

5-30-07 DRAFT

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

INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
PROVIDING FOR PROJECT WATER SERVICE
SAN LUIS UNIT AND DELTA DIVISION

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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California
5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6
7 PROVIDING FOR PROJECT WATER SERVICE FROM
8 SAN LUIS UNIT AND DELTA DIVISION

9 THIS CONTRACT, made this _____ day of _____, 200__, in pursuance
10 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
11 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
12 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
13 483), June 3, 1960 (74 Stat. 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
14 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
15 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between THE
16 UNITED STATES OF AMERICA, hereinafter referred to as the United States, and _____,
17 hereinafter referred to as the Contractor, a public agency of the State of California, duly organized,
18 existing, and acting pursuant to the laws thereof;

19 WITNESSETH, That:

20 EXPLANATORY RECITALS

21 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
22 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood
23 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and

24 restoration, generation and distribution of electric energy, salinity control, navigation and other
25 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the
26 San Joaquin River and their tributaries; and

27 [2nd] WHEREAS, the United States constructed the Delta Division Facilities, including the
28 San Luis Unit facilities (which include the San Luis Canal, Coalinga Canal, Pleasant Valley Pumping
29 Plant, and Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the
30 Contractor pursuant to the terms of this Contract; and

31 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant
32 to California law for operation of the Project; and

33 [4th] WHEREAS, the terms and conditions pursuant to which Project Water is to be
34 delivered to the Contractor through December 31, 2007, are addressed in the Contract Between the
35 United States and Westlands Water District Providing for Water Service, dated June 5, 1963, and the
36 Stipulated Judgment in the lawsuit entitled Barcellos and Wolfsen, Inc., v. Westlands Water District,
37 Civ. No. F-79-106-EDP (E.D. Cal.), as consolidated with Westlands Water District v. United States
38 of America, Civ. No. F-81-245-EDP (E.D. Cal.), entered on December 30, 1986, hereinafter referred
39 to as the Existing Contract; and (Include only in WWD Interim)

40 [4th] WHEREAS, the United States and the Contractor entered into Contract No. _____
41 as amended, which provided the Contractor, Project Water from Project facilities from _____ to
42 December 31, 200____, hereinafter referred to as the Existing Contract; and (Include in all Interims
43 Contracts other than WWD)

44 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
45 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a

46 binding agreement identified as Binding Agreement No. _____ BA, which sets out the terms
47 pursuant to which the Contractor agreed to renew the Existing Contract before the expiration date
48 after completion of the Programmatic Environmental Impact Statement (PEIS) and other appropriate
49 environmental documentation and negotiation of a renewal contract; and which also sets out the
50 consequences of a subsequent decision not to renew: and Contractor Specific Binding Agreements

51 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
52 Existing Contract following completion of appropriate environmental documentation, including the
53 PEIS, which was required by Section 3409 of the CVPIA, pursuant to the National Environmental
54 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
55 CVPIA and the potential renewal of all existing contracts for Project Water; and

56 [7th] WHEREAS, rights of renewal of Existing Contract and to convert said contract to a
57 contract as provided by subsection (d), Section 9 of the Act of August 4, 1939 (53 Stat. 1187), are set
58 forth in said contract; and

59 [8th] WHEREAS, the United States has completed the PEIS, but since all the environmental
60 documentation necessary to execute a long-term renewal contract has not been completed, the
61 Contractor has requested an interim renewal contract pursuant to Section 3404(c)(1) of the CVPIA;
62 and

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

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

68 Water to be made available to it pursuant to this Contract; and

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

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

74 [12.1] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that
75 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to
76 provide drainage service to the San Luis Unit; and

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

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

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

89 [12.5] WHEREAS, the Department of the Interior, Bureau of Reclamation published in June 2006

90 the San Luis Drainage Feature Re-evaluation Final Environmental Impact Statement, which considers
91 alternatives to provide agricultural drainage service to the San Luis Unit; and

92 [12.6] WHEREAS, on March 9, 2007, the Record of Decision was signed for the San Luis
93 Drainage Feature Re-evaluation Final Environmental Impact Statement identifying the retirement of
94 up to 194,000 acres of land from irrigated agricultural productions as the selected alternative; and
95 (Include only in WWD Interim)

96 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
97 to pursue measures to improve water supply, water quality, and reliability of the Project for all
98 Project purposes; and

