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

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

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1 UNITED STATES
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5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
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7 PROVIDING FOR PROJECT WATER SERVICE FROM
8 SAN LUIS UNIT AND DELTA DIVISION

9 THIS CONTRACT, made this 1st day of January, 2009, in pursuance generally of the Act of
10 June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not
11 limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939
12 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 3, 1960 (74 Stat.
13 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
14 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,
16 hereinafter referred to as the United States, and PANOCHÉ WATER DISTRICT, hereinafter referred
17 to as the Contractor, a public agency of the State of California, duly organized, existing, and acting
18 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 United States and the Contractor entered into Contract No. No. 14-
34 06-200-7864A as amended, which provided the Contractor, Project Water from Project facilities from
35 August 30, 1974 to December 31, 2008, hereinafter referred to as the Existing Contract; and

36 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
37 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
38 binding agreements identified as Binding Agreement No. 14-06-200-7864A-BA, which sets out the
39 terms pursuant to which the Contractor agreed to renew the Existing Contract before the expiration
40 date after completion of the Programmatic Environmental Impact Statement (PEIS) and other
41 appropriate environmental documentation and negotiation of a renewal contract; and which also sets
42 out the consequences of a subsequent decision not to renew: and

43 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
44 Existing Contract following completion of appropriate environmental documentation, including the

45 PEIS, which was required by Section 3409 of the CVPIA, pursuant to the National Environmental
46 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
47 CVPIA and the potential renewal of all existing contracts for Project Water; and

48 [7th] WHEREAS, rights of renewal of Existing Contract and to convert said contract to a
49 contract as provided by subsection (d), Section 9 of the Act of August 4, 1939 (53 Stat. 1187), are set
50 forth in said contract; and

51 [8th] WHEREAS, the United States has completed the PEIS, but since all the environmental
52 documentation necessary to execute a long-term renewal contract has not been completed, the
53 Contractor has requested an interim renewal contract pursuant to Section 3404(c)(1) of the CVPIA;
54 and

55 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
56 its obligations under the Existing Contract; and

57 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
58 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
59 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project
60 Water to be made available to it pursuant to this Contract; and

61 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
62 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
63 essential portion of its water supply; and

64 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
65 depend upon the continued availability of water, including water service from the Project; and

66 [12.1] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that

67 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to
68 provide drainage service to the San Luis Unit; and

69 [12.2] WHEREAS, the Contractor and the Contracting Officer recognize that adequate
70 drainage service is required to maintain agricultural production within certain areas served with
71 Project Water made available under this Contract, and all renewals thereof; and

72 [12.3] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are
73 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

74 [12.4] WHEREAS, the Contracting Officer and the Contractor acknowledge that such
75 drainage solutions may involve actions not originally contemplated and/or the construction or use of
76 facilities, other than the San Luis Drain; that the Contractor is investing in drainage solutions for
77 lands within its boundaries that should be considered by the Contracting Officer in determining
78 drainage solutions; and that the existing ratesetting policy as it relates to the allocation and collection
79 of drainage costs may require amendment to recognize those investments by the Contractor and other
80 relevant circumstances; and

81 [12.5] WHEREAS, the Department of the Interior, Bureau of Reclamation published in June 2006
82 the San Luis Drainage Feature Re-evaluation Final Environmental Impact Statement, which considers
83 alternatives to provide agricultural drainage service to the San Luis Unit; and

84 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
85 to pursue measures to improve water supply, water quality, and reliability of the Project for all
86 Project purposes; and

87 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
88 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment

89 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
90 reasonable balance among competing demands for use of Project Water; and to comply with all
91 applicable environmental statutes, all consistent with the legal obligations of the United States
92 relative to the Project; and

93 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
94 relationship in order to achieve their mutual goals; and

95 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
96 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
97 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

98 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
99 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
100 immediately above; and

101 [15.2] WHEREAS, in order to continue water service provided under Project water service
102 contracts that expire prior to the completion of all appropriate environmental documentation, the
103 United States intends to execute interim renewal contracts for a period not to exceed three (3) Years
104 in length, and for successive interim periods of not more than two (2) Years in length, until such
105 appropriate environmental documentation, is finally completed, at which time the Secretary shall,
106 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal
107 contract for a period of twenty-five (25) Years; and may thereafter renew such long-term renewal
108 contracts for successive periods not to exceed twenty-five (25) Years each; and

