400 States, its officers, employees, agents, and assigns on account of damage or claim of damage of
401 any nature whatsoever for which there is legal responsibility, including property damage,
402 personal injury, or death arising out of or connected with the control, carriage, handling, use,
403 disposal, or distribution of such Water Delivered beyond such delivery points, except for any
404 damage or claim arising out of (i) acts or omissions of the Contracting Officer or any of its
405 officers, employees, agents, or assigns, including the Operating Non-Federal Entity/Entities, with
406 the intent of creating the situation resulting in any damage or claim, (ii) willful misconduct of the
407 Contracting Officer or any of its officers, employees, agents, or assigns, including the Operating

408 Non-Federal Entity/Entities, (iii) negligence of the Contracting Officer or any of its officers,
409 employees, agents, or assigns including the Operating Non-Federal Entity/Entities, or (iv)
410 damage or claims resulting from a malfunction of facilities owned and/or operated by the United
411 States or responsible Operating Non-Federal Entity/Entities.

412 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S BOUNDARIES

413 6. (a) The Contractor has established a measuring program satisfactory to the
414 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
415 purposes within the Contractor's Boundaries is measured at each agricultural turnout and such
416 water delivered for M&I purposes is measured at each M&I service connection. The water
417 measuring devices or water measuring methods of comparable effectiveness must be acceptable
418 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and
419 maintaining and repairing all such measuring devices and implementing all such water
420 measuring methods at no cost to the United States. The Contractor shall use the information
421 obtained from such water measuring devices or water measuring methods to ensure its proper
422 management of the water, to bill water users for water delivered by the Contractor; and, if
423 applicable, to record water delivered for M&I purposes by customer class as defined in the
424 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein
425 contained, however, shall preclude the Contractor from establishing and collecting any charges,
426 assessments, or other revenues authorized by California law. The Contractor shall include a
427 summary of all its annual surface water deliveries in the annual report described in subdivision
428 (c) of Article 26.

429 (b) To the extent the information has not otherwise been provided, upon
430 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
431 report describing the measurement devices or water measuring methods being used or to be used
432 to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
433 service connections or alternative measurement programs approved by the Contracting Officer,

434 at which such measurement devices or water measuring methods are being used, and, if
435 applicable, identifying the locations at which such devices and/or methods are not yet being used
436 including a time schedule for implementation at such locations. The Contracting Officer shall
437 advise the Contractor in writing within 60 days as to the adequacy and necessary modifications,
438 if any, of the measuring devices or water measuring methods identified in the Contractor's report
439 and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If
440 the Contracting Officer notifies the Contractor that the measuring devices or methods are
441 inadequate, the parties shall within 60 days following the Contracting Officer's response,
442 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
443 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
444 compliance with subdivision (a) of this Article.

445 (c) All new surface water delivery systems installed within the Contractor's
446 Boundaries after the effective date of this Contract shall also comply with the measurement
447 provisions described in subdivision (a) of this Article.

448 (d) The Contractor shall inform the Contracting Officer and the State of
449 California in writing by April 30 of each Year of the monthly volume of surface water delivered
450 within the Contractor's Boundaries during the previous Year.

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

454 RATES AND METHOD OF PAYMENT FOR WATER

455 7. (a) The Contractor shall pay the United States as provided in this Article for
456 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
457 accordance with (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and
458 the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be
459 amended, modified, or superceded only through a public notice and comment procedure; (ii)

460 applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii)
461 other applicable provisions of this Contract. Payments shall be made by cash transaction,
462 electronic funds transfer, or any other mechanism as may be agreed to in writing by the
463 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component
464 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may
465 be revised annually.

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

468 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
469 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
470 period October 1, of the current Calendar Year, through September 30, of the following Calendar
471 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
472 to review and comment on such estimates. On or before September 15 of each Calendar Year,
473 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
474 the period October 1 of the current Calendar Year, through September 30, of the following
475 Calendar Year, and such notification shall revise Exhibit "B."

476 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
477 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component
478 for Project Water for the following Year and the computations and cost allocations upon which
479 those Rates are based. The Contractor shall be allowed not less than two months to review and
480 comment on such computations and cost allocations. By December 31 of each Calendar Year,
481 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
482 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

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

486 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
487 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
488 Year. Before the end of the first month and before the end of each calendar month thereafter, the
489 Contractor shall make an advance payment to the United States, at the Rate(s) set under
490 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
491 during the second month immediately following. Adjustments between advance payments for
492 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
493 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
494 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
495 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
496 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
497 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
498 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
499 additional Project Water shall be delivered to the Contractor unless and until an advance
500 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
501 between the advance payments for the Water Scheduled and payments for the quantities of Water
502 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
503 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
504 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
505 day of February.