99 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
100 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
101 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
102 reasonable balance among competing demands for use of Project Water; and to comply with all
103 applicable environmental statutes, all consistent with the legal obligations of the United States
104 relative to the Project; and

105 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
106 relationship in order to achieve their mutual goals; and

107 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
108 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
109 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

110 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
111 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital

112 immediately above; and

113 [15.2] WHEREAS, in order to continue water service provided under Project water service
114 contracts that expire prior to the completion of all appropriate environmental documentation, the
115 United States intends to execute interim renewal contracts for a period not to exceed three (3) Years
116 in length, and for successive interim periods of not more than two (2) Years in length, until such
117 appropriate environmental documentation, is finally completed, at which time the Secretary shall,
118 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal
119 contract for a period of twenty-five (25) Years; and may thereafter renew such long-term renewal
120 contracts for successive periods not to exceed twenty-five (25) Years each; and

121 [15.3] WHEREAS, the Secretary intends to assure uninterrupted water service and continuity
122 of contract through the process set forth in Article 2 hereof; and

123 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
124 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

127 DEFINITIONS

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

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

132 (b) "Charges" shall mean the payments required by Federal Reclamation law in
133 addition to the Rates as determined annually by the Contracting Officer pursuant to this Contract;

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

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

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

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

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

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

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

155 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in

156 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
157 Reclamation law;

158 (j) “Omitted”

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

161 (l) “Omitted”

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

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

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

173 (p) “Omitted”

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

177 (r) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)

178 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
179 Delta Division Facilities pursuant to written agreement(s) with the United States. When this Contract
180 was entered into, the Operating Non-Federal Entities were the San Luis & Delta-Mendota Water
181 Authority and, with respect to San Luis Unit facilities, the California Department of Water
182 Resources, and the Contractor; Contractor Specific

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

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

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

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

193 (w) Omitted

194 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed
195 successor, or an authorized representative acting pursuant to any authority of the Secretary and
196 through any agency of the Department of the Interior;

197 (y) Omitted

198 (z) “Water Delivered” or “Delivered Water” shall mean Project Water diverted for
199 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

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

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

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

208 TERM OF CONTRACT - RIGHT TO USE OF WATER

209 2. (a) This Contract shall be effective from January 1, 200_ and shall remain in
210 effect through February 28(29), 201_, and thereafter will be renewed as described in this Article.
211 Except as provided in subdivision (b) of this Article, until completion of all appropriate
212 environmental review, and provided that the Contractor has complied with all the terms and
213 conditions of the interim renewal contract in effect for the period immediately preceding the
214 requested successive interim renewal contract, this Contract will be renewed, upon request of the
215 Contractor, for successive interim periods each of which shall be no more than two (2) Years in
216 length. Also, except as provided in subdivision (b) of this Article, in order to promote orderly and
217 cost effective contract administration, the terms and conditions in subsequent interim renewal
218 contracts shall be identical to the terms and conditions in the interim renewal contract immediately
219 preceding the subsequent interim renewal contract: Provided, however, That each party preserves the
220 right to propose modification(s) in any interim renewal contract other than those described in
221 subdivision (b) of this Article, in which case the parties shall negotiate in good faith appropriate

222 modification(s) to be included in any successive interim renewal contracts. Said modification(s) of
223 each successive interim renewal contract shall be agreed upon within a reasonable time prior to the
224 expiration of the then existing interim renewal contract. Nothing in this Article shall in any way alter
225 the obligation that, upon final completion of any necessary environmental documentation, the
226 Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a
227 long-term renewal contract for a period of twenty-five (25) Years and may thereafter renew such
228 long-term renewal contracts for successive periods not to exceed twenty-five (25) Years each.

229 (b) The parties have engaged and if necessary will continue to engage in
230 good faith negotiations intended to permit the execution of a twenty-five (25) Year long-term
231 renewal contract contemplated by Section 3404 (c) of the CVPIA, hereinafter referred to as a “long-
232 term renewal contract”. The parties recognize the possibility that this schedule may not be met
233 without further negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer
234 have reached agreement on the terms of the Contractor's long-term renewal contract or (ii) the
235 Contractor and Contracting Officer have not completed the negotiations on the Contractor's
236 long-term renewal contract, believe that further negotiations on that contract would be beneficial, and
237 mutually commit to continue to negotiate to seek to reach agreement, but (iii) all environmental
238 documentation required to allow execution of the Contractor's long-term renewal contract by both
239 parties has not been completed in time to allow execution of the Contractor's long-term renewal
240 contract by _____201__, then (iv), the parties will expeditiously complete the environmental
241 documentation required of each of them in order to execute the Contractor's long-term renewal
242 contract at the earliest practicable date. In addition, the Contractor's then current interim renewal
243 contract will be renewed without change upon the request of either party through the agreed-upon

244 effective date of the Contractor's long-term renewal contract or, in the absence of agreement on the
245 terms of the Contractor's long-term renewal contract, through the succeeding February 28.