109 [15.3] WHEREAS, the Secretary intends to assure uninterrupted water service and continuity
110 of contract through the process set fourth in Article 2 hereof; and

111 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
112 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

115 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

146 (j) “Omitted”

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

149 (l) “Omitted”

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

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

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

161 (p) "Omitted"

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

165 (r) "Operating Non-Federal Entity" shall mean the entity(ies), its (their)
166 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
167 Delta Division Facilities pursuant to written agreement(s) with the United States. When this Contract
168 was entered into, the Operating Non-Federal Entities were the San Luis & Delta-Mendota Water
169 Authority and, with respect to San Luis Unit facilities and the California Department of Water
170 Resources;

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

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

175 (u) "Project Water" shall mean all water that is developed, diverted, stored, or
176 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance

177 with the terms and conditions of water rights acquired pursuant to California law;

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

181 (w) Omitted

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

185 (y) Omitted

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

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

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

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

196 TERM OF CONTRACT - RIGHT TO USE OF WATER

197 2. (a) This Contract shall be effective from January 1, 2009, and shall remain in
198 effect through February 28, 2011, and thereafter will be renewed as described in this Article. Except

199 as provided in subdivision (b) of this Article, until completion of all appropriate environmental
200 review, and provided that the Contractor has complied with all the terms and conditions of the
201 interim renewal contract in effect for the period immediately preceding the requested successive
202 interim renewal contract, this Contract will be renewed, upon request of the Contractor, for
203 successive interim periods each of which shall be no more than two (2) Years in length. Also, except
204 as provided in subdivision (b) of this Article, in order to promote orderly and cost effective contract
205 administration, the terms and conditions in subsequent interim renewal contracts shall be identical to
206 the terms and conditions in the interim renewal contract immediately preceding the subsequent
207 interim renewal contract: Provided, however, That each party preserves the right to propose
208 modification(s) in any interim renewal contract other than those described in subdivision (b) of this
209 Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be
210 included in any successive interim renewal contracts. Said modification(s) of each successive
211 interim renewal contract shall be agreed upon within a reasonable time prior to the expiration of the
212 then existing interim renewal contract. Nothing in this Article shall in any way alter the obligation
213 that, upon final completion of any necessary environmental documentation, the Secretary shall,
214 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal
215 contract for a period of twenty-five (25) Years and may thereafter renew such long-term renewal
216 contracts for successive periods not to exceed twenty-five (25) Years each.

217 (b) The parties have engaged and if necessary will continue to engage in good
218 faith negotiations intended to permit the execution of a twenty-five (25) Year long-term renewal
219 contract contemplated by Section 3404 (c) of the CVPIA, hereinafter referred to as a “long-term
220 renewal contract”. The parties recognize the possibility that this schedule may not be met without

221 further negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer have
222 reached agreement on the terms of the Contractor's long-term renewal contract or (ii) the Contractor
223 and Contracting Officer have not completed the negotiations on the Contractor's long-term renewal
224 contract, believe that further negotiations on that contract would be beneficial, and mutually commit
225 to continue to negotiate to seek to reach agreement, but (iii) all environmental documentation
226 required to allow execution of the Contractor's long-term renewal contract by both parties has not
227 been completed in time to allow execution of the Contractor's long-term renewal contract by
228 February 28, 2011, then (iv), the parties will expeditiously complete the environmental
229 documentation required of each of them in order to execute the Contractor's long-term renewal
230 contract at the earliest practicable date. In addition, the Contractor's then current interim renewal
231 contract will be renewed without change upon the request of either party through the agreed-upon
232 effective date of the Contractor's long-term renewal contract or, in the absence of agreement on the
233 terms of the Contractor's long-term renewal contract, through the succeeding February 28.

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

240 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

241 3. (a) During each Year, consistent with all applicable State water rights permits, and
242 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the

243 Contracting Officer shall make available for delivery to the Contractor 94,000 acre-feet of Project
244 Water for irrigation and M&I purposes. Provided, however, during the two (2) month period of
245 January and February of Year, 2009, the Contracting Officer shall make available for delivery to the
246 Contractor that portion of the 2008 allocation of Project Water unused by the Contractor under the
247 Existing Contract. Water Delivered to the Contractor in accordance with this subdivision shall be
248 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

249 (b) Because the capacity of the Project to deliver Project Water has been
250 constrained in recent years and may be constrained in the future due to many factors including
251 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
252 actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given
253 Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
254 Contract Total set forth in this Contract will not be available to the Contractor in many years.
255 Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties
256 under any provision of this Contract.

