

1 **DRAFT JUNE 21, 2007**

2 UNITED STATES  
3 DEPARTMENT OF THE INTERIOR  
4 BUREAU OF RECLAMATION  
5 Central Valley Project, California

6 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES  
7 AND  
8 SAN LUIS WATER DISTRICT  
9 PROVIDING FOR PROJECT WATER SERVICE  
10 SAN LUIS UNIT AND DELTA DIVISION

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17 PROVIDING FOR PROJECT WATER SERVICE FROM  
18 SAN LUIS UNIT AND DELTA DIVISION

19 THIS CONTRACT, made this 1<sup>st</sup> day of January, 2009, in pursuance generally of the Act of  
20 June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto, including, but not  
21 limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and supplemented, August 4, 1939  
22 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat. 483), June 3, 1960 (74 Stat.  
23 156), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.  
24 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively  
25 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF AMERICA,  
26 hereinafter referred to as the United States, and SAN LUIS WATER DISTRICT, hereinafter referred  
27 to as the Contractor, a public agency of the State of California, duly organized, existing, and acting  
28 pursuant to the laws thereof;

29 WITNESSETH, That:

30 EXPLANATORY RECITALS

31 [1<sup>st</sup>] WHEREAS, the United States has constructed and is operating the Central Valley  
32 Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood

33 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and  
34 restoration, generation and distribution of electric energy, salinity control, navigation and other  
35 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the  
36 San Joaquin River and their tributaries; and

37 [2<sup>nd</sup>] WHEREAS, the United States constructed the Delta Division Facilities, including the  
38 San Luis Unit facilities (which include the San Luis Canal, Coalinga Canal, Pleasant Valley Pumping  
39 Plant, and Dos Amigos Pumping Plant), which will be used in part for the furnishing of water to the  
40 Contractor pursuant to the terms of this Contract; and

41 [3<sup>rd</sup>] WHEREAS, the rights to Project Water were acquired by the United States pursuant  
42 to California law for operation of the Project; and

43 [4<sup>th</sup>] WHEREAS, the United States and the Contractor entered into Contract No. No. 14-  
44 06-200-7773A as amended, which provided the Contractor, Project Water from Project facilities from  
45 January 1, 1975 to December 31, 2008, hereinafter referred to as the Existing Contract; and

46 [4.1] WHEREAS, the Existing Contract originally provided that the Contracting Officer  
47 would make available for delivery to the Contractor 128,000 acre-feet of Project Water for irrigation  
48 and M&I purposes each year, but was subsequently revised by mutual agreement of the Contracting  
49 Officer and the Contractor to provide that the Contracting Officer would make available for delivery  
50 to the Contractor 125,080 acre-feet of Project Water for irrigation and M&I purposes each year; and

51 [5<sup>th</sup>] WHEREAS, the United States and the Contractor have pursuant to Subsection  
52 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into  
53 binding agreements identified as Binding Agreement No. 14-06-200-7773A-BA, which sets out the  
54 terms pursuant to which the Contractor agreed to renew the Existing Contract before the expiration

55 date after completion of the Programmatic Environmental Impact Statement (PEIS) and other  
56 appropriate environmental documentation and negotiation of a renewal contract; and which also sets  
57 out the consequences of a subsequent decision not to renew: and

58 [6<sup>th</sup>] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the  
59 Existing Contract following completion of appropriate environmental documentation, including the  
60 PEIS, which was required by Section 3409 of the CVPIA, pursuant to the National Environmental  
61 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the  
62 CVPIA and the potential renewal of all existing contracts for Project Water; and

63 [7<sup>th</sup>] WHEREAS, rights of renewal of Existing Contract and to convert said contract to a  
64 contract as provided by subsection (d), Section 9 of the Act of August 4, 1939 (53 Stat. 1187), are set  
65 forth in said contract; and

66 [8<sup>th</sup>] WHEREAS, the United States has completed the PEIS, but since all the environmental  
67 documentation necessary to execute a long-term renewal contract has not been completed, the  
68 Contractor has requested an interim renewal contract pursuant to Section 3404(c)(1) of the CVPIA;  
69 and

70 [9<sup>th</sup>] WHEREAS, the United States has determined that the Contractor has fulfilled all of  
71 its obligations under the Existing Contract; and

72 [10<sup>th</sup>] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting  
73 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and  
74 beneficial use and expects to utilize fully for reasonable and beneficial use the quantity of Project  
75 Water to be made available to it pursuant to this Contract; and

76 [11<sup>th</sup>] WHEREAS, water obtained from the Project has been relied upon by urban and

77 agricultural areas within California for more than 50 years, and is considered by the Contractor as an  
78 essential portion of its water supply; and

79 [12<sup>th</sup>] WHEREAS, the economies of regions within the Project, including the Contractor's,  
80 depend upon the continued availability of water, including water service from the Project; and

81 [12.1] WHEREAS, the United States Court of Appeals for the Ninth Circuit has held that  
82 Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, imposes on the Secretary a duty to  
83 provide drainage service to the San Luis Unit; and