506 (d) The Contractor shall also make a payment in addition to the Rate(s) in
507 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
508 appropriate Tiered Pricing Component then in effect, before the end of the month following the
509 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
510 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
511 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the

512 water delivery report for the subject month prepared by the Operating Non-Federal
513 Entity/Entities or, if there is no Operating Non-Federal Entity/Entities, by the Contracting
514 Officer. The water delivery report shall be deemed a bill for the payment of Charges and the
515 applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or
516 underpayment of Charges shall be made through the adjustment of payments due to the United
517 States for Charges for the next month. Any amount to be paid for past due payment of Charges
518 and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

531 (h) The Contracting Officer shall keep its accounts pertaining to the
532 administration of the financial terms and conditions of its long-term contracts, in accordance
533 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
534 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
535 Contractor a detailed accounting of all Project and Contractor expense allocations, the
536 disposition of all Project and Contractor revenues, and a summary of all water delivery

537 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
538 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

546 (j) (1) Beginning at such time as deliveries of Project Water in a Year
547 exceed 80 percent of the Contract Total, then before the end of the month following the month of
548 delivery the Contractor shall make an additional payment to the United States equal to the
549 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
550 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
551 Contract Total, shall equal one-half of the difference between the Rate established under
552 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
553 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
554 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
555 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water
556 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
557 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract
558 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in
559 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.

560 (2) Subject to the Contracting Officer's written approval, the
561 Contractor may request and receive an exemption from such Tiered Pricing Components for
562 Project Water delivered to produce a crop which the Contracting Officer determines will provide

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

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

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

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

588 for transferred Project Water shall be the Contractor's Rates and Charges and will not be
589 adjusted to reflect the Contractor's inability to pay.

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

592 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is
593 not legally obligated to repay any Project deficits claimed by the United States to have accrued
594 as of the date of this Contract or deficit-related interest charges thereon. By entering into this
595 Contract, the Contractor does not waive any legal rights or remedies that it may have with
596 respect to such disputed issues. Notwithstanding the execution of this Contract, and payments
597 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
598 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
599 term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2)
600 interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in
601 the Rates; (4) the application by the United States of payments made by the Contractor under its
602 Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the
603 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
604 shall be entitled to the benefit of any administrative or judicial ruling in favor of any other
605 Project M&I contractor on any of these issues and credits for payments heretofore made,
606 Provided, That the basis for such ruling is applicable to the Contractor.

607 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

608 8. The Contractor and the Contracting Officer concur that, as of the effective date of
609 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further
610 liability therefor.

611 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

648 (d) For the purpose of determining whether Section 3405(a)(1)(M) of the
649 CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting
650 Officer acknowledges that the Contractor is within a county, watershed, or other area of origin,
651 as those terms are utilized under California law, of water that constitutes the natural flow of the
652 Sacramento River and its tributaries above the confluence of the American and Sacramento
653 Rivers.

654 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

663 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
664 direction as to how to credit or refund such overpayment in response to the notice to the
665 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

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

671 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

694 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

705 (c) In any Year in which there may occur a shortage for any of the reasons
706 specified in subdivision (b) above, the Contracting Officer shall apportion the available Project
707 Water supply among the Contractor and others entitled, under existing contracts and future
708 contracts (to the extent such future contracts are permitted under subsections (a) and (b) of
709 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the
710 contractual obligations of the United States.

711 (d) Project Water furnished under this Contract will be allocated in
712 accordance with the then-existing Project M&I Water Shortage Policy. Such policy shall be
713 amended, modified, or superseded only through a public notice and comment procedure.

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UNAVOIDABLE GROUNDWATER PERCOLATION

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13. To the extent applicable, the Contractor shall not be deemed to have delivered

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Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such

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lands are irrigated with groundwater that reaches the underground strata as an unavoidable result

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

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RULES AND REGULATIONS

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14. The parties agree that the delivery of Irrigation Water or use of Federal facilities

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pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the

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Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and

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the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation

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law.

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WATER AND AIR POLLUTION CONTROL

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

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water and air pollution laws and regulations of the United States and the State of California, and

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shall obtain all required permits or licenses from the appropriate Federal, State, or local

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authorities.