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

259 (c.1) In the event any Project Contractor (other than a Cross Valley Contractor) that
260 receives Project Water through the Delta Division Facilities obtains a contractual agreement that the
261 Contracting Officer shall make Project Water available at a point or points of delivery in or north of
262 the Delta, at the request of the Contractor and upon completion of any required environmental
263 documentation, this Contract shall be amended to provide for deliveries in or north of the Delta on
264 mutually agreeable terms. Such amendments to this Contract shall be limited solely to those changes

265 made necessary by the addition of such alternate points of delivery in or north of the Delta; Provided,
266 That the Contracting Officer's use of the Harvey O. Banks Pumping Plant to deliver Project Water
267 does not trigger this right of amendment.

268 (d) The Contractor shall make reasonable and beneficial use of all water furnished
269 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater
270 banking programs, surface water storage programs, and other similar programs utilizing Project
271 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service
272 Area which are consistent with applicable State law and result in use consistent with Federal
273 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in
274 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
275 further, That such water conservation plan demonstrates sufficient lawful uses exist in the
276 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is
277 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.
278 Groundwater recharge programs, groundwater banking programs, surface water storage programs,
279 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract
280 conducted outside the Contractor's Service Area may be permitted upon written approval of the
281 Contracting Officer, which approval will be based upon environmental documentation, Project Water
282 rights, and Project operational concerns. The Contracting Officer will address such concerns in
283 regulations, policies, or guidelines.

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

287 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
288 excess of 34 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water
289 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an
290 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other
291 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
292 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
293 biological opinion or other environmental documentation referred to in this Article.

294 (f) Following the declaration of Water Made Available under Article 4 of this
295 Contract, the Contracting Officer will make a determination whether Project Water, or other water
296 available to the Project, can be made available to the Contractor in addition to the Contract Total
297 under this Article during the Year without adversely impacting other Project Contractors. At the
298 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
299 such a determination. If the Contracting Officer determines that Project Water, or other water
300 available to the Project, can be made available to the Contractor, the Contracting Officer will
301 announce the availability of such water and shall so notify the Contractor as soon as practical. The
302 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
303 taking such water to determine the most equitable and efficient allocation of such water. If the
304 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
305 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,
306 and policies. Subject to existing interim renewal and long-term contractual commitments, water
307 rights and operational constraints, interim renewal and long-term Project Contractors shall have a
308 first right to acquire such water, including Project Water made available pursuant to Section 215 of

309 the RRA.

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

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

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

327 (j) The Contracting Officer shall make reasonable efforts to protect the water
328 rights necessary for the Project and to provide the water available under this Contract and any
329 renewal thereof. The Contracting Officer shall not object to participation by the Contractor, in the
330 capacity and to the extent permitted by law, in administrative proceedings related to the Project

331 Water rights; Provided, that the Contracting Officer retains the right to object to the substance of the
332 Contractor's position in such a proceeding; Provided, further, That in such proceedings the
333 Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to
334 use Project Water.

335 TIME FOR DELIVERY OF WATER

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

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

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

352 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this

353 Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial
354 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
355 revision(s) thereto satisfactory to the Contracting Officer, submitted within a reasonable time prior to
356 the date(s) on which the requested change(s) is/are to be implemented.

357 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

370 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
371 measured and recorded with equipment furnished, installed, operated, and maintained by the
372 Contracting Officer either directly or indirectly through its written agreements(s) with the Operating
373 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
374 Officer at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon

375 the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be
376 investigated by the appropriate Operating Non-Federal Entity(ies) the accuracy of such
377 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
378 period of time when accurate measurements have not been made, the Contracting Officer shall
379 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
380 making a final determination of the quantity delivered for that period of time.

381 (e) Absent a separate contrary written agreement with the Contractor, neither the
382 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
383 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
384 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
385 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
386 account of damage or claim of damage of any nature whatsoever for which there is legal
387 responsibility, including property damage, personal injury, or death arising out of or connected with
388 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
389 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
390 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating
391 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)
392 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
393 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of
394 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a
395 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal
396 Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns, including

397 the Operating Non-Federal Entity(ies), to provide drainage service.

