

AG and M&I
R. O. CVP-Wide Draft 4/19-2004
Stony Creek WD 3/01-2004
Stony Creek WD 7/22-2003
Stony Creek WD 6/30-2003
Sac. Valley Division Draft 5/28-2003
CVP-Wide Draft 5/23-2003
Contract No.
2-07-20-W0261-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
STONY CREEK WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE BLACK BUTTE PROJECT

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THIS CONTRACT, made this _____ day of _____, 20____, in
pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as
amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2,
1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986
(100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
OF AMERICA, hereinafter referred to as the United States, and STONY CREEK WATER
DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California, duly
organized, existing, and acting pursuant to the laws thereof;

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WITNESSETH, That:

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EXPLANATORY RECITALS

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[1st] WHEREAS, the United States has constructed and is operating the Central Valley
Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection

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 [1.1] WHEREAS, the United States has constructed the Orland Project which is being
29 operated by the Orland Water Users' Association pursuant to Contract No. 14-06-200-3502
30 dated August 26, 1954, as amended by the contract dated August 24, 1960; and

31 [2nd] WHEREAS, the United States constructed the Black Butte Dam and Reservoir
32 which were integrated into the Project and which will be used in part for the furnishing of water
33 to the Contractor pursuant to the terms of this Contract; and

34 [2.1] WHEREAS, the water rights of all lands and the use thereof within the watershed
35 of Stony Creek and its tributaries were adjudicated by the U.S. District Court for the Northern
36 District of California, Second Division, in United States of America, Plaintiff, v. H. C. Angle, et
37 al., Defendants, Equity Number 30, hereinafter referred to as the Angle Decree; and

38 [2.2] WHEREAS, the United States is willing to make water stored in the Black Butte
39 Reservoir available to the Contractor from the East Park Reservoir of the Orland Project pursuant
40 to the exchange Contract No. 14-06-200-1020A, dated June 26, 1964, between the United States
41 and the Orland Water Users' Association; and

42 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
43 pursuant to California law for operation of the Project; and

44 [4th] WHEREAS, the Contractor and the United States entered into Contract
45 No. 2-07-20-W0261, as amended on January 13, 1999, which provided the Contractor with Base
46 Supply and established terms for the delivery to the Contractor of Project Water from Stony
47 Creek and East Park Reservoir from April 19, 1982, through December 31, 2020, hereinafter
48 referred to as the "Existing Contract"; and

49 [5th] WHEREAS, the United States and the Contractor have, pursuant to subsection
50 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a

51 binding agreement identified as Binding Agreement No. 2-07-20-W0261-BA, which sets out the
52 terms pursuant to which the Contractor agreed to renew the Existing Contract before its
53 expiration date after completion of a programmatic environmental impact statement and other
54 appropriate environmental documentation and negotiation of a renewal contract, and which also
55 sets out the consequences of a subsequent decision not to renew; and

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

61 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
62 environmental review necessary to provide for long-term renewal of the Existing Contract; and

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

66 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
67 of its obligations under the Existing Contract; and

68 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
69 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
70 reasonable and beneficial use and, based upon a needs analysis cooperatively prepared by the
71 Contracting Officer and the Contractor, has demonstrated projected future demand for water use
72 that exceeds the Contract Total to be made available to it pursuant to this Contract; and

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

76 [12th] WHEREAS, the economies of regions within the Project, including the
77 Contractor's, depend upon the continued availability of water, including water service from the
78 Project; and

79 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
80 partnerships to pursue measures to improve water supply, water quality, and reliability of the
81 Project for all Project purposes; and

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

88 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
89 relationship in order to achieve their mutual goals; and

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

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

94 DEFINITIONS

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

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

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

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

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

108 (e) "Contract Total" shall mean the maximum amount of water to which the
109 Contractor is entitled under subdivisions (a)(1) and (2) of Article 3 of this Contract;

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

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

116 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
117 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
118 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

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

122 (j) "Full Cost Rate" shall mean an annual rate as determined by the
123 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
124 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M
125 deficits funded, less payments, over such periods as may be required under Federal Reclamation
126 law, or applicable contract provisions. Interest will accrue on both the construction expenditures
127 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the

128 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
129 in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes
130 actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules
131 and Regulations for the RRA;

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

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

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

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

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

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

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

153 (r) Omitted;

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

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

159 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
160 delivered by the Secretary in accordance with the statutes authorizing the Project and in
161 accordance with the terms and conditions of water rights acquired pursuant to California law and
162 that is diverted or scheduled to be diverted each month by the Contractor which is in excess of
163 the Base Supply;

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

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

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

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

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

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

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

184 (cc) "Year" shall mean the period from and including March 1 of each
185 Calendar Year through the last day of February of the following Calendar Year; and

186 (dd) "Base Supply" shall mean the quantity of water described in subdivision
187 (a)(1) of Article 3 and Exhibit "C" which the United States agrees may be diverted by the
188 Contractor from Stony Creek and East Park Reservoir each month during the period March
189 through November of each Year without payment to the United States for such quantities
190 diverted; and;

191 (ee) "Other Water" shall mean water available from the Project other than
192 Irrigation Water and M&I Water.