84 [12.2] WHEREAS, the Contractor and the Contracting Officer recognize that adequate  
85 drainage service is required to maintain agricultural production within certain areas served with  
86 Project Water made available under this Contract, and all renewals thereof; and

87 [12.3] WHEREAS, the Contracting Officer intends, to the extent appropriated funds are  
88 available, to develop and implement effective solutions to drainage problems in the San Luis Unit; and

89 [12.4] WHEREAS, the Contracting Officer and the Contractor acknowledge that such  
90 drainage solutions may involve actions not originally contemplated and/or the construction or use of  
91 facilities, other than the San Luis Drain; that the Contractor is investing in drainage solutions for  
92 lands within its boundaries that should be considered by the Contracting Officer in determining  
93 drainage solutions; and that the existing ratesetting policy as it relates to the allocation and collection  
94 of drainage costs may require amendment to recognize those investments by the Contractor and other  
95 relevant circumstances; and

96 [12.5] WHEREAS, the Department of the Interior, Bureau of Reclamation published in June 2006  
97 the San Luis Drainage Feature Re-evaluation Final Environmental Impact Statement, which considers  
98 alternatives to provide agricultural drainage service to the San Luis Unit; and

99 [13<sup>th</sup>] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships  
100 to pursue measures to improve water supply, water quality, and reliability of the Project for all  
101 Project purposes; and

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

108 [14.1] WHEREAS, the parties intend by this Contract to develop a more cooperative  
109 relationship in order to achieve their mutual goals; and

110 [15<sup>th</sup>] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,  
111 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to  
112 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

113 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive  
114 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital  
115 immediately above; and

116 [15.2] WHEREAS, in order to continue water service provided under Project water service  
117 contracts that expire prior to the completion of all appropriate environmental documentation, the  
118 United States intends to execute interim renewal contracts for a period not to exceed three (3) Years  
119 in length, and for successive interim periods of not more than two (2) Years in length, until such  
120 appropriate environmental documentation, is finally completed, at which time the Secretary shall,

121 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal  
122 contract for a period of twenty-five (25) Years; and may thereafter renew such long-term renewal  
123 contracts for successive periods not to exceed twenty-five (25) Years each; and

124 [15.3] WHEREAS, the Secretary intends to assure uninterrupted water service and continuity  
125 of contract through the process set fourth in Article 2 hereof; and

126 [16<sup>th</sup>] WHEREAS, the United States and the Contractor are willing to enter into this  
127 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

#### 130 DEFINITIONS

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

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

135 (b) “Charges” shall mean the payments required by Federal Reclamation law in  
136 addition to the Rates as determined annually by the Contracting Officer pursuant to this Contract;

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

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

142 (e) “Contract Total” shall mean the maximum amount of water to which the



143 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

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

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

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

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

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

161 (j) "Omitted"

162 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not be  
163 delivered in accordance with Section 204 of the RRA;

164 (l) "Omitted"

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

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

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

176 (p) "Omitted"

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

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

186 (s) "Project" shall mean the Central Valley Project owned by the United States

187 and managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

196 (w) Omitted

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

200 (y) Omitted

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

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

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

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

211 TERM OF CONTRACT - RIGHT TO USE OF WATER

212 2. (a) This Contract shall be effective from January 1, 2009 and shall remain in  
213 effect through February 28, 2011, and thereafter will be renewed as described in this Article. Except  
214 as provided in subdivision (b) of this Article, until completion of all appropriate environmental  
215 review, and provided that the Contractor has complied with all the terms and conditions of the  
216 interim renewal contract in effect for the period immediately preceding the requested successive  
217 interim renewal contract, this Contract will be renewed, upon request of the Contractor, for  
218 successive interim periods each of which shall be no more than two (2) Years in length. Also, except  
219 as provided in subdivision (b) of this Article, in order to promote orderly and cost effective contract  
220 administration, the terms and conditions in subsequent interim renewal contracts shall be identical to  
221 the terms and conditions in the interim renewal contract immediately preceding the subsequent  
222 interim renewal contract: Provided, however, That each party preserves the right to propose  
223 modification(s) in any interim renewal contract other than those described in subdivision (b) of this  
224 Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be  
225 included in any successive interim renewal contracts. Said modification(s) of each successive  
226 interim renewal contract shall be agreed upon within a reasonable time prior to the expiration of the  
227 then existing interim renewal contract. Nothing in this Article shall in any way alter the obligation  
228 that, upon final completion of any necessary environmental documentation, the Secretary shall,  
229 pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal

230 contract for a period of twenty-five (25) Years and may thereafter renew such long-term renewal  
231 contracts for successive periods not to exceed twenty-five (25) Years each.