398 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

399 6. (a) The Contractor has established a measuring program satisfactory to the
400 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
401 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
402 water delivered for M&I purposes is measured at each M&I service connection. The water
403 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
404 the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining,
405 and repairing all such measuring devices and implementing all such water measuring methods at no
406 cost to the United States. The Contractor shall use the information obtained from such water
407 measuring devices or water measuring methods to ensure its proper management of the water; to bill
408 water users for water delivered by the Contractor; and, if applicable, to record water delivered for
409 M&I purposes by customer class as defined in the Contractor's water conservation plan provided for
410 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
411 establishing and collecting any charges, assessments, or other revenues authorized by California law.
412 The Contractor shall include a summary of all its annual surface water deliveries in the annual report
413 described in subdivision (c) of Article 26 of this Contract.

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

419 measurement devices or water measuring methods are being used, and, if applicable, identifying the
420 locations at which such devices and/or methods are not yet being used including a time schedule for
421 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
422 within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or
423 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
424 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the
425 Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days
426 following the Contracting Officer's response, negotiate in good faith the earliest practicable date by
427 which the Contractor shall modify said measuring devices and/or measuring methods as required by
428 the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

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

438 RATES AND METHOD OF PAYMENT FOR WATER

439 7. (a) The Contractor shall pay the United States as provided in this Article for all
440 Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's ratesetting

441 policy for Irrigation Water adopted in 1988 and the Secretary’s then-existing ratesetting policy for
442 M&I Water. Such ratesetting policies shall be amended, modified, or superseded only through a
443 public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules
444 and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
445 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to in
446 writing by the Contractor and the Contracting Officer. The Rates and Charges applicable to the
447 Contractor upon execution of this Contract are set forth in Exhibit “B,” as may be revised annually.
448

449 (b) The Contracting Officer shall notify the Contractor of the Rates and Charges
450 as follows:

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

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

463 By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with
464 the final Rates to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

465 (c) At the time the Contractor submits the initial schedule for the delivery of
466 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
467 shall make an advance payment to the United States equal to the total amount payable pursuant to the
468 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
469 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
470 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
471 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
472 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
473 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
474 for Water Delivered shall be made before the end of the following month; Provided, That any revised
475 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
476 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
477 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
478 to the Contractor in advance of such payment. In any month in which the quantity of Water
479 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
480 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
481 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
482 adjustment between the advance payments for the Water Scheduled and payments for the quantities
483 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
484 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water

485 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
486 last day of February.

487 (d) The Contractor shall also make a payment in addition to the Rate(s) in
488 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in effect,
489 before the end of the month following the month of delivery. The payments shall be consistent with
490 the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for
491 the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no Operating
492 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
493 the payment of Charges for Water Delivered. Adjustment for overpayment or underpayment of
494 Charges shall be made through the adjustment of payments due to the United States for Charges for
495 the next month. Any amount to be paid for past due payment of Charge shall be computed pursuant
496 to Article 20 of this Contract.

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

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

505 (g) All revenues received by the United States from the Contractor relating to the
506 delivery of Project Water or the delivery of non-Project water through Project facilities shall be

507 allocated and applied in accordance with Federal Reclamation law and the associated rules or
508 regulations, and the then-current Project ratesetting policies for M&I Water or Irrigation Water.

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

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

524 (j) Omitted

525 (1-3) Omitted

526 (k) For the term of this Contract, Rates applied under the respective ratesetting
527 policies will be established to recover only reimbursable O&M (including any deficits) and capital
528 costs of the Project, as those terms are used in the then-current Project ratesetting policies, and

529 interest, where appropriate, except in instances where a minimum Rate is applicable in accordance
530 with the relevant Project ratesetting policy. Changes of significance in practices which implement
531 the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer
532 has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed
533 change.

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

542 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3030), the Contracting
543 Officer is authorized to adjust determinations of ability to pay every five years.

544 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

548 SALES, TRANSFERS, OR EXCHANGES OF WATER

549 9. (a) The right to receive Project Water provided for in this Contract may be sold,
550 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if

551 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
552 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
553 Contract may take place without the prior written approval of the Contracting Officer, except as
554 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
555 approved absent all appropriate environmental documentation, including, but not limited to,
556 documents prepared pursuant to the NEPA and ESA. Such environmental documentation should
557 include, as appropriate, an analysis of groundwater impacts and economic and social effects,
558 including environmental justice, of the proposed water transfers on both the transferor and transferee.