193 TERM OF CONTRACT

194 2. (a) This Contract shall be effective March 1, 20___, through February 28,
195 20___, and supercedes the Existing Contract. In the event the Contractor wishes to renew this
196 Contract beyond February 28, 20___, the Contractor shall submit a request for renewal in writing
197 to the Contracting Officer no later than two years prior to the date this Contract expires. The
198 renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the
199 Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract
200 insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by
201 subdivision (c) of this Article.

202 (b) (1) Under terms and conditions of a renewal contract that are mutually
203 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the

204 time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and
205 subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation
206 Water to the Contractor, shall be renewed for a period of 25 years.

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

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

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

238 (d) The Contracting Officer shall make a determination ten years after
239 the date of execution of this Contract, and every five years thereafter during the term of this
240 Contract, of whether a conversion of the relevant portion of this Contract to a contract under said
241 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act
242 of July 2, 1956 (70 Stat. 483). The Contracting Officer shall also make a determination ten years
243 after the date of execution of this Contract and every five years thereafter during the term of this
244 Contract of whether a conversion of the relevant portion of this Contract to a contract under
245 subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.

246 Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights
247 and benefits under the Act of July 2, 1956 (70 Stat. 483). The Contracting Officer anticipates
248 that during the term of this Contract, all authorized Project construction expected to occur will
249 have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate
250 all costs that are properly assignable to the Contractor, and agrees further that, at any time after
251 such allocation is made, and subject to satisfaction of the condition set out in this subdivision,
252 this Contract shall, at the request of the Contractor, be converted to a contract under subsection
253 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to

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

271 (e) The Contractor recognizes that this Contract is subject to the terms and
272 conditions of Contract No. 14-06-200-1020A, between the United States and the Orland Water
273 Users' Association. In the event that Contract No. 14-0. 6-200-1020A is terminated, this
274 Contract shall also be considered terminated.

275 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

276 3. (a) (1) The Contractor is hereby entitled and authorized to divert from
277 Stony Creek and East Park Reservoir, subject to the terms and conditions contained herein, 425
278 acre-feet of Base Supply shown in Exhibit “C” for beneficial use within the area shown on
279 Exhibit “A”.

280 (2) During each Year, consistent with all applicable State water rights,
281 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
282 this Contract, the Contracting Officer shall make available for delivery to the Contractor 2,920
283 acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in
284 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
285 Articles 4 and 7 of this Contract.

286 (b) Because the capacity of the Project to deliver Project Water has been
287 constrained in recent years and may be constrained in the future due to many factors including
288 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
289 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
290 Article in any given Year is uncertain. The Contracting Officer’s modeling referenced in the
291 PEIS projected that the Contract Total set forth in this Contract will not be available to the
292 Contractor in many years. During the most recent five years, the Recent Historic Average of
293 water made available to the Contractor was 2,714 acre-feet. Nothing in subdivision (b) of this
294 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

297 (d) The Contractor shall make reasonable and beneficial use of all water
298 furnished pursuant to this Contract. Ground-water recharge programs (direct, indirect, or in
299 lieu), ground-water banking programs, surface water storage programs, and other similar

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

314 (e) The Contractor shall comply with requirements applicable to the
315 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
316 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
317 as amended, that are within the Contractor's legal authority to implement. The Existing
318 Contract, which evidences in excess of 21 years of diversions for irrigation and/or M&I purposes
319 of the quantities of water provided in subdivision (a)(2) of Article 3 of this Contract, will be
320 considered in developing an appropriate baseline for biological assessment(s) prepared pursuant
321 to the ESA, and any other needed environmental review. Nothing herein shall be construed to
322 prevent the Contractor from challenging or seeking judicial relief in a court of competent
323 jurisdiction with respect to any biological opinion or other environmental documentation referred
324 to in this Article.

325 (f) As soon as possible following each declaration of Water Made Available
326 under Article 4 of this Contract, the Contracting Officer will make a determination whether
327 Project Water, or other water available to the Project, can be made available to the Contractor in
328 addition to the Contract Total under Article 3 of this Contract during the Year without adversely
329 impacting other Project Contractors. At the request of the Contractor, the Contracting Officer
330 will consult with the Contractor prior to making such a determination. If the Contracting Officer
331 determines that Project Water, or other water available to the Project, can be made available to
332 the Contractor, the Contracting Officer will announce the availability of such water and shall so
333 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the
334 Contractor and other Project Contractors capable of taking such water to determine the most
335 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
336 quantity of such water, the Contracting Officer shall make such water available to the Contractor
337 in accordance with applicable statutes, regulations, guidelines, and policies.