232 (b) The parties have engaged and if necessary will continue to engage in good  
233 faith negotiations intended to permit the execution of a twenty-five (25) Year long-term renewal  
234 contract contemplated by Section 3404 (c) of the CVPIA, hereinafter referred to as a “long-term  
235 renewal contract”. The parties recognize the possibility that this schedule may not be met without  
236 further negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer have  
237 reached agreement on the terms of the Contractor’s long-term renewal contract or (ii) the Contractor  
238 and Contracting Officer have not completed the negotiations on the Contractor’s long-term renewal  
239 contract, believe that further negotiations on that contract would be beneficial, and mutually commit  
240 to continue to negotiate to seek to reach agreement, but (iii) all environmental documentation  
241 required to allow execution of the Contractor’s long-term renewal contract by both parties has not  
242 been completed in time to allow execution of the Contractor’s long-term renewal contract by  
243 **February 28, 2011**, then (iv), the parties will expeditiously complete the environmental  
244 documentation required of each of them in order to execute the Contractor’s long-term renewal  
245 contract at the earliest practicable date. In addition, the Contractor’s then current interim renewal  
246 contract will be renewed without change upon the request of either party through the agreed-upon  
247 effective date of the Contractor’s long-term renewal contract or, in the absence of agreement on the  
248 terms of the Contractor’s long-term renewal contract, through the succeeding February 28.

249 (c) The omission of language in this Contract providing for conversion of this  
250 interim renewal contract or any subsequent renewals thereof to a repayment contract, pursuant to the  
251 Act of July 2, 1956 (70 Stat. 483), shall not prejudice the Contractor’s right to assert a right to have

252 such language included in subsequent renewals of this Contract or to exercise such conversion, all as  
253 provided by law, or to negotiate the language regarding such conversion to be included in subsequent  
254 renewal contracts.

255 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

256 3. (a) During each Year, consistent with all applicable State water rights permits, and  
257 licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the  
258 Contracting Officer shall make available for delivery to the Contractor 125,080 acre-feet of Project  
259 Water for irrigation and M&I purposes. Provided, however, during the two (2) month period of  
260 January and February of Year, 2009, the Contracting Officer shall make available for delivery to the  
261 Contractor that portion of the 2008 allocation of Project Water unused by the Contractor under the  
262 Existing Contract. Water Delivered to the Contractor in accordance with this subdivision shall be  
263 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

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

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

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

283 (d) The Contractor shall make reasonable and beneficial use of all water furnished  
284 pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater  
285 banking programs, surface water storage programs, and other similar programs utilizing Project  
286 Water or other water furnished pursuant to this Contract conducted within the Contractor's Service  
287 Area which are consistent with applicable State law and result in use consistent with Federal  
288 Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in  
289 the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,  
290 further, That such water conservation plan demonstrates sufficient lawful uses exist in the  
291 Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is  
292 demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law.  
293 Groundwater recharge programs, groundwater banking programs, surface water storage programs,  
294 and other similar programs utilizing Project Water or other water furnished pursuant to this Contract  
295 conducted outside the Contractor's Service Area may be permitted upon written approval of the

296 Contracting Officer, which approval will be based upon environmental documentation, Project Water  
297 rights, and Project operational concerns. The Contracting Officer will address such concerns in  
298 regulations, policies, or guidelines.

299 (e) The Contractor shall comply with requirements applicable to the Contractor in  
300 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract  
301 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are  
302 within the Contractor's legal authority to implement. The Existing Contract, which evidences in  
303 excess of 33 years of diversions for irrigation and/or M&I purposes of the quantities of Project Water  
304 provided in subdivision (a) of Article 3 of this Contract, will be considered in developing an  
305 appropriate baseline for the biological assessment(s) prepared pursuant to the ESA, and any other  
306 needed environmental review. Nothing herein shall be construed to prevent the Contractor from  
307 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any  
308 biological opinion or other environmental documentation referred to in this Article.

309 (f) Following the declaration of Water Made Available under Article 4 of this  
310 Contract, the Contracting Officer will make a determination whether Project Water, or other water  
311 available to the Project, can be made available to the Contractor in addition to the Contract Total  
312 under this Article during the Year without adversely impacting other Project Contractors. At the  
313 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making  
314 such a determination. If the Contracting Officer determines that Project Water, or other water  
315 available to the Project, can be made available to the Contractor, the Contracting Officer will  
316 announce the availability of such water and shall so notify the Contractor as soon as practical. The  
317 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of



318 taking such water to determine the most equitable and efficient allocation of such water. If the  
319 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make  
320 such water available to the Contractor in accordance with applicable statutes, regulations, guidelines,  
321 and policies. Subject to existing interim renewal and long-term contractual commitments, water  
322 rights and operational constraints, interim renewal and long-term Project Contractors shall have a  
323 first right to acquire such water, including Project Water made available pursuant to Section 215 of  
324 the RRA.

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

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

338 (i) Project Water furnished to the Contractor pursuant to this Contract may be  
339 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this

340 Contract upon written approval by the Contracting Officer in accordance with the terms and  
341 conditions of such approval.

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

350 TIME FOR DELIVERY OF WATER

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

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

362 Officer shall use all reasonable means to deliver Project Water according to the approved schedule  
363 for the Year commencing on such March 1.

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

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

372 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

384 approved in advance by the Contracting Officer.