246 (c) The omission of language in this Contract providing for conversion of this
247 interim renewal contract or any subsequent renewals thereof to a repayment contract, pursuant to the
248 Act of July 2, 1956 (70 Stat. 483), shall not prejudice the Contractor's right to assert a right to have
249 such language included in subsequent renewals of this Contract or to exercise such conversion, all as
250 provided by law, or to negotiate the language regarding such conversion to be included in subsequent
251 renewal contracts.

252 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

253 3. (a) During each Year, consistent with all applicable State water rights permits, and
254 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
255 Contracting Officer shall make available for delivery to the Contractor _____ acre-feet of Project
256 Water for irrigation and M&I purposes. Provided, however, during the two (2) month period of
257 January and February of Year, 201_, the Contracting Officer shall make available for delivery to the
258 Contractor that portion of the 201_ allocation of Project Water unused by the Contractor under the
259 Existing Contract. Water Delivered to the Contractor in accordance with this subdivision shall be
260 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

261 3. (a.1) (Include only in WWD Interim)

262 (b) Because the capacity of the Project to deliver Project Water has been
263 constrained in recent years and may be constrained in the future due to many factors including
264 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
265 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given

266 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
267 Contract Total set forth in this Contract will not be available to the Contractor in many years.
268 Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties
269 under any provision of this Contract.

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

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

281 (d) The Contractor shall make reasonable and beneficial use of all water furnished
282 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
283 banking programs, surface water storage programs, and other similar programs utilizing Project
284 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
285 Area which are consistent with applicable State law and result in use consistent with Federal
286 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in
287 the Contractor's water conservation plan submitted pursuant to Article 26 of this ~~Interim Renewal~~

288 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses
289 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered
290 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation
291 law. Groundwater recharge programs, groundwater banking programs, surface water storage
292 programs, and other similar programs utilizing Project Water or other water furnished pursuant to this
293 Contract conducted outside the Contractor's Service Area may be permitted upon written approval of
294 the Contracting Officer, which approval will be based upon environmental documentation, Project
295 Water rights, and Project operational concerns. The Contracting Officer will address such concerns
296 in regulations, policies, or guidelines.

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

307 (f) Following the declaration of Water Made Available under Article 4 of this
308 Contract, the Contracting Officer will make a determination whether Project Water, or other water
309 available to the Project, can be made available to the Contractor in addition to the Contract Total

310 under this Article during the Year without adversely impacting other Project Contractors. At the
311 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
312 such a determination. If the Contracting Officer determines that Project Water, or other water
313 available to the Project, can be made available to the Contractor, the Contracting Officer will
314 announce the availability of such water and shall so notify the Contractor as soon as practical. The
315 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
316 taking such water to determine the most equitable and efficient allocation of such water. If the
317 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
318 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
319 and policies. Subject to existing **interim renewal and** long-term contractual commitments, water
320 rights and operational constraints, **interim renewal and** long-term Project Contractors shall have a
321 first right to acquire such water, including Project Water made available pursuant to Section 215 of
322 the RRA.

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

329 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
330 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the
331 term thereof and any subsequent **interim renewal** contracts, as described in Article 2 of this Contract,

332 during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its
333 obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall
334 affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of
335 Article 12 of this Contract or applicable provisions of any subsequent interim renewal contracts.

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

340 (j) The Contracting Officer shall make reasonable efforts to protect the water
341 rights necessary for the Project and to provide the water available under this Contract **and any**
342 **renewal thereof**. The Contracting Officer shall not object to participation by the Contractor, in the
343 capacity and to the extent permitted by law, in administrative proceedings related to the Project
344 Water rights; Provided, that the Contracting Officer retains the right to object to the substance of the
345 Contractor's position in such a proceeding; Provided, further, That in such proceedings the
346 Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to
347 use Project Water.