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QUALITY OF WATER

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

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

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Water to the Contractor in accordance with the water quality standards specified in subsection

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2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of

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October 27, 1986 (100 Stat. 3050), or other existing Federal laws. The United States is under no

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obligation to construct or furnish water treatment facilities to maintain or to improve the quality

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

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warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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(b) The O&M of Project facilities shall be performed in such manner as is

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practicable to maintain the quality of raw water made available through such facilities at the

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highest level reasonably attainable as determined by the Contracting Officer. The Contractor

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shall be responsible for compliance with all State and Federal water quality standards applicable

743 to surface and subsurface agricultural drainage discharges generated through the use of Federal
744 or Contractor facilities or Project Water provided by the Contractor within the Contractor's
745 Boundaries.

746 WATER ACQUIRED BY THE CONTRACTOR
747 OTHER THAN FROM THE UNITED STATES

748 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
749 other than from the United States and Irrigation Water furnished pursuant to the terms of this
750 Contract may be simultaneously transported through the same distribution facilities of the
751 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
752 and non-Project water were constructed without funds made available pursuant to Federal
753 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
754 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive
755 Irrigation Water must be established through the certification requirements as specified in the
756 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of
757 Eligible Lands within the Contractor's Boundaries can be established and the quantity of
758 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such
759 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-
760 Project water are/were constructed with funds made available pursuant to Federal Reclamation
761 law, the non-Project water will be subject to the acreage limitation provisions of Federal
762 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
763 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate
764 annually the cost to the Federal Government, including interest, on storing or delivering non-
765 Project water, which for purposes of this Contract shall be determined as follows: The quotient
766 shall be the unpaid distribution system costs divided by the total irrigable acreage within the
767 Contractor's Boundaries. The incremental fee per acre is the mathematical result of such
768 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982
769 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land

770 within the Contractor's Boundaries that receives non-Project water through Federally financed or
771 constructed facilities. The incremental fee calculation methodology will continue during the
772 term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or
773 policy adopted after the Contractor has been afforded the opportunity to review and comment on
774 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall
775 supercede this provision.

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

781 (1) The Contractor may introduce non-Project water into Project
782 facilities and deliver said water to lands within the Contractor's Boundaries, including Ineligible
783 Lands, subject to payment to the United States and/or to any applicable Operating Non-Federal
784 Entity of an appropriate rate as determined by the applicable Project ratesetting policy, the RRA,
785 and the Project use power policy, if such Project use power policy is applicable, each as
786 amended, modified, or superceded from time to time.

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

793 (3) Neither the United States nor the Operating Non-Federal Entity
794 shall be responsible for control, care, or distribution of the non-Project water before it is
795 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases

796 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
797 their respective officers, agents, and employees, from any claim for damage to persons or
798 property, direct or indirect, resulting from the acts of the Contractor, its officers', employees',
799 agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii)
800 diverting such non-Project water into Project facilities.

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

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

809 OPINIONS AND DETERMINATIONS

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

820 (b) The Contracting Officer shall have the right to make determinations
821 necessary to administer this Contract that are consistent with the provisions of this Contract, the

822 laws of the United States and of the State of California, and the rules and regulations
823 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation
824 with the Contractor to the extent reasonably practicable.

825 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

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

865 CHARGES FOR DELINQUENT PAYMENTS

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

875 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
876 in the Federal Register by the Department of the Treasury for application to overdue payments,

877 or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the
878 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
879 determined as of the due date and remain fixed for the duration of the delinquent period.

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

883 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

929 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

942 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

943 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
944 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
945 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
946 laws, as well as with their respective implementing regulations and guidelines imposed by the
947 U.S. Department of the Interior and/or Bureau of Reclamation.

948 (b) These statutes require that no person in the United States shall, on the
949 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
950 denied the benefits of, or be otherwise subjected to discrimination under any program or activity

951 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the
952 Contractor agrees to immediately take any measures necessary to implement this obligation,
953 including permitting officials of the United States to inspect premises, programs, and documents.

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

962 PRIVACY ACT COMPLIANCE

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

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

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

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

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

988 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

997 WATER CONSERVATION

998 26. (a) Prior to the delivery of water provided from or conveyed through
999 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1000 shall be implementing an effective water conservation and efficiency program based on the
1001 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1002 the conservation and efficiency criteria for evaluating water conservation plans established under
1003 Federal law. The water conservation and efficiency program shall contain definite water
1004 conservation objectives, appropriate economically feasible water conservation measures, and
1005 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1006 Contract shall be contingent upon the Contractor's continued implementation of such water
1007 conservation program. In the event the Contractor's water conservation plan or any revised water
1008 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
1009 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1010 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
1011 shall be made under this Contract so long as the Contractor diligently works with the Contracting
1012 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor

1013 immediately begins implementing its water conservation and efficiency program in accordance
1014 with the time schedules therein.