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

396 (e) Absent a separate contrary written agreement with the Contractor, neither the  
397 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,  
398 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this  
399 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.  
400 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on  
401 account of damage or claim of damage of any nature whatsoever for which there is legal  
402 responsibility, including property damage, personal injury, or death arising out of or connected with  
403 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such  
404 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the  
405 Contracting Officer or any of its officers, employees, agents, and assigns, including the Operating

406 Non-Federal Entity(ies) with the intent of creating the situation resulting in any damage or claim; (ii)  
407 willful misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,  
408 including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting Officer or any of  
409 its officers, employees, agents, and assigns including the Operating Non-Federal Entity(ies); (iv) a  
410 malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal  
411 Entity(ies); or (v) failure of the United States, its officers, employees, agents, and assigns, including  
412 the Operating Non-Federal Entity(ies), to provide drainage service.

413 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

428 described in subdivision (c) of Article 26 of this Contract.

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

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

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

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

453 RATES AND METHOD OF PAYMENT FOR WATER

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

463  
464 (b) The Contracting Officer shall notify the Contractor of the Rates and Charges  
465 as follows:

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

472 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and  
473 such notification shall revise Exhibit “B.”

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

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

480 (c) At the time the Contractor submits the initial schedule for the delivery of  
481 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor  
482 shall make an advance payment to the United States equal to the total amount payable pursuant to the  
483 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be  
484 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end  
485 of the first month and before the end of each calendar month thereafter, the Contractor shall make an  
486 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the  
487 Water Scheduled to be delivered pursuant to this Contract during the second month immediately  
488 following. Adjustments between advance payments for Water Scheduled and payments at Rates due  
489 for Water Delivered shall be made before the end of the following month; Provided, That any revised  
490 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the  
491 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with  
492 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered  
493 to the Contractor in advance of such payment. In any month in which the quantity of Water



494 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid  
495 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and  
496 until an advance payment at the Rates then in effect for such additional Project Water is made. Final  
497 adjustment between the advance payments for the Water Scheduled and payments for the quantities  
498 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable  
499 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water  
500 rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the  
501 last day of February.

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

512 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or  
513 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable  
514 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;  
515 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall

516 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision  
517 (a) of this Article.

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

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

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

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

538 Contract.

539 (j) Omitted

540 (1-3) Omitted

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

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

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

559 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

563 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

574 (b) In order to facilitate efficient water management by means of water transfers of  
575 the type historically carried out among Project Contractors located within the same geographical area  
576 and to allow the Contractor to participate in an accelerated water transfer program during the term of  
577 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental  
578 documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA,  
579 analyzing annual transfers within such geographical areas and the Contracting Officer shall  
580 determine whether such transfers comply with applicable law. Following the completion of the  
581 environmental documentation, such transfers addressed in such documentation shall be conducted

582 with advance notice to the Contracting Officer, but shall not require prior written approval by the  
583 Contracting Officer. Such environmental documentation and the Contracting Officer's compliance  
584 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of  
585 the then existing five-year period. All subsequent environmental documentation shall include an  
586 alternative to evaluate not less than the quantity of Project Water historically transferred within the  
587 same geographical area.

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

#### 598 APPLICATION OF PAYMENTS AND ADJUSTMENTS

599 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,  
600 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of  
601 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000  
602 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment, at  
603 the option of the Contractor, may be credited against amounts to become due to the United States by

604 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole  
605 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the  
606 Project Water supply provided for herein. All credits and refunds of overpayments shall be made  
607 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such  
608 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year  
609 in which the overpayment was made.

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

615 TEMPORARY REDUCTIONS--RETURN FLOWS

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

621 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily  
622 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the  
623 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project  
624 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far  
625 as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due

626 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in  
627 which case no notice need be given; Provided, That the United States shall use its best efforts to  
628 avoid any discontinuance or reduction in such service. Upon resumption of service after such  
629 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,  
630 deliver the quantity of Project Water which would have been delivered hereunder in the absence of  
631 such discontinuance or reduction.

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

638 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

648 agents, or employees for any damage, direct or indirect, arising therefrom.

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

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

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

668 (3) The total quantity of Project Water estimated to be scheduled or  
669 actually scheduled by the Contractor during the relevant Year, under subdivision (b) of Article 4



670 hereof, shall be divided by the scheduled total, the quotient thus obtained being hereinafter referred to  
671 as the Contractor's proportionate share; and

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

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

691 (e) Omitted

692 UNAVOIDABLE GROUNDWATER PERCOLATION

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

697 RULES AND REGULATIONS

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

702 WATER AND AIR POLLUTION CONTROL

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

706 QUALITY OF WATER

707 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to  
708 this Contract shall be operated and maintained to enable the United States to deliver Project Water to  
709 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act  
710 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.  
711 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish  
712 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor  
713 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the  
714 Contractor pursuant to this Contract.