348

349 TIME FOR DELIVERY OF WATER

350 4. (a) On or about February 20 each Calendar Year, the Contracting Officer shall
351 announce the Contracting Officer's expected declaration of the Water Made Available. Such
352 declaration will be expressed in terms of Water Made Available and will be updated monthly, and
353 more frequently if necessary, based on then-current operational and hydrologic conditions and a new

354 declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer
355 shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting
356 information, upon the written request of the Contractor.

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

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

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

371 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

395 (e) Absent a separate contrary written agreement with the Contractor, neither the
396 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
397 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this

398 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
399 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
400 account of damage or claim of damage of any nature whatsoever for which there is legal
401 responsibility, including property damage, personal injury, or death arising out of or connected with
402 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
403 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
404 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
405 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)
406 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
407 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
408 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a
409 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
410 Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns, including
411 the Operating Non-Federal Entity(ies), to provide drainage service.

412 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

413 6. (a) The Contractor has established a measuring program satisfactory to the
414 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
415 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
416 water delivered for M&I purposes is measured at each M&I service connection. The water
417 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
418 the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining,
419 and repairing all such measuring devices and implementing all such water measuring methods at no

420 cost to the United States. The Contractor shall use the information obtained from such water
421 measuring devices or water measuring methods to ensure its proper management of the water; to bill
422 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
423 M&I purposes by customer class as defined in the Contractor's water conservation plan provided for
424 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
425 establishing and collecting any charges, assessments, or other revenues authorized by California law.
426 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
427 described in subdivision (c) of Article 26 of this Contract.

428 (b) To the extent the information has not otherwise been provided, upon execution
429 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
430 the measurement devices or water measuring methods being used or to be used to implement
431 subdivision (a) of this Article and identifying the agricultural turnouts and the M&I service
432 connections or alternative measurement programs approved by the Contracting Officer, at which such
433 measurement devices or water measuring methods are being used, and, if applicable, identifying the
434 locations at which such devices and/or methods are not yet being used including a time schedule for
435 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
436 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
437 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
438 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
439 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
440 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
441 which the Contractor shall modify said measuring devices and/or measuring methods as required by

442 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

443 (c) All new surface water delivery systems installed within the Contractor's
444 Service Area after the effective date of this ~~Interim Renewal~~ Contract shall also comply with the
445 measurement provisions described in subdivision (a) of this Article.

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

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

452 RATES AND METHOD OF PAYMENT FOR WATER

453 7. (a) The Contractor shall pay the United States as provided in this Article for all
454 Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's ratesetting
455 policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for
456 M&I Water. Such ratesetting policies shall be amended, modified, or superseded only through a
457 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules
458 and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
459 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to in
460 writing by the Contractor and the Contracting Officer. The Rates and Charges applicable to the
461 Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

462
463 (b) The Contracting Officer shall notify the Contractor of the Rates and Charges

464 as follows:

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

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

479 (c) At the time the Contractor submits the initial schedule for the delivery of
480 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
481 shall make an advance payment to the United States equal to the total amount payable pursuant to the
482 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
483 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
484 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
485 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the

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

501 (d) The Contractor shall also make a payment in addition to the Rate(s) in
502 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in effect,
503 before the end of the month following the month of delivery. The payments shall be consistent with
504 the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for
505 the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating
506 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
507 the payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of

508 Charges shall be made through the adjustment of payments due to the United States for Charges for
509 the next month. Any amount to be paid for past due payment of Charge shall be computed pursuant
510 to Article 20 of this Contract.

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

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

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

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

530 reports, or information.

531 (i) The parties acknowledge and agree that the efficient administration of this
532 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
533 policies, and procedures used for establishing Rates and Charges and/or for making and allocating
534 payments, other than those set forth in this Article may be in the mutual best interest of the parties, it
535 is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies,
536 and procedures for any of those purposes while this Contract is in effect without amending this
537 Contract.

538 (j) Omitted

539 (1-3) Omitted

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

548 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
549 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
550 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect the
551 changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project

552 Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and Charges
553 because of inability to pay and is transferring Project Water to another entity whose Rates and
554 Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water
555 shall not be adjusted to reflect the Contractor's inability to pay.

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

558 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

562 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

574 the type historically carried out among Project Contractors located within the same geographical area
575 and to allow the Contractor to participate in an accelerated water transfer program during the term of
576 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
577 documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA,
578 analyzing annual transfers within such geographical areas and the Contracting Officer shall
579 determine whether such transfers comply with applicable law. Following the completion of the
580 environmental documentation, such transfers addressed in such documentation shall be conducted
581 with advance notice to the Contracting Officer, but shall not require prior written approval by the
582 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
583 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
584 the then existing five-year period. All subsequent environmental documentation shall include an
585 alternative to evaluate not less than the quantity of Project Water historically transferred within the
586 same geographical area.