559 (b) In order to facilitate efficient water management by means of water transfers of
560 the type historically carried out among Project Contractors located within the same geographical area
561 and to allow the Contractor to participate in an accelerated water transfer program during the term of
562 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
563 documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA,
564 analyzing annual transfers within such geographical areas and the Contracting Officer shall
565 determine whether such transfers comply with applicable law. Following the completion of the
566 environmental documentation, such transfers addressed in such documentation shall be conducted
567 with advance notice to the Contracting Officer, but shall not require prior written approval by the
568 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance
569 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
570 the then existing five-year period. All subsequent environmental documentation shall include an
571 alternative to evaluate not less than the quantity of Project Water historically transferred within the
572 same geographical area.

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

583 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

600 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

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

623 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

634 (c) In any Year in which there may occur a Condition of Shortage for any of the
635 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
636 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
637 Project M&I Water Shortage in its form applicable under Article 12(c) of water service contracts in
638 effect on the date of this contract which provide water service from Delta Division Facilities for

639 determining the amount of Project Water Available for delivery to the Project Contractors. Subject
640 to the foregoing allocation, in any year in which there may occur a Condition of Shortage, the
641 Contracting Officer shall then apportion Project Water among the Contractor and others entitled to
642 Project Water from Delta Division Facilities under long-term water service or repayment contracts
643 (or renewals thereof or binding commitments therefore) in force on February 28, 2005, as follows:

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

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

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

657 (4) The available supply shall be multiplied by the Contractor's
658 proportionate share and the result shall be the quantity of Project Water made available by the United
659 States to the Contractor for the relevant Year in accordance with the schedule developed by the
660 Contracting Officer under subdivision (c) (1) of this Article 12, but in no event shall such amount

661 exceed the Contract Total. In the event the Contracting Officer subsequently determines that the
662 Contracting Officer can increase or needs to decrease the available supply for delivery from Delta
663 Division Facilities to interim renewal, long-term water service, and repayment contractors during the
664 relevant Year, such additions or reductions to the available supply shall be apportioned consistent
665 with subparagraphs (1) through (4), inclusive.

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

676 (e) Omitted

677 UNAVOIDABLE GROUNDWATER PERCOLATION

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

682

RULES AND REGULATIONS

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

687

WATER AND AIR POLLUTION CONTROL

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

691

QUALITY OF WATER

692 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
693 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
694 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
695 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
696 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
697 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
698 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
699 Contractor pursuant to this Contract.

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

706 (c) The Contracting Officer shall notify the Contractor in writing when drainage

707 service becomes available. Thereafter, the Contracting Officer shall provide drainage service to the
708 Contractor at rates established pursuant to the then-existing ratesetting policy for Irrigation Water;
709 Provided, That such ratesetting policy shall be amended, modified, or superseded only through the
710 process described in subdivision (a) of Article 7 of this Contract.

711
712 WATER ACQUIRED BY THE CONTRACTOR
713 OTHER THAN FROM THE UNITED STATES

714 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
715 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
716 be simultaneously transported through the same distribution facilities of the Contractor subject to the
717 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
718 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
719 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
720 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
721 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
722 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
723 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
724 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
725 Water and non-Project water are/were constructed with funds made available pursuant to Federal
726 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
727 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43
728 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
729 cost to the Federal Government, including interest, of storing or delivering non-Project water, which

730 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid
731 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.
732 The incremental fee per acre is the mathematical result of such quotient times the interest rate
733 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental
734 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that
735 receives non-Project water through Federally financed or constructed facilities. The incremental fee
736 calculation methodology will continue during the term of this Contract absent the promulgation of a
737 contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded
738 the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule,
739 regulation, or policy is adopted it shall supersede this provision.

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

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

751 (2) Delivery of such non-Project water in and through Project facilities

752 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
753 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
754 Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other
755 Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

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

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

767 (5) After Project purposes are met, as determined by the Contracting
768 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
769 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
770 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
771 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
772 have a second priority to any remaining capacity of facilities declared to be available by the
773 Contracting Officer for conveyance and transportation of non-Project water prior to any such

774 remaining capacity being made available to non-Project contractors.

775 OPINIONS AND DETERMINATIONS

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

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

790 COORDINATION AND COOPERATION

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

796 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
797 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
798 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
799 authority for all actions, opinions, and determinations to be made by the respective party.