715 (b) The O&M of Project facilities shall be performed in such manner as is  
716 practicable to maintain the quality of raw water made available through such facilities at the highest

717 level reasonably attainable as determined by the Contracting Officer. The Contractor shall be  
718 responsible for compliance with all State and Federal water quality standards applicable to surface  
719 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor  
720 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

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

726

727

728

WATER ACQUIRED BY THE CONTRACTOR  
OTHER THAN FROM THE UNITED STATES

729 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other  
730 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may  
731 be simultaneously transported through the same distribution facilities of the Contractor subject to the  
732 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were  
733 constructed without funds made available pursuant to Federal Reclamation law, the provisions of  
734 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation  
735 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the  
736 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part  
737 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be  
738 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity  
739 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation

740 Water and non-Project water are/were constructed with funds made available pursuant to Federal  
741 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal  
742 Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43  
743 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the  
744 cost to the Federal Government, including interest, of storing or delivering non-Project water, which  
745 for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid  
746 distribution system costs divided by the total irrigable acreage within the Contractor's Service Area.  
747 The incremental fee per acre is the mathematical result of such quotient times the interest rate  
748 determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental  
749 fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that  
750 receives non-Project water through Federally financed or constructed facilities. The incremental fee  
751 calculation methodology will continue during the term of this Contract absent the promulgation of a  
752 contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded  
753 the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule,  
754 regulation, or policy is adopted it shall supersede this provision.

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

760 (1) The Contractor may introduce non-Project water into Project facilities  
761 and deliver said water to lands within the Contractor's Service Area, including Ineligible Lands,

762 subject to payment to the United States and/or to any applicable Operating Non-Federal Entity of an  
763 appropriate rate as determined by the applicable Project ratesetting policy, the RRA, and the Project  
764 use power policy, if such Project use power policy is applicable, each as amended, modified, or  
765 superseded from time to time.

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

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

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

782 (5) After Project purposes are met, as determined by the Contracting  
783 Officer, the United States and Project Contractors entitled to Project Water from Delta Division

784 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available  
785 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such  
786 remaining capacity being made available to non-Project contractors. Other Project Contractors shall  
787 have a second priority to any remaining capacity of facilities declared to be available by the  
788 Contracting Officer for conveyance and transportation of non-Project water prior to any such  
789 remaining capacity being made available to non-Project contractors.

#### 790 OPINIONS AND DETERMINATIONS

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

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

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COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

842 CHARGES FOR DELINQUENT PAYMENTS

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

851 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in  
852 the Federal Register by the Department of the Treasury for application to overdue payments, or the  
853 interest rate of one-half of one percent per month prescribed by Section 6 of the Reclamation Project



854 Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and  
855 remain fixed for the duration of the delinquent period.

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

859 EQUAL OPPORTUNITY

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

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

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

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

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

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

887 (f) In the event of the Contractor's noncompliance with the nondiscrimination  
888 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be

889 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible  
890 for further Government contracts in accordance with procedures authorized in said amended  
891 Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said  
892 Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided  
893 by law.

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

903 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

916 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

925 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor  
926 agrees to immediately take any measures necessary to implement this obligation, including  
927 permitting officials of the United States to inspect premises, programs, and documents.  
928

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

936 PRIVACY ACT COMPLIANCE

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

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

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

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

955 (e) The Contractor shall forward promptly to the System Manager each proposed  
956 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR  
957 2.71; notify the requester accordingly of such referral; and provide the System Manager with  
958 information and records necessary to prepare an appropriate response to the requester. These  
959 requirements do not apply to individuals seeking access to their own certification and reporting forms  
960 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy  
961 Act as a basis for the request.  
962

963 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

972 WATER CONSERVATION

973 26. (a) Prior to the delivery of water provided from or conveyed through Federally  
974 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be  
975 implementing an effective water conservation and efficiency program based on the Contractor's water  
976 conservation plan that has been determined by the Contracting Officer to meet the conservation and  
977 efficiency criteria for evaluating water conservation plans established under Federal law. The water  
978 conservation and efficiency program shall contain definite water conservation objectives, appropriate  
979 economically feasible water conservation measures, and time schedules for meeting those objectives.  
980 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's  
981 continued implementation of such water conservation program. In the event the Contractor's water  
982 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of  
983 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to  
984 circumstances which the Contracting Officer determines are beyond the control of the Contractor,

985 water deliveries shall be made under this Contract so long as the Contractor diligently works with the  
986 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the  
987 Contractor immediately begins implementing its water conservation and efficiency program in  
988 accordance with the time schedules therein.

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

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

997 (d) At five-year intervals, the Contractor shall revise its water conservation plan to  
998 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans  
999 established under Federal law and submit such revised water management plan to the Contracting  
1000 Officer for review and evaluation. The Contracting Officer will then determine if the water  
1001 conservation plan meets Reclamation's then-current conservation and efficiency criteria for  
1002 evaluating water conservation plans established under Federal law.

1003 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall  
1004 be described in the Contractor's water conservation plan.

1005 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1006 27. Except as specifically provided in Article 17 of this Contract, the provisions of this

1007 Contract shall not be applicable to or affect non-Project Water or water rights now owned or  
1008 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.  
1009 Any such water shall not be considered Project Water under this Contract. In addition, this Contract  
1010 shall not be construed as limiting or curtailing any rights which the Contractor or any water user  
1011 within the Contractor's Service Area acquires or has available under any other contract pursuant to  
1012 Federal Reclamation law.