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

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

597 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

614 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

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

637 CONSTRAINTS ON THE AVAILABILITY OF WATER

638 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
639 means to guard against a Condition of Shortage in the quantity of water to be made available to the

640 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a
641 Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said
642 determination as soon as practicable.

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

648 (c) In any Year in which there may occur a Condition of Shortage for any of the
649 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
650 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
651 Project M&I Water Shortage in its form applicable under Article 12(c) of water service contracts in
652 effect on the date of this contract which provide water service from Delta Division Facilities **for**
653 **determining the amount of Project Water Available for delivery to the Project Contractors.** Subject
654 to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the
655 Contracting Officer shall then apportion Project Water among the Contractor and others entitled to
656 Project Water from Delta Division Facilities under long-term water service or repayment contracts
657 (or renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

658 (1) The Contracting Officer shall make an initial and subsequent
659 determination as necessary of the total quantity of Project Water estimated to be scheduled or actually
660 scheduled under subdivision (b) of Article 4 of this Contract and under all other interim renewal,
661 long-term water service or repayment contracts then in force for the delivery of Project Water by the

662 United States from Delta Division Facilities during the relevant Year, the quantity so determined
663 being hereinafter referred to as the scheduled total;

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

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

671 (4) The available supply shall be multiplied by the Contractor's
672 proportionate share and the result shall be the quantity of Project Water made available by the United
673 States to the Contractor for the relevant Year in accordance with the schedule developed by the
674 Contracting Officer under subdivision (c) (1) of this Article 12, but in no event shall such amount
675 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
676 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
677 Division Facilities to interim renewal, long-term water service, and repayment contractors during the
678 relevant Year, such additions or reductions to the available supply shall be apportioned consistent
679 with subparagraphs (1) through (4), inclusive.

680 (d) By entering into this Contract, the Contractor does not waive any legal rights
681 or remedies it may have to file or participate in any administrative or judicial proceeding contesting
682 (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the substance of
683 such a policy; (iii) the applicability of such a policy; or (iv) the manner in which such policy is

684 implemented in order to allocate Project Water between municipal and industrial and irrigation
685 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
686 administrative procedures necessary to institute any judicial challenge within six months of the policy
687 becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any legal
688 defenses or remedies that it may have to assert in such a proceeding. Nothing contained herein shall
689 be interpreted to validate or invalidate the Central Valley Project M&I Water Shortage Policy.

690 (e) **Omitted**

691 UNAVOIDABLE GROUNDWATER PERCOLATION

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

696 RULES AND REGULATIONS

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

701 WATER AND AIR POLLUTION CONTROL

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

705 QUALITY OF WATER

706 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
707 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
708 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act

709 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
710 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
711 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
712 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
713 Contractor pursuant to this Contract.

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

720 (c) The Contracting Officer shall notify the Contractor in writing when drainage
721 service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the
722 Contractor at rates established pursuant to the then-existing ratesetting policy for Irrigation Water;
723 Provided, That such ratesetting policy shall be amended, modified, or superseded only through the
724 process described in subdivision (a) of Article 7 of this Contract.

725
726 WATER ACQUIRED BY THE CONTRACTOR
727 OTHER THAN FROM THE UNITED STATES

728 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
729 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
730 be simultaneously transported through the same distribution facilities of the Contractor subject to the
731 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were

732 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
733 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
734 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
735 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
736 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
737 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
738 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
739 Water and non-Project water are/were constructed with funds made available pursuant to Federal
740 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
741 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
742 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
743 cost to the Federal Government, including interest, of storing or delivering non-Project water, which
744 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
745 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
746 The incremental fee per acre is the mathematical result of such quotient times the interest rate
747 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
748 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
749 receives non-Project water through Federally financed or constructed facilities. The incremental fee
750 calculation methodology will continue during the term of this Contract absent the promulgation of a
751 contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded
752 the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule,
753 regulation, or policy is adopted it shall supersede this provision.