1015 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1016 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall
1017 implement the Best Management Practices identified by the time frames issued by the California
1018 Urban Water Conservation Council for such M&I Water unless any such practice is determined
1019 by the Contracting Officer to be inappropriate for the Contractor.

1020 (c) The Contractor shall submit to the Contracting Officer a report on the
1021 status of its implementation of the water conservation plan on the reporting dates specified in the
1022 then existing conservation and efficiency criteria established under Federal law.

1023 (d) At five-year intervals, the Contractor shall revise its water conservation
1024 plan to reflect the then-current conservation and efficiency criteria for evaluating water
1025 conservation plans established under Federal law and submit such revised water management
1026 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
1027 determine if the water conservation plan meets Reclamation's then-current conservation and
1028 efficiency criteria for evaluating water conservation plans established under Federal law.

1029 (e) If the Contractor is engaged in direct ground-water recharge, such activity
1030 shall be described in the Contractor's water conservation plan.

1031 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1032 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1033 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1034 hereafter acquired by the Contractor or any user of such water within the Contractor's
1035 Boundaries. Any such water shall not be considered Project Water under this Contract. In
1036 addition, this Contract shall not be construed as limiting or curtailing any rights which the
1037 Contractor or any water user within the Contractor's Boundaries acquires or has available under
1038 any other contract pursuant to Federal Reclamation law.

1039 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1040 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1041 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1042 Operating Non-Federal Entity by separate agreement between the United States and the
1043 Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the
1044 rights or obligations of the Contractor or the United States hereunder.

1045 (b) The Contracting Officer has previously notified the Contractor in writing
1046 that the O&M of a portion of the Project facilities which serve the Contractor has been
1047 transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly
1048 to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer
1049 under the terms and conditions of the separate agreement between the United States and the
1050 Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or
1051 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1052 Federal Entity or such successor determines, sets, or establishes for the O&M of the portion of
1053 the Project facilities operated and maintained by the Operating Non-Federal Entity or such
1054 successor. Such direct payments to the Operating Non-Federal Entity or such successor shall not
1055 relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1056 of the Project Rates, Charges, and Tiered Pricing Component(s) except to the extent the
1057 Operating Non-Federal Entity collects payments on behalf of the United States in accordance
1058 with the separate agreement identified in subdivision (a) of this Article.

1059 (c) For so long as the O&M of any portion of the Project facilities serving the
1060 Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the
1061 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1062 Contract representing the cost associated with the activity being performed by the Operating
1063 Non-Federal Entity or its successor.

1064 (d) In the event the O&M of the Project facilities operated and maintained by
1065 the Operating Non-Federal Entity is re-assumed by the United States during the term of this
1066 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1067 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1068 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1069 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1070 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1071 Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the
1072 United States in compliance with Article 7 of this Contract.

1073 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1074 29. The expenditure or advance of any money or the performance of any obligation of
1075 the United States under this Contract shall be contingent upon appropriation or allotment of
1076 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1077 obligations under this Contract. No liability shall accrue to the United States in case funds are
1078 not appropriated or allotted.

1079 BOOKS, RECORDS, AND REPORTS

1080 30. (a) The Contractor shall establish and maintain accounts and other books and
1081 records pertaining to administration of the terms and conditions of this Contract, including: the
1082 Contractor's financial transactions, water supply data, and Project land and right-of-way
1083 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1084 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1085 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1086 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1087 Contract shall have the right during office hours to examine and make copies of the other party's
1088 books and records relating to matters covered by this Contract.

1089 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1090 books, records, or other information shall be requested from the Contractor by the Contracting
1091 Officer unless such books, records, or information are reasonably related to the administration or
1092 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1093 time within which to provide the requested books, records, or information.

1094 (c) At such time as the Contractor provides information to the Contracting
1095 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1096 to the Operating Non-Federal Entity.

1097 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1098 31. (a) The provisions of this Contract shall apply to and bind the successors and
1099 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1100 therein shall be valid until approved in writing by the Contracting Officer.

1101 (b) The assignment of any right or interest in this Contract by either party
1102 shall not interfere with the rights or obligations of the other party to this Contract absent the
1103 written concurrence of said other party.

1104 (c) The Contracting Officer shall not unreasonably condition or withhold his
1105 approval of any proposed assignment.