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

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

351 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
352 contracts.

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

357 (j) The Contracting Officer shall make reasonable efforts to protect the water
358 rights necessary for the Project and to provide the water available under this Contract. The
359 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
360 extent permitted by law, in administrative proceedings related to the Project Water rights;
361 Provided, That the Contracting Officer retains the right to object to the substance of the
362 Contractor's position in such a proceeding; Provided further, That in such proceedings the
363 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
364 Contract to use Project Water.

365 TIME FOR DELIVERY OF WATER

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

375 (b) On or before each March 1 and at such other times as necessary, the
376 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the

377 Contracting Officer, showing the monthly quantities of Base Supply and Project Water to be
378 delivered by the United States to the Contractor pursuant to this Contract for the Year
379 commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver
380 Base Supply and Project Water according to the approved schedule for the Year commencing on
381 such March 1.

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

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

392 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

393 5. (a) Base Supply and Project Water scheduled pursuant to subdivision (b) of
394 Article 4 of this Contract shall be delivered to the Contractor at existing points of diversion on
395 Stony Creek and East Park Reservoir shown on Exhibit A and any additional point or points of
396 delivery either on Project facilities or another location or locations mutually agreed to in writing
397 by the Contracting Officer and the Contractor.

398 (b) The Contracting Officer shall make all reasonable efforts to maintain
399 sufficient flows and levels of water in Stony Creek and East Park Reservoir to deliver Project
400 Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this
401 Article.

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

406 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
407 measured and recorded with equipment furnished, installed, operated, and maintained by the
408 Contractor at the point or points of delivery established pursuant to subdivision (a) of this
409 Article. Upon the request of either party to this Contract, the Contracting Officer shall
410 investigate the accuracy of such measurements and shall take any necessary steps to adjust any
411 errors appearing therein. For any period of time when accurate measurements have not been
412 made, the Contracting Officer shall consult with the Contractor prior to making a final
413 determination of the quantity delivered for that period of time.

414 (e) The Contracting Officer shall not be responsible for the control, carriage,
415 handling, use, disposal, or distribution of Base Supply and Water Delivered to the Contractor
416 pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article.
417 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
418 account of damage or claim of damage of any nature whatsoever for which there is legal
419 responsibility, including property damage, personal injury, or death arising out of or connected
420 with the control, carriage, handling, use, disposal, or distribution of such Base Supply and Water
421 Delivered beyond such delivery points, except for any damage or claim arising out of (i) acts or
422 omissions of the Contracting Officer or any of its officers, employees, agents, or assigns with the
423 intent of creating the situation resulting in any damage or claim, (ii) willful misconduct of the
424 Contracting Officer or any of its officers, employees, agents, or assigns, (iii) negligence of the
425 Contracting Officer or any of its officers, employees, agents, or assigns or (iv) damage or claims
426 resulting from a malfunction of facilities owned and/or operated by the United States

427 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

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

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

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

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

466 (e) The Contractor shall inform the Contracting Officer on or before the 10th
467 calendar day of each month of the quantity of Irrigation Water or M&I Water and/or Other Water
468 taken during the preceding month.

469 RATES AND METHOD OF PAYMENT FOR WATER

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

479 applicable to the Contractor upon execution of this Contract are set forth in Exhibit “B,” as may
480 be revised annually. The Rates and Charges for Other Water shall be determined by the
481 Contracting Officer upon the Contractor’s request to use all or a portion of its Project Water as
482 Other Water.

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

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

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

500 (c) At the time the Contractor submits the initial schedule for the delivery of
501 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
502 Contractor shall make an advance payment to the United States equal to the total amount payable
503 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
504 scheduled to be delivered pursuant to this Contract during the first two calendar months of the

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

523 (d) The Contractor shall also make a payment in addition to the Rate(s) in
524 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
525 appropriate Tiered Pricing Component then in effect, before the end of the month following the
526 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
527 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
528 consistent with the quantities of Irrigation Water, M&I Water and/or Other Water Delivered as
529 shown in the water delivery report for the subject month prepared by the Contracting Officer.
530 The water delivery report shall be deemed a bill for the payment of Charges and the applicable

531 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment
532 of Charges shall be made through the adjustment of payments due to the United States for
533 Charges for the next month. Any amount to be paid for past due payment of Charges and the
534 Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

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

555 (i) The parties acknowledge and agree that the efficient administration of this
556 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,

557 policies, and procedures used for establishing Rates, Charges, and the Tiered Pricing
558 Component, and/or for making and allocating payments, other than those set forth in this Article
559 may be in the mutual best interest of the parties, it is expressly agreed that the parties may enter
560 into agreements to modify the mechanisms, policies, and procedures for any of those purposes
561 while this Contract is in effect without amending this Contract.