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

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

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

770 (3) Neither the United States nor the Operating Non-Federal Entity(ies)
771 shall be responsible for control, care or distribution of the non-Project water before it is introduced
772 into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
773 defend and indemnify the United States and the Operating Non-Federal Entity(ies), and their
774 respective officers, agents, and employees, from any claim for damage to persons or property, direct
775 or indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in

776 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
777 into Project facilities.

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

781 (5) After Project purposes are met, as determined by the Contracting
782 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
783 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
784 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
785 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
786 have a second priority to any remaining capacity of facilities declared to be available by the
787 Contracting Officer for conveyance and transportation of non-Project water prior to any such
788 remaining capacity being made available to non-Project contractors.

789 OPINIONS AND DETERMINATIONS

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

798 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

804 COORDINATION AND COOPERATION

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

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

820 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
821 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this intent:
822 (1) The Contracting Officer will, at the request of the Contractor, assist in
823 the development of integrated resource management plans for the Contractor. Further, the
824 Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to
825 improve water supply, water quality, and reliability.

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

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

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

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

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

841

CHARGES FOR DELINQUENT PAYMENTS

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

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

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

858

EQUAL OPPORTUNITY

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

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

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

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

877 employment.

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

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

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

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

902 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

913 (c) With respect to subdivision (b) of this Article, the Contractor shall have no

914 obligation to require advance payment for water rates which it levies.

915 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

934 PRIVACY ACT COMPLIANCE

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

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

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

949 (d) The Contracting Officer shall designate a full-time employee of the Bureau of

950 Reclamation to be the System Manager who shall be responsible for making decisions on denials
951 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
952 authorized to grant requests by individuals for access to their own records.

953 (e) The Contractor shall forward promptly to the System Manager each proposed
954 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
955 2.71; notify the requester accordingly of such referral; and provide the System Manager with
956 information and records necessary to prepare an appropriate response to the requester. These
957 requirements do not apply to individuals seeking access to their own certification and reporting forms
958 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
959 Act as a basis for the request.

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961

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

970

WATER CONSERVATION

971 26. (a) Prior to the delivery of water provided from or conveyed through Federally
972 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
973 implementing an effective water conservation and efficiency program based on the Contractor's water
974 conservation plan that has been determined by the Contracting Officer to meet the conservation and
975 efficiency criteria for evaluating water conservation plans established under Federal law. The water
976 conservation and efficiency program shall contain definite water conservation objectives, appropriate

977 economically feasible water conservation measures, and time schedules for meeting those objectives.
978 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
979 continued implementation of such water conservation program. In the event the Contractor's water
980 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
981 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to
982 circumstances which the Contracting Officer determines are beyond the control of the Contractor,
983 water deliveries shall be made under this Contract so long as the Contractor diligently works with the
984 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the
985 Contractor immediately begins implementing its water conservation and efficiency program in
986 accordance with the time schedules therein.

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

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

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

999 conservation plan meets Reclamation's then-current conservation and efficiency criteria for
1000 evaluating water conservation plans established under Federal law.

1001 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1002 be described in the Contractor's water conservation plan.

1003 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1004 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1005 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1006 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1007 water shall not be considered Project Water under this Contract. In addition, this Contract shall not
1008 be construed as limiting or curtailing any rights which the Contractor or any water user within the
1009 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1010 Reclamation law.

1011 OPERATION AND MAINTENANCE BY
1012 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1013 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1014 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1015 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1016 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1017 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations
1018 of the Contractor or the United States hereunder.

1019 (b) The Contracting Officer has previously notified the Contractor in writing that
1020 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1021 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the

1022 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1023 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1024 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1025 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1026 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1027 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1028 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1029 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1030 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1031 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1032 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects
1033 payments on behalf of the United States in accordance with subdivision (a) of this Article.

1034 (c) For so long as the O&M of any portion of the Project facilities serving the
1035 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1036 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1037 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1038 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1039 successor.

1040 (d) In the event the O&M of the Project facilities operated and maintained by
1041 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1042 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1043 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the

1044 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1045 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1046 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates and
1047 Charges specified in the revised Exhibit "B" directly to the United States in compliance with Article
1048 7 of this Contract.

1049 OPERATION AND MAINTENANCE BY
1050 CALIFORNIA DEPARTMENT OF WATER RESOURCES

1051 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1052 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1053 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1054 200-9755) between the United States and Operating Non-Federal Entity California Department of
1055 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1056 of the Contractor or the United States hereunder.