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

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

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

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

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

817 (4) The Secretary will coordinate actions of agencies within the

818 Department of the Interior that may impact the availability of water for Project purposes.

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

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

827 CHARGES FOR DELINQUENT PAYMENTS

828 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
829 on delinquent installments or payments. When a payment is not received by the due date, the
830 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
831 When a payment becomes 60 days delinquent, the Contractor shall pay an administrative charge to
832 cover additional costs of billing and processing the delinquent payment. When a payment is
833 delinquent 90 days or more, the Contractor shall pay an additional penalty charge of six percent per
834 year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay
835 any fees incurred for debt collection services associated with a delinquent payment.

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

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

844 EQUAL OPPORTUNITY

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

846 (a) The Contractor will not discriminate against any employee or applicant for

847 employment because of race, color, religion, sex, or national origin. The Contractor will take
848 affirmative action to ensure that applicants are employed, and that employees are treated during
849 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
850 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
851 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
852 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
853 conspicuous places, available to employees and applicants for employment, notices to be provided by
854 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

879 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
880 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
881 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
882 provisions will be binding upon each subcontractor or vendor. The Contractor will take such action
883 with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a
884 means of enforcing such provisions, including sanctions for noncompliance: Provided, however,
885 That in the event the Contractor becomes involved in, or is threatened with, litigation with a

886 subcontractor or vendor as a result of such direction, the Contractor may request the United States to
887 enter into such litigation to protect the interests of the United States.

888 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

901 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

913
914 (c) The Contractor makes this agreement in consideration of and for the purpose
915 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
916 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
917 installment payments after such date on account of arrangements for Federal financial assistance
918 which were approved before such date. The Contractor recognizes and agrees that such Federal
919 assistance will be extended in reliance on the representations and agreements made in this Article,
920 and that the United States reserves the right to seek judicial enforcement thereof.

921

PRIVACY ACT COMPLIANCE

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

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

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

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

940 (e) The Contractor shall forward promptly to the System Manager each proposed
941 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
942 2.71; notify the requester accordingly of such referral; and provide the System Manager with
943 information and records necessary to prepare an appropriate response to the requester. These
944 requirements do not apply to individuals seeking access to their own certification and reporting forms
945 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy
946 Act as a basis for the request.

947

948

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

949 25. In addition to all other payments to be made by the Contractor pursuant to this
950 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
951 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
952 direct cost incurred by the United States for work requested by the Contractor associated with this
953 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and

954 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
955 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
956 administration.

957 WATER CONSERVATION

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

974 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
975 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement

976 the Best Management Practices identified by the time frames issued by the California Urban Water
977 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
978 Officer to be inappropriate for the Contractor.

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

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

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

990 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

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

998
999
1000 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1001 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
1002 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
1003 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1004 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations
1005 of the Contractor or the United States hereunder.

1006 (b) The Contracting Officer has previously notified the Contractor in writing that
1007 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1008 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1009 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
1010 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of
1011 the separate agreement between the United States and Operating Non-Federal Entity San Luis &
1012 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
1013 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1014 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes
1015 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1016 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments
1017 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1018 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1019 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects
1020 payments on behalf of the United States in accordance with subdivision (a) of this Article.

1021 (c) For so long as the O&M of any portion of the Project facilities serving the
1022 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water
1023 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1024 Rates for Water Delivered under this Contract representing the cost associated with the activity being
1025 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its
1026 successor.

1027 (d) In the event the O&M of the Project facilities operated and maintained by
1028 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1029 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1030 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1031 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs
1032 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,
1033 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates and
1034 Charges specified in the revised Exhibit "B" directly to the United States in compliance with Article
1035 7 of this Contract.

1036 OPERATION AND MAINTENANCE BY
1037 CALIFORNIA DEPARTMENT OF WATER RESOURCES

1038 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1039 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
1040 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
1041 200-9755) between the United States and Operating Non-Federal Entity California Department of
1042 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
1043 of the Contractor or the United States hereunder.

1044 (b) The Contracting Officer has previously notified the Contractor in writing that
1045 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to
1046 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall
1047 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any
1048 successor approved by the Contracting Officer under the terms and conditions of the separate
1049 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota
1050 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or
1051 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal
1052 Entity California Department of Water Resources, or such successor determines, sets, or establishes
1053 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
1054 Federal Entity California Department of Water Resources, or such successor. Such direct payments
1055 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
1056 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
1057 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects
1058 payments on behalf of the United States in accordance with the separate agreement identified in
1059 subdivision (a) of Article 28 of this Contract.