562 (j) (1) Beginning at such time as deliveries of Project Water in a Year
563 exceed 80 percent of the Contract Total, then before the end of the month following the month of
564 delivery the Contractor shall make an additional payment to the United States equal to the
565 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
566 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
567 Contract Total, shall equal one-half of the difference between the Rate established under
568 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
569 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
570 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
571 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water
572 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
573 subdivision (a)(2) of Article 3 of this Contract which is in excess of 80 percent of the Contract
574 Total, this increment shall be deemed to be divided between Irrigation Water, M&I Water and/or
575 Other Water in the same proportion as actual deliveries of each bear to the cumulative total
576 Water Delivered.

577 (2) Subject to the Contracting Officer's written approval, the
578 Contractor may request and receive an exemption from such Tiered Pricing Component for
579 Project Water delivered to produce a crop which the Contracting Officer determines will provide
580 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
581 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
582 Irrigation Water shall apply only if such habitat values can be assured consistent with the

583 purposes of the CVPIA through binding agreements executed with or approved by the
584 Contracting Officer prior to use of such water.

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

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

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

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

609 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is
610 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
611 of the date of this Contract or deficit-related interest charges thereon. By entering into this
612 Contract, the Contractor does not waive any legal rights or remedies that it may have with
613 respect to such disputed issues. Notwithstanding the execution of this Contract, and payments
614 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
615 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
616 term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2)
617 interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in
618 the Rates; (4) the application by the United States of payments made by the Contractor under its
619 Existing Contract and any preceding interim renewal contract, if applicable; and (5) the
620 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
621 shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project
622 M&I contractor on any of these issues, and credits for payments heretofore made, Provided, That
623 the basis for such ruling is applicable to the Contractor.

624 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

628 SALES, TRANSFERS, OR EXCHANGES OF WATER

629 9. (a) The right to receive Project Water provided for in this Contract may be
630 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
631 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
632 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
633 Water under this Contract may take place without the prior written approval of the Contracting
634 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or

635 exchanges shall be approved absent all appropriate environmental documentation, including but
636 not limited to documents prepared pursuant to NEPA and ESA. Such environmental
637 documentation should include, as appropriate, an analysis of ground-water impacts and
638 economic and social effects, including environmental justice, of the proposed water transfers on
639 both the transferor and transferee.

640 (b) In order to facilitate efficient water management by means of water
641 transfers of the type historically carried out among Project Contractors located within the same
642 geographical area and to allow the Contractor to participate in an accelerated water transfer
643 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
644 all necessary environmental documentation including, but not limited to, documents prepared
645 pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas, and the
646 Contracting Officer shall determine whether such transfers comply with applicable law.
647 Following the completion of the environmental documentation, such transfers addressed in such
648 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
649 require prior written approval by the Contracting Officer. Such environmental documentation
650 and the Contracting Officer's compliance determination shall be reviewed every five years and
651 updated, as necessary, prior to the expiration of the then-existing five-year period. All
652 subsequent environmental documentation shall include an alternative to evaluate not less than the
653 quantity of Project Water historically transferred within the same geographical area.

654 (c) For a water transfer to qualify under subdivision (b) of this Article, such
655 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
656 years, for M&I use, ground-water recharge, water banking, similar ground-water activities,
657 surface water storage, or fish and wildlife resources; not lead to land conversion; and be
658 delivered to established cropland, wildlife refuges, ground-water basins or M&I use; (ii) occur
659 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
660 through existing facilities with no new construction or modifications to facilities and be between

661 existing Project Contractors and/or the Contractor and the United States, Department of the
662 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and
663 requirements imposed for protection of the environment and Indian Trust Assets, as defined
664 under Federal law.

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

671 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

683 (b) All advances for miscellaneous costs incurred for work requested by the
684 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs
685 when the work has been completed. If the advances exceed the actual costs incurred, the

686 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
687 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

688 TEMPORARY REDUCTIONS--RETURN FLOWS

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

694 (b) The Contracting Officer may temporarily discontinue or reduce the
695 quantity of Water Delivered to the Contractor as herein provided for the purposes of
696 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
697 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
698 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
699 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
700 Provided, That the United States shall use its best efforts to avoid any discontinuance or
701 reduction in such service. Upon resumption of service after such reduction or discontinuance,
702 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
703 Project Water which would have been delivered hereunder in the absence of such discontinuance
704 or reduction.