1057 (b) The Contracting Officer has previously notified the Contractor in writing that
1058 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1059 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1060 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1061 successor approved by the Contracting Officer under the terms and conditions of the separate
1062 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1063 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1064 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1065 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1066 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-

1067 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1068 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1069 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1070 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects
1071 payments on behalf of the United States in accordance with the separate agreement identified in
1072 subdivision (a) of Article 28 of this Contract.

1073 (c) For so long as the O&M of any portion of the Project facilities serving the
1074 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1075 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1076 Water Delivered under this Contract representing the cost associated with the activity being
1077 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1078 successor.

1079 (d) In the event the O&M of the Project facilities operated and maintained by
1080 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1081 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1082 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1083 Rates and Charges, to be paid by the Contractor for Project Water under this Contract representing
1084 the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor
1085 shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary,
1086 pay the Rates and Charges specified in the revised Exhibit "B" directly to the United States in
1087 compliance with Article 7 of this Contract.

1088 OPERATION AND MAINTENANCE BY THE CONTRACTOR

1089 28.2 (a) (Include only in WWD Interim)

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

1094 28.3. (a) The United States shall furnish and install pumping plants and furnish the
1095 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1096 the Contractor from the Delta-Mendota, San Luis, and Coalinga Canals, including the Pleasant
1097 Valley Pumping Plant, at the point(s) of delivery identified pursuant to subdivision (a) of Article 5 of
1098 this Contract at heads and elevations sufficient to irrigate by gravity the areas within the Contractor's
1099 Service Area below 700 feet mean sea level elevation. Article 28.2(3) (a) and (b) Contractor Specific

1100 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1101 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1102 divert and deliver Project Water from the Delta-Mendota, San Luis, and Coalinga Canals and the
1103 Pleasant Valley Pumping Plant before the United States furnishes and installs all the pumping plants
1104 referred to in subdivision (a) of this Article. The United States shall furnish the amount of Project
1105 power needed to operate such pumping facilities; Provided, That the Contractor maintains an
1106 agreement with an entity to convey such power to such facilities, and the Contractor agrees to pay
1107 any and all charges assessed by that entity for such service. Article 28.2(3) (a) and (b) Contractor
1108 Specific

1109 (c) The furnishing of power by the United States shall be in conformance with
1110 operating criteria, rules, and regulations, including the project use power policy, established by the
1111 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the
1112 project use power policy, established by the Contracting Officer shall not excuse the United States

1113 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and
1114 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1115 irrigation management practices and the power generation capacity available to the United States for
1116 the furnishing of Project **Water** to the Contractor.

1117 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1118 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1119 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1120 of all major replacements that the Contracting Officer determines are needed.

1121 (e) The Contracting Officer or his representative shall at all times have access to
1122 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1123 being kept in safe and proper operating condition.

1124 (f) No change in any of the pumping facilities, which in the opinion of the
1125 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1126 consent of the Contracting Officer. The Contractor shall promptly make any and all repairs and
1127 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.
1128 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1129 operation by the United States of the pumping facilities pursuant to subdivision (g) of this Article,
1130 the United States may cause the repairs and replacements to be made and the cost thereof, as
1131 determined by the Contracting Officer, shall be paid by the Contractor to the United States upon
1132 notice of the payment due but not later than April 1 of the year following that during which such
1133 work was completed.

1134 (g) In the event the Contracting Officer determines that the Contractor has not

1135 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any
1136 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1137 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1138 the Contractor of such election and the effective date thereof. Thereafter, during the period of
1139 operation by the United States, the Contractor shall pay to the United States in advance of the use of
1140 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1141 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate
1142 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1143 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1144 pay such amount on or before the date specified in said notice. Any amount of such advances
1145 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1146 credited upon amounts to become due to the United States from the Contractor under the provisions
1147 of this Contract in subsequent years. The pumping facilities so taken back by the United States may
1148 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1149 intention to retransfer.

1150 (h) The Contractor shall hold the United States, its officers, and employees
1151 harmless from every and all claim for damages to persons or property arising out of or connected
1152 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That
1153 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties
1154 other than the United States with respect to such matters.

1155 (i) During the time the pumping facilities are operated and maintained by the
1156 Contractor, in addition to all other payments to be made by the Contractor under this ~~Interim~~

1157 ~~Renewal~~ Contract, the Contractor shall pay to the United States pursuant to Article 25 hereof, costs
1158 incurred by the United States for work associated with the pumping facilities under this ~~Interim~~
1159 ~~Renewal~~ Contract normally charged by the United States to water users and properly and equitably
1160 chargeable to the Contractor.