1060 (c) For so long as the O&M of any portion of the Project facilities serving the
1061 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,
1062 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for
1063 Water Delivered under this Contract representing the cost associated with the activity being
1064 performed by Operating Non-Federal Entity California Department of Water Resources, or its
1065 successor.

1066 (d) In the event the O&M of the Project facilities operated and maintained by
1067 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
1068 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,
1069 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the
1070 Rates and Charges, to be paid by the Contractor for Project Water under this Contract representing
1071 the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor
1072 shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary,
1073 pay the Rates and Charges specified in the revised Exhibit "B" directly to the United States in
1074 compliance with Article 7 of this Contract.

1075 PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER
1076 OF OPERATION AND MAINTENANCE TO THE CONTRACTOR

1077 28.2. (a) The United States shall furnish and install pumping plants and furnish the
1078 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to
1079 the Contractor from the Delta-Mendota and San Luis Canals at the point(s) of delivery identified
1080 pursuant to subdivision (a) of Article 5 at heads and elevations sufficient to irrigate by gravity the
1081 areas within the Contractor's Service Area below 700 feet mean sea level elevation.

1082 (b) With advance approval of the Contracting Officer, the Contractor may, at its
1083 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to
1084 divert and deliver Project Water from the Delta-Mendota and San Luis Canals before the United
1085 States furnishes and installs all the pumping plants referred to in subdivision (a) of this Article. The
1086 United States shall furnish the amount of Project power needed to operate such pumping facilities;
1087 Provided, That the Contractor maintains an agreement with an entity to convey such power to such
1088 facilities, and the Contractor agrees to pay any and all charges assessed by that entity for such

1089 service.

1090 (c) The furnishing of power by the United States shall be in conformance with
1091 operating criteria, rules, and regulations, including the project use power policy, established by the
1092 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the
1093 project use power policy, established by the Contracting Officer shall not excuse the United States
1094 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and
1095 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable
1096 irrigation management practices and the power generation capacity available to the United States for
1097 the furnishing of Project water to the Contractor.

1098 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all
1099 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that
1100 they remain in good and efficient condition; Provided, That the United States shall finance the costs
1101 of all major replacements that the Contracting Officer determines are needed.

1102 (e) The Contracting Officer or his representative shall at all times have access to
1103 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are
1104 being kept in safe and proper operating condition.

1105 (f) No change in any of the pumping facilities, which in the opinion of the
1106 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written
1107 consent of the Contracting Officer. The Contractor promptly shall make any and all repairs and
1108 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.
1109 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of
1110 operation by the United States of the pumping facilities pursuant to subdivision (g) of this Article, the

1111 United States may cause the repairs and replacements to be made and the cost thereof, as determined
1112 by the Contracting Officer, shall be paid by the Contractor to the United States upon notice of the
1113 payment due but not later than April 1 of the year following that during which such work was
1114 completed.

1115 (g) In the event the Contracting Officer determines that the Contractor has not
1116 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any
1117 of the provisions of this Article, then at the election of the Contracting Officer the United States may
1118 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to
1119 the Contractor of such election and the effective date thereof. Thereafter during the period of
1120 operation by the United States the Contractor shall pay to the United States in advance of the use of
1121 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements
1122 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate
1123 to properly care for, operate, and maintain the pumping facilities to the end of any year, the
1124 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall
1125 pay such amount on or before the date specified in said notice. Any amount of such advances
1126 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or
1127 credited upon amounts to become due to the United States from the Contractor under the provisions
1128 of this Contract in subsequent years. The pumping facilities so taken back by the United States may
1129 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of
1130 intention to retransfer.

1131 (h) The Contractor shall hold the United States, its officers and employees
1132 harmless from every and all claim for damages to persons or property arising out of or connected

1133 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That
1134 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties
1135 other than the United States with respect to such matters.

1136 (i) During the time the pumping facilities are operated and maintained by the
1137 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the
1138 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the United
1139 States for work associated with the pumping facilities under this Contract normally charged by the
1140 United States to water users and properly and equitably chargeable to the Contractor.