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

711 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

731 (e) By entering into this Contract, the Contractor does not waive any legal
732 rights or remedies it may have to file or participate in any administrative or judicial proceeding
733 contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy
734 adopted after the effective date of this Contract was promulgated; (ii) the substance of such a
735 policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting

736 Officer does not waive any legal defenses or remedies that it may then have to assert in such a
737 proceeding.

738 UNAVOIDABLE GROUNDWATER PERCOLATION

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

743 RULES AND REGULATIONS

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

749 WATER AND AIR POLLUTION CONTROL

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

754 QUALITY OF WATER

755 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
756 to this Contract shall be operated and maintained to enable the United States to deliver Project
757 Water to the Contractor in accordance with the water quality standards specified in subsection
758 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October
759 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
760 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
761 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
762 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

763 (b) The O&M of Project facilities shall be performed in such manner as is
764 practicable to maintain the quality of raw water made available through such facilities at the
765 highest level reasonably attainable as determined by the Contracting Officer. The Contractor
766 shall be responsible for compliance with all State and Federal water quality standards applicable
767 to surface and subsurface agricultural drainage discharges generated through the use of Federal
768 or Contractor facilities or Project Water provided by the Contractor within the Contractor's
769 Service Area.

770 WATER ACQUIRED BY THE CONTRACTOR
771 OTHER THAN FROM THE UNITED STATES

772 17. (a) Water or water rights, including Base Supply water furnished pursuant to
773 this Contract, now owned or hereafter acquired by the Contractor other than from the United
774 States and Irrigation Water furnished pursuant to the terms of this Contract may be
775 simultaneously transported through the same distribution facilities of the Contractor subject to
776 the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project
777 water were constructed without funds made available pursuant to Federal Reclamation law, the
778 provisions of Federal Reclamation law will be applicable only to the Landholders of lands which
779 receive Irrigation Water; (ii) the eligibility of land to receive Irrigation Water must be established
780 through the certification requirements as specified in the Acreage Limitation Rules and
781 Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the
782 Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is
783 less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the
784 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed
785 with funds made available pursuant to Federal Reclamation law, the non-Project water will be
786 subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor
787 pays to the United States the incremental fee described in 43 CFR 426.15. In determining the
788 incremental fee, the Contracting Officer will calculate annually the cost to the Federal

789 Government, including interest on storing or delivering non-Project water, which for purposes of
790 this Contract shall be determined as follows: The quotient shall be the unpaid distribution
791 system costs divided by the total irrigable acreage within the Contractor's Service Area. The
792 incremental fee per acre is the mathematical result of such quotient times the interest rate
793 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such
794 incremental fee will be charged to each acre of excess or full cost land within the Contractor's
795 Service Area that receives non-Project water through Federally financed or constructed facilities.
796 The incremental fee calculation methodology will continue during the term of this Contract
797 absent the promulgation of a contrary Reclamation-wide rule, regulation, or policy adopted after
798 the Contractor has been afforded the opportunity to review and comment on the proposed rule,
799 regulation, or policy. If such rule, regulation, or policy is adopted it shall supercede this
800 provision.

801 (b) Water or water rights, including Base Supply water furnished pursuant to
802 this Contract, now owned or hereafter acquired by the Contractor, other than from the United
803 States, may be stored, conveyed, and/or diverted through Project facilities, subject to the
804 completion of appropriate environmental documentation, with the approval of the Contracting
805 Officer and the execution of any contract determined by the Contracting Officer to be necessary,
806 consistent with the following provisions:

807 (1) The Contractor may introduce non-Project water into Project
808 facilities and deliver said water to lands within the Contractor's Service Area, including
809 Ineligible Lands, subject to payment to the United States of an appropriate rate as determined by
810 the applicable Project ratesetting policy, the RRA, and the Project use power policy, if such
811 Project use power policy is applicable, each as amended, modified, or superceded from time to
812 time.

813 (2) Delivery of such non-Project water in and through Project facilities
814 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project

815 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
816 available to other Project Contractors; (iii) interfere with the delivery of contractual water
817 entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of
818 the Project facilities.

819 (3) The United States shall not be responsible for control, care, or
820 distribution of the non-Project water before it is introduced into or after it is delivered from the
821 Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United
822 States and its respective officers, agents, and employees, from any claim for damage to persons
823 or property, direct or indirect, resulting from acts of the Contractor, its officers', employees',
824 agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii)
825 diverting such non-Project water into Project facilities.

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

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

834 OPINIONS AND DETERMINATIONS

835 18. (a) Where the terms of this Contract provide for actions to be based upon the
836 opinion or determination of either party to this Contract, said terms shall not be construed as
837 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
838 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
839 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
840 or unreasonable opinion or determination. Each opinion or determination by either party shall be

841 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is
842 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
843 any opinion or determination implementing a specific provision of Federal law embodied in
844 statute or regulation.