1161 (j) The Contracting Officer may make review of any part or all of the pumping
1162 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in
1163 assessing the condition of facilities and the adequacy of the maintenance program(s). The
1164 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and
1165 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall
1166 reimburse the actual cost
1167 incurred by the United States in making O&M examinations, inspections, and audits, and preparing
1168 associated reports and recommendations.

1169 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,
1170 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1171 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1172 remedial measures required for their correction, and to assist the Contractor in solving specific
1173 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1174 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United
1175 States. **This article is applicable only to WWD**

1176 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1177 29. The expenditure or advance of any money or the performance of any obligation of the
1178 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1179 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1180 under this Contract. No liability shall accrue to the United States in case funds are not appropriated

1181 or allotted.

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1183

BOOKS, RECORDS, AND REPORTS

1184 30. (a) The Contractor shall establish and maintain accounts and other books and
1185 records pertaining to administration of the terms and conditions of this Contract including: the
1186 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1187 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1188 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1189 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1190 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1191 during office hours to examine and make copies of the other party's books and records relating to
1192 matters covered by this Contract.

1193 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1194 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1195 such books, records, or information are reasonably related to the administration or performance of
1196 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1197 to provide the requested books, records, or information.

1198 (c) At such time as the Contractor provides information to the Contracting Officer
1199 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1200 Operating Non-Federal Entity (ies).

1201 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1202 31. (a) The provisions of this Contract shall apply to and bind the successors and
1203 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1204 therein shall be valid until approved in writing by the Contracting Officer.

1205 (b) The assignment of any right or interest in this Contract by either party shall not
1206 interfere with the rights or obligations of the other party to this Contract absent the written
1207 concurrence of said other party.

1208 (c) The Contracting Officer shall not unreasonably condition or withhold approval

1209 of any proposed assignment.

1210 SEVERABILITY

1211 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1212 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1213 association or other form of organization whose primary function is to represent parties to Project
1214 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1215 enforceability of a provision included in this Contract and said person, entity, association, or
1216 organization obtains a final court decision holding that such provision is legally invalid or
1217 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1218 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1219 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1220 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1221 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1222 actions designated above, to the extent it can do so without violating any applicable provisions of
1223 law, the United States shall continue to make the quantities of Project Water specified in this
1224 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1225 to be legally invalid or unenforceable in the final court decision.

1226 RESOLUTION OF DISPUTES

1227 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1228 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1229 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1230 any matter to the Department of Justice, the party shall provide to the other party 30 days' written

1231 notice of the intent to take such action; Provided, That such notice shall not be required where a
1232 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1233 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1234 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1235 waive or abridge any right or remedy that the Contractor or the United States may have.

1236 OFFICIALS NOT TO BENEFIT

1237 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1238 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1239 manner as other water users or landowners.

1240 CHANGES IN CONTRACTOR'S SERVICE AREA

1241 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1242 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1243 except upon the Contracting Officer's written consent.

1244 (b) Within 30 days of receipt of a request for such a change, the Contracting
1245 Officer will notify the Contractor of any additional information required by the Contracting Officer
1246 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1247 timely completion of the process. Such process will analyze whether the proposed change is likely
1248 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1249 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1250 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1251 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1252 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1253 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1254

FEDERAL LAWS

1255 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1256 validity or application in connection with the performance of the terms and conditions of this
1257 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1258 terms and conditions of this Contract unless and until relief from application of such Federal law or
1259 regulation to the implementing provision of the Contract is granted by a court of competent
1260 jurisdiction.

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NOTICES

1263 37. Any notice, demand, or request authorized or required by this Contract shall be
1264 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1265 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1266 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1267 Directors of the _____. The designation of the addressee or the address may be
1268 changed by notice given in the same manner as provided in this Article for other notices.

DRAFT

1269 IN WITNESS WHEREOF, the parties hereto have executed this INTERIM RENEWAL
1270 CONTRACT as of the day and year first above written.

1271
1272

THE UNITED STATES OF AMERICA

1273
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1275

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

1276 (SEAL)

1277

DISTRICT _____

1278
1279

By: _____
President of the Board of Directors

1280 Attest:

1281
1282

By: _____
Secretary of the Board of Directors

EXHIBIT A

[Map or Description of Service Area]

DRAFT

EXHIBIT B
200 Water Rates and Charges

DRAFT