1013 OPERATION AND MAINTENANCE BY  
1014 SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

1015 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and  
1016 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis  
1017 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-  
1018 20-X0354) between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota  
1019 Water Authority. That separate agreement shall not interfere with or affect the rights or obligations  
1020 of the Contractor or the United States hereunder.

1021 (b) The Contracting Officer has previously notified the Contractor in writing that  
1022 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to  
1023 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the  
1024 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1025 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of  
1026 the separate agreement between the United States and Operating Non-Federal Entity San Luis &  
1027 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or  
1028 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal  
1029 Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets, or establishes

1030 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-  
1031 Federal Entity San Luis & Delta-Mendota Water Authority, or such successor. Such direct payments  
1032 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall  
1033 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share  
1034 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects  
1035 payments on behalf of the United States in accordance with subdivision (a) of this Article.

1036 (c) For so long as the O&M of any portion of the Project facilities serving the  
1037 Contractor is performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water  
1038 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the  
1039 Rates for Water Delivered under this Contract representing the cost associated with the activity being  
1040 performed by Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or its  
1041 successor.

1042 (d) In the event the O&M of the Project facilities operated and maintained by  
1043 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the  
1044 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,  
1045 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the  
1046 Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs  
1047 of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter,  
1048 in the absence of written notification from the Contracting Officer to the contrary, pay the Rates and  
1049 Charges specified in the revised Exhibit "B" directly to the United States in compliance with Article  
1050 7 of this Contract.

1051 OPERATION AND MAINTENANCE BY  
1052 CALIFORNIA DEPARTMENT OF WATER RESOURCES

1053           28.1   (a)    The O&M of a portion of the Project facilities which serve the Contractor, and  
1054 responsibility for funding a portion of the costs of such O&M, have been transferred to the California  
1055 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-  
1056 200-9755) between the United States and Operating Non-Federal Entity California Department of  
1057 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations  
1058 of the Contractor or the United States hereunder.

1059           (b)    The Contracting Officer has previously notified the Contractor in writing that  
1060 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to  
1061 Operating Non-Federal Entity California Department of Water Resources, and the Contractor shall  
1062 pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or to any  
1063 successor approved by the Contracting Officer under the terms and conditions of the separate  
1064 agreement between the United States and Operating Non-Federal Entity San Luis & Delta-Mendota  
1065 Water Authority, described in subdivision (a) of Article 28 of this Contract, all rates, charges, or  
1066 assessments of any kind, including any assessment for reserve funds, which Operating Non-Federal  
1067 Entity California Department of Water Resources, or such successor determines, sets, or establishes  
1068 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-  
1069 Federal Entity California Department of Water Resources, or such successor. Such direct payments  
1070 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall  
1071 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share  
1072 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity collects  
1073 payments on behalf of the United States in accordance with the separate agreement identified in  
1074 subdivision (a) of Article 28 of this Contract.



1075 (c) For so long as the O&M of any portion of the Project facilities serving the  
1076 Contractor is performed by Operating Non-Federal Entity California Department of Water Resources,  
1077 or any successor thereto, the Contracting Officer shall adjust those components of the Rates for  
1078 Water Delivered under this Contract representing the cost associated with the activity being  
1079 performed by Operating Non-Federal Entity California Department of Water Resources, or its  
1080 successor.

1081 (d) In the event the O&M of the Project facilities operated and maintained by  
1082 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the  
1083 United States during the term of this Contract, the Contracting Officer shall so notify the Contractor,  
1084 in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the  
1085 Rates and Charges, to be paid by the Contractor for Project Water under this Contract representing  
1086 the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor  
1087 shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary,  
1088 pay the Rates and Charges specified in the revised Exhibit "B" directly to the United States in  
1089 compliance with Article 7 of this Contract.

1090 PUMPING PLANTS, POWER FOR PUMPING PLANTS, AND TRANSFER  
1091 OF OPERATION AND MAINTENANCE TO THE CONTRACTOR

1092 28.2. (a) The United States shall furnish and install pumping plants and furnish the  
1093 amount of Project power the Contracting Officer determines is necessary to deliver Project Water to  
1094 the Contractor from the Delta-Mendota and San Luis Canals at the point(s) of delivery identified  
1095 pursuant to subdivision (a) of Article 5 at heads and elevations sufficient to irrigate by gravity the  
1096 areas within the Contractor's Service Area below 700 feet mean sea level elevation.

1097 (b) With advance approval of the Contracting Officer, the Contractor may, at its

1098 own expense, furnish and install pumping facilities, and related electrical equipment, to enable it to  
1099 divert and deliver Project Water from the Delta-Mendota and San Luis Canals before the United  
1100 States furnishes and installs all the pumping plants referred to in subdivision (a) of this Article. The  
1101 United States shall furnish the amount of Project power needed to operate such pumping facilities;  
1102 Provided, That the Contractor maintains an agreement with an entity to convey such power to such  
1103 facilities, and the Contractor agrees to pay any and all charges assessed by that entity for such  
1104 service.