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

850 COORDINATION AND COOPERATION

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

861 (b) Within 120 days following the effective date of this Contract, the
862 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
863 with interested Project Contractors to develop a mutually agreeable, written Project-wide
864 process, which may be amended as necessary separate and apart from this Contract. The goal of
865 this process shall be to provide, to the extent practicable, the means of mutual communication

866 and interaction regarding significant decisions concerning Project operation and management on
867 a real-time basis.

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

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

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

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

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

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

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

890 CHARGES FOR DELINQUENT PAYMENTS

891 20. (a) The Contractor shall be subject to interest, administrative and penalty
892 charges on delinquent installments or payments. When a payment is not received by the due

893 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
894 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
895 administrative charge to cover additional costs of billing and processing the delinquent payment.
896 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
897 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
898 due date. Further, the Contractor shall pay any fees incurred for debt collection services
899 associated with a delinquent payment.

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

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

908 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

954 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

967

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

968 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
969 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
970 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
971 laws, as well as with their respective implementing regulations and guidelines imposed by the
972 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

987

PRIVACY ACT COMPLIANCE

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

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

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

1002 (d) The Contracting Officer shall designate a full-time employee of the
1003 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions

1004 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
1005 Contractor is authorized to grant requests by individuals for access to their own records.

1006 (e) The Contractor shall forward promptly to the System Manager each
1007 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1008 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1009 Manager with information and records necessary to prepare an appropriate response to the
1010 requester. These requirements do not apply to individuals seeking access to their own
1011 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
1012 requester elects to cite the Privacy Act as a basis for the request.

1013 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1014 25. In addition to all other payments to be made by the Contractor pursuant to this
1015 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1016 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1017 of direct cost incurred by the United States for work requested by the Contractor associated with
1018 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1019 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1020 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1021 contract administration.

1022 WATER CONSERVATION

1023 26. (a) Prior to the delivery of water provided from or conveyed through
1024 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1025 shall be implementing an effective water conservation and efficiency program based on the
1026 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1027 the conservation and efficiency criteria for evaluating water conservation plans established under
1028 Federal law. The water conservation and efficiency program shall contain definite water
1029 conservation objectives, appropriate economically feasible water conservation measures, and
1030 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1031 Contract shall be contingent upon the Contractor's continued implementation of such water
1032 conservation program. In the event the Contractor's water conservation plan or any revised water
1033 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not

1034 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1035 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
1036 shall be made under this Contract so long as the Contractor diligently works with the Contracting
1037 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
1038 immediately begins implementing its water conservation and efficiency program in accordance
1039 with the time schedules therein.

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

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

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

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

1056 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1057 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1058 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1059 hereafter acquired by the Contractor or any user of such water within the Contractor's Service

1060 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1061 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1062 any water user within the Contractor's Service Area acquires or has available under any other
1063 contract pursuant to Federal Reclamation law.

1064 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1065 28. Omitted.

1066 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1067 29. The expenditure or advance of any money or the performance of any obligation of
1068 the United States under this Contract shall be contingent upon appropriation or allotment of
1069 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1070 obligations under this Contract. No liability shall accrue to the United States in case funds are
1071 not appropriated or allotted.

1072 BOOKS, RECORDS, AND REPORTS

1073 30. (a) The Contractor shall establish and maintain accounts and other books and
1074 records pertaining to administration of the terms and conditions of this Contract, including: the
1075 Contractor's financial transactions, water supply data, and Project land and right-of-way
1076 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1077 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1078 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1079 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1080 Contract shall have the right during office hours to examine and make copies of the other party's
1081 books and records relating to matters covered by this Contract.

1082 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1083 books, records, or other information shall be requested from the Contractor by the Contracting
1084 Officer unless such books, records, or information are reasonably related to the administration or
1085 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1086 time within which to provide the requested books, records, or information.

1087 (c) Omitted.

1088 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1089 31. (a) The provisions of this Contract shall apply to and bind the successors and
1090 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1091 therein shall be valid until approved in writing by the Contracting Officer.

1092 (b) The assignment of any right or interest in this Contract by either party
1093 shall not interfere with the rights or obligations of the other party to this Contract absent the
1094 written concurrence of said other party.

1095 (c) The Contracting Officer shall not unreasonably condition or withhold his
1096 approval of any proposed assignment.