1141 (j) The Contracting Officer may make review of any part or all of the pumping
1142 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in
1143 assessing the condition of facilities and the adequacy of the maintenance program(s). The
1144 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and
1145 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall
1146 reimburse the actual cost incurred by the United States in making O&M examinations, inspections,
1147 and audits, and preparing associated reports and recommendations.

1148 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,
1149 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's
1150 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the
1151 remedial measures required for their correction, and to assist the Contractor in solving specific
1152 problems. Any special inspection or audit shall, except in a case of emergency, be made after written
1153 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United
1154 States.

1155 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1156 29. The expenditure or advance of any money or the performance of any obligation of the
1157 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1158 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1159 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1160 or allotted.

1161
1162 BOOKS, RECORDS, AND REPORTS

1163 30. (a) The Contractor shall establish and maintain accounts and other books and
1164 records pertaining to administration of the terms and conditions of this Contract including: the
1165 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1166 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1167 matters that the Contracting Officer may require. Reports thereon shall be furnished to the
1168 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.
1169 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right
1170 during office hours to examine and make copies of the other party's books and records relating to
1171 matters covered by this Contract.

1172 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1173 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1174 such books, records, or information are reasonably related to the administration or performance of
1175 this Contract. Any such request shall allow the Contractor a reasonable period of time within which
1176 to provide the requested books, records, or information.

1177 (c) At such time as the Contractor provides information to the Contracting Officer
1178 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1179 Operating Non-Federal Entity (ies).

1180 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1181 31. (a) The provisions of this Contract shall apply to and bind the successors and
1182 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1183 therein shall be valid until approved in writing by the Contracting Officer.

1184 (b) The assignment of any right or interest in this Contract by either party shall not

1185 interfere with the rights or obligations of the other party to this Contract absent the written
1186 concurrence of said other party.

1187 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1188 of any proposed assignment.

1189 SEVERABILITY

1190 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1191 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1192 association or other form of organization whose primary function is to represent parties to Project
1193 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1194 enforceability of a provision included in this Contract and said person, entity, association, or
1195 organization obtains a final court decision holding that such provision is legally invalid or
1196 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1197 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1198 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1199 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1200 specified above may be extended by mutual agreement of the parties. Pending the completion of the
1201 actions designated above, to the extent it can do so without violating any applicable provisions of
1202 law, the United States shall continue to make the quantities of Project Water specified in this
1203 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1204 to be legally invalid or unenforceable in the final court decision.

1205 RESOLUTION OF DISPUTES

1206 33. Should any dispute arise concerning any provisions of this Contract, or the parties'

1207 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1208 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1209 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1210 notice of the intent to take such action; Provided, That such notice shall not be required where a
1211 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1212 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1213 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1214 waive or abridge any right or remedy that the Contractor or the United States may have.

1215 OFFICIALS NOT TO BENEFIT

1216 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1217 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1218 manner as other water users or landowners.

1219 CHANGES IN CONTRACTOR'S SERVICE AREA

1220 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1221 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1222 except upon the Contracting Officer's written consent.

1223 (b) Within 30 days of receipt of a request for such a change, the Contracting
1224 Officer will notify the Contractor of any additional information required by the Contracting Officer
1225 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1226 timely completion of the process. Such process will analyze whether the proposed change is likely
1227 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1228 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1229 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1230 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with

1231 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting
1232 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

1233 FEDERAL LAWS

1234 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1235 validity or application in connection with the performance of the terms and conditions of this
1236 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1237 terms and conditions of this Contract unless and until relief from application of such Federal law or
1238 regulation to the implementing provision of the Contract is granted by a court of competent
1239 jurisdiction.

1240
1241

NOTICES

1242 37. Any notice, demand, or request authorized or required by this Contract shall be
1243 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1244 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721,
1245 and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1246 Directors of the Panoche Water District, 52027 West Althea Avenue, Firebaugh, California 93622.
1247

1248 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1249 year first above written.

1250
1251

THE UNITED STATES OF AMERICA

1252
1253
1254

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

1255 (SEAL)

1256

PANOCHE WATER DISTRICT _____

1257
1258

By: _____
President of the Board of Directors

1259 Attest:

1260
1261

By: _____
Secretary of the Board of Directors

EXHIBIT A

[Map or Description of Service Area]

DRAFT

EXHIBIT B
200 Water Rates and Charges

DRAFT