1105 (c) The furnishing of power by the United States shall be in conformance with  
1106 operating criteria, rules, and regulations, including the project use power policy, established by the  
1107 Contracting Officer; Provided, That any such operating criteria, rules, and regulations, including the  
1108 project use power policy, established by the Contracting Officer shall not excuse the United States  
1109 from its obligation under subdivision (a) of this Article. Such operating criteria, rules, and  
1110 regulations shall be developed in cooperation with the Contractor and shall be based on acceptable  
1111 irrigation management practices and the power generation capacity available to the United States for  
1112 the furnishing of Project water to the Contractor.

1113 (d) The Contractor hereby agrees to operate and maintain, at its own expense, all  
1114 of the pumping facilities described in subdivisions (a) and (b) of this Article in such a manner that  
1115 they remain in good and efficient condition; Provided, That the United States shall finance the costs  
1116 of all major replacements that the Contracting Officer determines are needed.

1117 (e) The Contracting Officer or his representative shall at all times have access to  
1118 and may inspect and investigate the pumping facilities for the purpose of ascertaining if they are  
1119 being kept in safe and proper operating condition.

1120 (f) No change in any of the pumping facilities, which in the opinion of the  
1121 Contracting Officer is substantial, shall be made by the Contractor without first obtaining the written  
1122 consent of the Contracting Officer. The Contractor promptly shall make any and all repairs and  
1123 replacements to the pumping facilities which in the opinion of the Contracting Officer are necessary.  
1124 In the event the Contractor neglects or fails to make such repairs and replacements or in the event of  
1125 operation by the United States of the pumping facilities pursuant to subdivision (g) of this Article, the  
1126 United States may cause the repairs and replacements to be made and the cost thereof, as determined  
1127 by the Contracting Officer, shall be paid by the Contractor to the United States upon notice of the  
1128 payment due but not later than April 1 of the year following that during which such work was  
1129 completed.

1130 (g) In the event the Contracting Officer determines that the Contractor has not  
1131 properly cared for, operated, and maintained said pumping facilities or has failed to comply with any  
1132 of the provisions of this Article, then at the election of the Contracting Officer the United States may  
1133 take over from the Contractor the care and O&M of the pumping facilities by giving written notice to  
1134 the Contractor of such election and the effective date thereof. Thereafter during the period of  
1135 operation by the United States the Contractor shall pay to the United States in advance of the use of  
1136 such pumping facilities the Contractor's share of the cost of O&M thereof and replacements  
1137 therefore, as fixed in notices from the Contracting Officer. In the event such advances are inadequate  
1138 to properly care for, operate, and maintain the pumping facilities to the end of any year, the  
1139 Contracting Officer may give written notice of a supplemental O&M charge and the Contractor shall  
1140 pay such amount on or before the date specified in said notice. Any amount of such advances  
1141 remaining unexpended or unobligated, at the option of the Contractor, either shall be refunded or

1142 credited upon amounts to become due to the United States from the Contractor under the provisions  
1143 of this Contract in subsequent years. The pumping facilities so taken back by the United States may  
1144 be returned to the Contractor upon the furnishing to the Contractor of a written 90-day notice of  
1145 intention to retransfer.

1146 (h) The Contractor shall hold the United States, its officers and employees  
1147 harmless from every and all claim for damages to persons or property arising out of or connected  
1148 with the Contractor's O&M of the pumping facilities referred to in this Article; Provided, That  
1149 nothing contained herein shall be construed as an assumption of liability by the Contractor to parties  
1150 other than the United States with respect to such matters.

1151 (i) During the time the pumping facilities are operated and maintained by the  
1152 Contractor, in addition to all other payments to be made by the Contractor under this Contract, the  
1153 Contractor shall pay to the United States pursuant to Article 25 hereof, costs incurred by the United  
1154 States for work associated with the pumping facilities under this Contract normally charged by the  
1155 United States to water users and properly and equitably chargeable to the Contractor.

1156 (j) The Contracting Officer may make review of any part or all of the pumping  
1157 facilities being operated by the Contractor pursuant to this Article to assist the Contractor in  
1158 assessing the condition of facilities and the adequacy of the maintenance program(s). The  
1159 Contracting Officer shall prepare reports based on the examinations, inspections or audits, and  
1160 furnish copies of such reports and any recommendations to the Contractor. The Contractor shall  
1161 reimburse the actual cost  
1162 incurred by the United States in making O&M examinations, inspections, and audits, and preparing  
1163 associated reports and recommendations.

1164 (k) If deemed necessary by the Contracting Officer or requested by the Contractor,  
1165 special inspections of the pumping facilities being operated by the Contractor and of the Contractor's  
1166 books and records may be made to ascertain the extent of any O&M deficiencies, to determine the  
1167 remedial measures required for their correction, and to assist the Contractor in solving specific  
1168 problems. Any special inspection or audit shall, except in a case of emergency, be made after written  
1169 notice to the Contractor and the actual cost thereof shall be paid by the Contractor to the United  
1170 States.

1171 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1172 29. The expenditure or advance of any money or the performance of any obligation of the  
1173 United States under this Contract shall be contingent upon appropriation or allotment of funds.  
1174 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations  
1175 under this Contract. No liability shall accrue to the United States in case funds are not appropriated  
1176 or allotted.