1097 SEVERABILITY

1098 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1099 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1100 an association or other form of organization whose primary function is to represent parties to
1101 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1102 enforceability of a provision included in this Contract and said person, entity, association, or
1103 organization obtains a final court decision holding that such provision is legally invalid or
1104 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1105 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1106 final court decision identify by mutual agreement the provisions in this Contract which must be
1107 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1108 The time periods specified above may be extended by mutual agreement of the parties. Pending
1109 the completion of the actions designated above, to the extent it can do so without violating any
1110 applicable provisions of law, the United States shall continue to make the quantities of Project
1111 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1112 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1113 RESOLUTION OF DISPUTES

1114 33. Should any dispute arise concerning any provisions of this Contract, or the
1115 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1116 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1117 Officer referring any matter to Department of Justice, the party shall provide to the other party

1118 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1119 required where a delay in commencing an action would prejudice the interests of the party that
1120 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1121 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1122 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1123 United States may have.

1124 OFFICIALS NOT TO BENEFIT

1125 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1126 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1127 manner as other water users or landowners.

1128 CHANGES IN CONTRACTOR'S SERVICE AREA

1129 35. (a) While this Contract is in effect, no change may be made in the
1130 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1131 or otherwise, except upon the Contracting Officer's written consent.

1132 (b) Within 30 days of receipt of a request for such a change, the Contracting
1133 Officer will notify the Contractor of any additional information required by the Contracting
1134 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1135 schedule for timely completion of the process. Such process will analyze whether the proposed
1136 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1137 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1138 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1139 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1140 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1141 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1142 be paid in accordance with Article 25 of this Contract.

1143 FEDERAL LAWS

1144 36. By entering into this Contract, the Contractor does not waive its rights to contest
1145 the validity or application in connection with the performance of the terms and conditions of this

1146 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1147 the terms and conditions of this Contract unless and until relief from application of such Federal
1148 law or regulation to the implementing provision of the Contract is granted by a court of
1149 competent jurisdiction.

1150 NOTICES

1151 37. Any notice, demand, or request authorized or required by this Contract shall be
1152 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1153 delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349
1154 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when
1155 mailed, postage prepaid, or delivered to the Board of Directors of the Stony Creek Water
1156 District, 940 County Road 303, Elk Creek, California 95939. The designation of the addressee
1157 or the address may be changed by notice given in the same manner as provided in this Article for
1158 other notices.

1159 CONFIRMATION OF CONTRACT

1160 38. The Contractor, after the execution of this Contract, shall promptly seek to secure
1161 a decree of a court of competent jurisdiction of the State of California, confirming the execution
1162 of this Contract. The Contractor shall furnish the United States a certified copy of the final
1163 decree, the validation proceedings, and all pertinent supporting records of the court approving
1164 and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on
1165 the Contractor.

1166 AGREEMENT ON WATER QUANTITIES

1167 39. (a) During the term of this Contract, and any renewals thereof, it shall
1168 constitute full agreement as between the United States and the Contractor as to the quantities of
1169 water and the allocation thereof between Base Supply and Project Water which may be diverted
1170 by the Contractor from Stony Creek and East Park Reservoir for beneficial use on the land
1171 shown on Exhibit "A" which said diversion, use and allocation shall not be disturbed so long as
1172 the Contractor shall fulfill all of its obligations hereunder, and the Contractor shall not claim any
1173 right against the United States in conflict with the provisions hereof.

1174 (b) Nothing herein contained is intended to or does limit rights of the
1175 Contractor against other than the United States or of the United States against any person other
1176 than the Contractor; Provided, however, That in the event the Contractor, the United States, or

1177 any other person shall become party to a general adjudication of rights to the use of water of the
1178 Sacramento River system, this Contract shall not jeopardize the rights or position of either party
1179 hereto or of any other person and the rights of all such persons in respect to the use of such water
1180 shall be determined in such proceedings the same as if this Contract had not been entered into,
1181 and if final judgment in any such general adjudication shall determine that the rights of the
1182 parties hereto are different from the rights as assumed herein, the United States shall submit to
1183 the Contractor an amendment to give effect to such judgment and the Contract shall be deemed
1184 to have been amended accordingly unless within 60 days after submission of such amendment to
1185 the Contractor, the Contractor elects to terminate the Contract or within the same period of time
1186 the parties agree upon mutually satisfactory amendments to give effect to such judgment.

1187 (c) In the event this Contract terminates, the rights of the parties to thereafter
1188 divert and use water shall exist as if this Contract had not been entered into. However, the fact
1189 that this Contract places a limit on the total supply to be diverted annually by the Contractor
1190 during the contract term and segregates it into Base Supply and Project Water shall not
1191 jeopardize the rights or position of either party with respect to its water rights or the yield thereof
1192 at all times after the contract terminates. It is further agreed that the Contractor at all times will
1193 first use water to the use of which it is entitled by virtue of its own water rights, and neither the
1194 provisions of this Contract, action taken thereunder, nor payments made thereunder to the United
1195 States by the Contractor shall be construed as an admission that any part of the water used by the
1196 Contractor during the term of this Contract was in fact water to which it would not have been
1197 entitled under water rights owned by it nor shall receipt of payments thereunder by the United
1198 States from the Contractor be construed as an admission that any part of the water used by the
1199 Contractor during the term of this Contract was in fact water to which it would have been
1200 entitled under water rights owned by it.

