

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

5 INTERIM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 THE CITY OF TRACY
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this _____ day of _____, 201____, in
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050),
15 as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
16 hereinafter referred to as Federal Reclamation law, between the UNITED STATES OF
17 AMERICA, hereinafter referred to as the United States, and the CITY OF TRACY, hereinafter
18 referred to as the Contractor, a public agency of the State of California, duly organized, existing,
19 and acting pursuant to the laws thereof, with its principal place of business in California;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

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

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

28 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
29 facilities, hereinafter collectively referred to as the Delta Division Facilities, which will be used
30 in part for the furnishing of water to the Contractor pursuant to the terms of this interim renewal
31 contract; and

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

34 [4th] WHEREAS, the Contractor and the United States entered into Contract
35 No. 14-06-200-7858A dated July 22, 1974, which established the terms for the delivery to the
36 Contractor of up to ten thousand acre-feet of Project Water from the Delta Mendota Canal
37 through December 31, 2013; and

38 [5th] WHEREAS, the United States and the Contractor have, pursuant to subsection
39 3404(c)(3) of CVPIA, subsequently entered into a binding agreement identified as Binding
40 Agreement No. 14-06-200-7858A-BA dated September 30, 1997, which sets out the terms
41 pursuant to which the Contractor agreed to renew Contract No. 14-06-200-7858A before its
42 expiration date after completion of a programmatic environmental impact statement and other
43 appropriate environmental documentation and negotiation of a renewal contract, and which also
44 sets out the consequences of a decision not to renew; and

45 [6th] WHEREAS, pursuant to a June 5, 2001 “Agreement for Assignment of
46 Entitlement to CVP Water Between the City of Tracy and the Banta-Carbona Irrigation District,”
47 as amended on September 11, 2002, the Contractor was assigned five thousand acre-feet of

48 Banta-Carbona Irrigation District's entitlement to Project Water under Contract
49 No. 14-06-200-4305A-IR7, which assignment is reflected in the increased Contract Total under
50 subdivision (a) of Article 3 of this Contract; and

51 [7th] WHEREAS, pursuant to an August 21, 2001 "Agreement for Assignment of
52 Entitlement to CVP Water Between the City of Tracy and The West Side Irrigation District," as
53 amended on September 11, 2002, the Contractor was assigned two thousand five hundred acre-feet
54 of The West Side Irrigation District's entitlement to Project Water under Contract
55 No. 7-07-20-W0045-IR7, which assignment is reflected in the increased Contract Total under
56 subdivision (a) of Article 3 of this Contract; and

57 [7.1] WHEREAS, pursuant to that same August 21, 2001 "Agreement for Assignment
58 of Entitlement to CVP Water Between the City of Tracy and The West Side Irrigation District,"
59 as amended on September 11, 2002, the Contractor obtained an option to purchase an additional
60 two thousand five hundred acre-feet of The West Side Irrigation District's entitlement to Project
61 Water under Contract No. 7-07-20-W0045-IR7 (hereinafter "Unexercised Option") and the
62 Contractor expects to exercise that option during the term of this Contract; and

63 [8th] WHEREAS, the Contractor and the United States entered into two separate
64 interim renewal contracts, Contract No. 14-06-200-4305A-IR13-B and Contract
65 No. 7-07-20-W0045-IR13-B, which in the aggregate, established the terms for the delivery to the
66 Contractor of up to seven thousand five hundred acre-feet of Project Water from the
67 Delta-Mendota Canal through February 28, 2014; and

68 [9th] WHEREAS, Contract No. 14-06-200-7858A dated July 22, 1974, Contract
69 No. 07-20-W0045-IR13-B dated February 29, 2012, and Contract No. 14-06-200-4305A-IR13-B

70 dated February 29, 2012, in the aggregate, constitute and are hereinafter referred to as the
71 “Existing Contract”; and

72 [10th] WHEREAS, the Contractor has requested renewal of the Existing Contract,
73 pursuant to Subsection 3404(c)(1) of the CVPIA, which will provide for the continued delivery
74 of up to seventeen thousand five hundred acre-feet of Project Water from the Delta Mendota
75 Canal of the Central Valley Project; and

76 [11th] WHEREAS, Section 3404(c) of the CVPIA, precludes long-term renewal of water
77 service contracts (including Contract No. 14-06-200-7858A dated July 22, 1974) until the
78 completion of appropriate environmental documentation, including a programmatic
79 environmental impact statement (hereinafter “PEIS”) which is required by Section 3409 of the
80 CVPIA, pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and
81 indirect impacts and benefits of implementing the CVPIA and the potential renewal of all
82 existing contracts for Project Water; and

83 [12th] WHEREAS, in order to continue water service provided under Project water
84 service contracts that expire prior to the completion of appropriate environmental documentation,
85 including the PEIS, the United States intends to execute interim renewal contracts for a period
86 not to exceed three Years in length, and for successive interim periods of not more than two
87 Years in length, until appropriate environmental documentation, including the PEIS, is finally
88 completed, at which time the Secretary shall, pursuant to Federal Reclamation law, upon request
89 of the Contractor, enter into a long-term renewal contract for a period of forty Years; and may
90 thereafter renew such long-term renewal contracts for successive periods not to exceed forty
91 years each; and