1177  
1178 BOOKS, RECORDS, AND REPORTS

1179 30. (a) The Contractor shall establish and maintain accounts and other books and  
1180 records pertaining to administration of the terms and conditions of this Contract including: the  
1181 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;  
1182 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other  
1183 matters that the Contracting Officer may require. Reports thereon shall be furnished to the  
1184 Contracting Officer in such form and on such date or dates as the Contracting Officer may require.  
1185 Subject to applicable Federal laws and regulations, each party to this Contract shall have the right  
1186 during office hours to examine and make copies of the other party's books and records relating to  
1187 matters covered by this Contract.

1188 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,  
1189 records, or other information shall be requested from the Contractor by the Contracting Officer unless  
1190 such books, records, or information are reasonably related to the administration or performance of  
1191 this Contract. Any such request shall allow the Contractor a reasonable period of time within which  
1192 to provide the requested books, records, or information.

1193 (c) At such time as the Contractor provides information to the Contracting Officer  
1194 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the  
1195 Operating Non-Federal Entity (ies).

1196 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1197 31. (a) The provisions of this Contract shall apply to and bind the successors and  
1198 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest  
1199 therein shall be valid until approved in writing by the Contracting Officer.

1200 (b) The assignment of any right or interest in this Contract by either party shall not  
1201 interfere with the rights or obligations of the other party to this Contract absent the written  
1202 concurrence of said other party.

1203 (c) The Contracting Officer shall not unreasonably condition or withhold approval  
1204 of any proposed assignment.

1205 SEVERABILITY

1206 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor  
1207 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an  
1208 association or other form of organization whose primary function is to represent parties to Project  
1209 contracts, brings an action in a court of competent jurisdiction challenging the legality or  
1210 enforceability of a provision included in this Contract and said person, entity, association, or  
1211 organization obtains a final court decision holding that such provision is legally invalid or  
1212 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the  
1213 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court  
1214 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)  
1215 within three months thereafter promptly agree on the appropriate revision(s). The time periods

1216 specified above may be extended by mutual agreement of the parties. Pending the completion of the  
1217 actions designated above, to the extent it can do so without violating any applicable provisions of  
1218 law, the United States shall continue to make the quantities of Project Water specified in this  
1219 Contract available to the Contractor pursuant to the provisions of this Contract which were not found  
1220 to be legally invalid or unenforceable in the final court decision.

1221 RESOLUTION OF DISPUTES

1222 33. Should any dispute arise concerning any provisions of this Contract, or the parties'  
1223 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the  
1224 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring  
1225 any matter to the Department of Justice, the party shall provide to the other party 30 days' written  
1226 notice of the intent to take such action; Provided, That such notice shall not be required where a  
1227 delay in commencing an action would prejudice the interests of the party that intends to file suit.  
1228 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in  
1229 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to  
1230 waive or abridge any right or remedy that the Contractor or the United States may have.

1231 OFFICIALS NOT TO BENEFIT

1232 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the  
1233 Contractor shall benefit from this Contract other than as a water user or landowner in the same  
1234 manner as other water users or landowners.

1235 CHANGES IN CONTRACTOR'S SERVICE AREA

1236 35. (a) While this Contract is in effect, no change may be made in the Contractor's  
1237 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,  
1238 except upon the Contracting Officer's written consent.

1239 (b) Within 30 days of receipt of a request for such a change, the Contracting

1240 Officer will notify the Contractor of any additional information required by the Contracting Officer  
1241 for processing said request, and both parties will meet to establish a mutually agreeable schedule for  
1242 timely completion of the process. Such process will analyze whether the proposed change is likely  
1243 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of  
1244 the Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-  
1245 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project  
1246 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with  
1247 the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the Contracting  
1248 Officer in this process, and such costs will be paid in accordance with Article 25 of this Contract.

#### 1249 FEDERAL LAWS

1250 36. By entering into this Contract, the Contractor does not waive its rights to contest the  
1251 validity or application in connection with the performance of the terms and conditions of this  
1252 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the  
1253 terms and conditions of this Contract unless and until relief from application of such Federal law or  
1254 regulation to the implementing provision of the Contract is granted by a court of competent  
1255 jurisdiction.

#### 1256 NOTICES

1258 37. Any notice, demand, or request authorized or required by this Contract shall be  
1259 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered  
1260 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, CA 93721, and on  
1261 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of Directors of  
1262 the San Luis Water District, 1015 6<sup>th</sup> Street, Los Banos, California 93635. The designation of the  
1263 addressee or the address may be changed by notice given in the same manner as provided in this  
1264 Article for other notices.  
1265



1266 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and  
1267 year first above written.

1268  
1269

THE UNITED STATES OF AMERICA

1270  
1271  
1272

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

1273 (SEAL)

1274

SAN LUIS WATER DISTRICT \_\_\_\_\_

1275  
1276

By: \_\_\_\_\_  
President of the Board of Directors

1277 Attest:

1278  
1279

By: \_\_\_\_\_  
Secretary of the Board of Directors

EXHIBIT A

[Map or Description of Service Area]

DRAFT

EXHIBIT B  
200 Water Rates and Charges

DRAFT