1106 SEVERABILITY

1107 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1108 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1109 an association or other form of organization whose primary function is to represent parties to
1110 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1111 enforceability of a provision included in this Contract and said person, entity, association, or
1112 organization obtains a final court decision holding that such provision is legally invalid or
1113 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1114 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1115 final court decision identify by mutual agreement the provisions in this Contract which must be
1116 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1117 The time periods specified above may be extended by mutual agreement of the parties. Pending
1118 the completion of the actions designated above, to the extent it can do so without violating any
1119 applicable provisions of law, the United States shall continue to make the quantities of Project
1120 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1121 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1122 RESOLUTION OF DISPUTES

1123 33. Should any dispute arise concerning any provisions of this Contract, or the
1124 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to

1125 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1126 Officer referring any matter to Department of Justice, the party shall provide to the other party
1127 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1128 required where a delay in commencing an action would prejudice the interests of the party that
1129 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1130 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1131 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1132 United States may have.

1133 OFFICIALS NOT TO BENEFIT

1134 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1135 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1136 manner as other water users or landowners.

1137 CHANGES IN CONTRACTOR'S BOUNDARIES

1138 35. (a) While this Contract is in effect, no change may be made in the
1139 Contractor's Boundaries, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1140 or otherwise, except upon the Contracting Officer's written consent.

1141 (b) Within 30 days of receipt of a request for such a change, the Contracting
1142 Officer will notify the Contractor of any additional information required by the Contracting
1143 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1144 schedule for timely completion of the process. Such process will analyze whether the proposed
1145 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1146 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1147 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1148 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1149 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1150 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1151 be paid in accordance with Article 25 of this Contract.

1152

FEDERAL LAWS

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36. By entering into this Contract, the Contractor does not waive its rights to contest

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the validity or application in connection with the performance of the terms and conditions of this

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Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with

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the terms and conditions of this Contract unless and until relief from application of such Federal

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law or regulation to the implementing provision of the Contract is granted by a court of

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competent jurisdiction.

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NOTICES

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37. Any notice, demand, or request authorized or required by this Contract shall be

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deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or

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delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349

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Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when

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mailed, postage prepaid, or delivered to the Board of Directors of the Kanawha Water District,

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P. O. Box 1054, 360 North County Road G, Willows, California 95988. The designation of the

1166

addressee or the address may be changed by notice given in the same manner as provided in this

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Article for other notices.

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CONFIRMATION OF CONTRACT

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38. The Contractor, after the execution of this Contract, shall promptly seek to secure

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a decree of a court of competent jurisdiction of the State of California, confirming the execution

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of this Contract. The Contractor shall furnish the United States a certified copy of the final

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decree, the validation proceedings, and all pertinent supporting records of the court approving

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and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on

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the Contractor.

1175 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1176 the day and year first above written.

1177 THE UNITED STATES OF AMERICA

1178 By: _____
1179 Regional Director, Mid-Pacific Region
1180 Bureau of Reclamation

1181 KANAWHA WATER DISTRICT

1182 By: _____
1183 President of the Board of Directors

1184 Attest:

1185 By: _____
1186 Secretary of the Board of Directors

1187 (I:\LTRC\LTRC Drafts\04-19-2004-01 Kanawha WD Final LTRC Draft Contract.doc)

EXHIBIT A

[Map or Description of Boundaries]

EXHIBIT B
Rates and Charges
KANAWHA WATER DISTRICT

	2003 Rates Per Acre-Foot	
	<u>Irrigation</u>	<u>M&I</u>
CONTRACT RATE *	\$13.70	
(1 st Tier - ≤80% of Contract Total)		
2 ND TIER [>80% ≤90% of Contract Total]	\$26.13	
(Sec. 202(3) Full Cost Rate + Contract Rate/ 2) **		
3 RD TIER [> 90% of Contract Total]	\$38.56	
(Sec. 202(3) Full Cost Rate) **		
FULL-COST RATES: **		
RRA Section 202(3) rate is applicable to Qualified Recipients or to Limited Recipients receiving irrigation water on or before October 1, 1981.	\$38.56	
RRA Section 205(a)(3) rate is applicable to Limited Recipients that did <u>not</u> receive irrigation water on or before October 1, 1981.	\$48.08	
SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND***		
Restoration Payments [3407(d)(2)(A)]	\$0.00	

* Capital component of cost-of-service rate is not included in Contract Rate due to ability to pay relief for Contractor established pursuant to the results of the Payment Capacity Analysis for the Tehama-Colusa Water Users Association Service Area as announced by letter dated February 10, 1995.

** Contractors with 9(d) distribution systems do not have the 9(d) Full Cost component included for tiered pricing calculations. See Article 1(j).

*** These surcharges are payments in addition to the water rates and are determined pursuant to Title XXXIV of P.L. 102-575. Restoration Fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1-9/30). Contractors with ability to pay relief do not pay Restoration Fund charges for irrigation water.

Note: Additional detail of rate components is available on the Internet at <http://www.mp.usbr.gov/cvpwaterrates/>.