1201 HAZARDOUS WASTE

1202 40. (a) The Contractor shall comply with all applicable Federal, State, and local
1203 laws and regulations, and Reclamation policies and instructions, existing or hereafter enacted or

1204 promulgated, concerning any hazardous material that will be used, produced, transported, stored
1205 or disposed of on or in lands, waters or facilities owned by the United States or administered by
1206 Reclamation.

1207 (b) “Hazardous material” means any substance, pollutant or contaminant
1208 listed as hazardous under the Comprehensive Environmental Response, Compensation, and
1209 Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq., and the regulations promulgated
1210 pursuant to that Act.

1211 (c) The Contractor may not allow contamination of lands, waters or facilities
1212 owned by the United States or administered by Reclamation by hazardous materials, thermal
1213 pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings,
1214 mineral salts, pesticides (including, but not limited to, the misuse of pesticides), pesticide
1215 containers or any other pollutants.

1216 (d) The Contractor shall report to Reclamation, within 24 hours of its
1217 occurrence, any event which may or does result in pollution or contamination adversely affecting
1218 lands, water or facilities owned by the United States or administered by Reclamation.

1219 (e) Violation of any of the provisions of this Article shall constitute grounds
1220 for immediate termination of this Contract and shall make the Contractor liable for the cost of
1221 full and complete remediation and/or restoration of any Federal resources or facilities that are
1222 adversely affected as a result of the violation.

1223 (f) The Contractor agrees to include the provisions contained in paragraphs
1224 (a) through (e) of this Article in any subcontract or third party contract it may enter into pursuant
1225 to this Contract.

1226 (g) Reclamation agrees to provide information necessary for the Contractor,
1227 using reasonable diligence, to comply with the provisions of this Article.

EXHIBIT A

[Map or Description of Contractor's Service Area]

EXHIBIT B
2004 Water Rates and Charges
Stony Creek Water District – Black Butte Project

	Cost of Service		Calculated Payment Capacity 1/
	<u>Irrigation</u>	<u>M&I</u>	<u>Irrigation</u>
<u>COST OF SERVICE (COS) RATES:</u>			
Capital Rates	\$ 3.17	\$17.33	\$ 0.00
O&M Rates:			
Water Marketing	7.59	5.01	7.59
Storage	5.83	6.38	5.83
Deficit Rates:			
Interest Bearing	0.01	0.00	0.01
CFO/PRF Adj. Rate 2/	<u>1.29</u>	<u>0.00</u>	<u>1.29</u>
TOTAL	<u>\$17.89</u>	<u>\$28.72</u>	<u>\$14.72</u>
<u>TIERED PRICING COMPONENT >80% ≤ 90% OF</u>			
<u>CONTRACT TOTAL ((Full Cost Rate – COS Rate)/2)</u>	<u>\$2.30</u>		<u>\$3.89</u>
<u>TIERED PRICING COMPONENT >90% OF</u>			
<u>CONTRACT TOTAL (Full Cost Rate – COS Rate)</u>	<u>\$4.60</u>		<u>\$7.77</u>
<u>IRRIGATION FULL-COST RATES:</u>			
<u>Section 202(3) /3</u>	<u>\$22.49</u>		<u>\$22.49</u>
<u>Section 205(a)(3) /4</u>	<u>\$24.26</u>		<u>\$24.26</u>
<u>M&I FULL-COST RATE 5/</u>		<u>\$0.00</u>	
<u>CHARGES UNDER P.L. 102-575 TO THE</u>			
<u>RESTORATION FUND 6/</u>			
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>	<u>\$ 0.00</u>

1/ 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.

2/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

3/ Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.

4/ Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.

5/ Interest rates used in the calculation of the M&I Full Cost Rate shall comply with the Interest Rate Methodology contained in Section 202(3)(B) and (C) of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended.

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

EXHIBIT C

SCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply (Acre-Feet)</u>	<u>Project Water Supply (Acre-Feet)</u>	<u>Total Supply (Acre-Feet)</u>
March	15	90	105
April	40	290	330
May	60	410	470
June	75	525	600
July	90	610	700
August	75	475	600
September	55	330	435
October	15	90	105
November	0	100	100
Total	425	2,920	3,345

Point(s) of Diversion (River Mile): Stony Creek (above Stony Gorge Dam)