92 [13th] WHEREAS, the United States has completed the PEIS, but since the
93 environmental documentation necessary to execute a long-term renewal contract has not been
94 completed, the Contractor has requested an interim renewal contract pursuant to Section
95 3404(c)(1) of the CVPIA; and

96 [14th] WHEREAS, the United States has determined that the Contractor has fulfilled all
97 of its obligations under the Existing Contract; and

98 [15th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
99 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
100 reasonable and beneficial use and expects to utilize fully for reasonable and beneficial use the
101 quantity of Project Water to be made available to it pursuant to this interim renewal contract; and

102 [16th] WHEREAS, water obtained from the Central Valley Project has been relied upon
103 by urban areas within California for more than thirty-nine years, and is considered by the
104 Contractor as an essential portion of its water supply; and

105 [17th] WHEREAS, the economies of regions within the Central Valley Project,
106 including the Contractor's, depend upon the continued availability of water, including water
107 service from the Central Valley Project; and

108 [18th] WHEREAS, the Secretary intends through coordination, cooperation, and
109 partnerships to pursue measures to improve water supply, water quality, and reliability of the
110 Project for all Project purposes; and

111 [19th] WHEREAS, the mutual goals of the United States and the Contractor include: to
112 provide for reliable Central Valley Project Water supplies; to control costs of those supplies; to
113 achieve repayment of the Central Valley Project as required by law; to guard reasonably against
114 Central Valley Project Water shortages; to achieve a reasonable balance among competing

115 demands for use of Central Valley Project Water; and to comply with all applicable
116 environmental statutes, all consistent with the legal obligations of the United States relative to
117 the Central Valley Project; and

118 [19.1] WHEREAS, the parties intend by this Contract to develop a more cooperative
119 relationship in order to achieve their mutual goals; and

120 [20th] WHEREAS, the Contractor has utilized or may utilize transfers, contract
121 assignments, rescheduling and conveyance of Project Water and non-Project water under this
122 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the
123 beneficial uses of water; and

124 [20.1] WHEREAS, the parties desire and intend that this Contract not provide a
125 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
126 Explanatory Recital immediately above; and

127 [20.2] WHEREAS, The Secretary intends to assure uninterrupted water service and
128 continuity of contract through the process set forth in Article 2 hereof; and

129 [21st] WHEREAS, the United States and the Contractor are willing to enter into this
130 Contract pursuant to Federal Reclamation law on the terms and conditions set for below;

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

133 DEFINITIONS

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

136 (a) "Assigned Water" shall mean all Project water supply acquired through
137 assignment from the Banta Carbona Irrigation District, assignment agreement

138 No.14-06-200-4305A-B, dated February 27, 2004, and acquired through assignment from
139 The West Side Irrigation District, assignment agreement No. 7-07-20-W0045-B dated
140 February 27, 2004. Prior to execution of this contract, the Assigned Water has been delivered to
141 the Contractor pursuant to the Existing Contract;

142 (b) “Calendar Year” shall mean the period January 1 through December 31,
143 both dates inclusive;

144 (c) “Charges” shall mean the payments required by Federal Reclamation law
145 in addition to the Rates specified in this Contract as determined annually by the Contracting
146 Officer pursuant to this Contract;

147 (d) “Condition of Shortage” shall mean a condition respecting the Project
148 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the
149 Contract Total;

150 (e) “Contracting Officer” shall mean the Secretary of the Interior’s duly
151 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
152 or regulation;

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

155 (g) “Contractor’s Service Area” shall mean the area to which the Contractor is
156 permitted to provide Project Water under this Contract as described in Exhibit “A” attached
157 hereto, which may be modified from time to time in accordance with Article 34 of this Contract
158 without amendment of this Contract;

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

161 (h.1) "Delta Division Facilities" shall mean those existing and future Project
162 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to,
163 the Tracy Pumping Plant, the O'Neill Pumping/Generating Plant, and the San Luis Reservoir,
164 used to divert, store and convey water to those Project Contractors entitled to receive water
165 conveyed through the Delta-Mendota Canal.

166 (i-j) Omitted;

167 (k) "Full Cost Rate" shall mean an annual rate, as determined by the
168 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
169 Project Irrigation or M&I functions, as appropriate, of facilities in service including all operation
170 and maintenance deficits funded, less payments, over such periods as may be required under
171 Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the
172 construction expenditures and funded Operations and Maintenance deficits from
173 October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs
174 arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections
175 202(3)(B) and (3)(C) of the Reclamation Reform Act. The Full-Cost Rate includes actual
176 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and
177 Regulations for the RRA;

178 (l-m) Omitted;

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

182 (o) Omitted;

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

190 (q) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to
191 the delivery of M&I Water;

192 (r) “Operation and Maintenance” or “O&M” shall mean normal and
193 reasonable care, control, operation, repair, replacement (other than Capital replacement), and
194 maintenance of Project facilities;

195 (s) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)
196 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of
197 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this
198 Contract was entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis
199 Delta-Mendota Water Authority;

200 (t) “Project” shall mean the Central Valley Project owned by the United
201 States and managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

208 (w) "Rates" shall mean the payments determined annually by the Contracting
209 Officer in accordance with the then-current applicable water ratesetting policies for the Project,

210 as described in subdivision (a) of Article 7 of this Contract;

211 (x) "Recent Historic Average" shall mean the most recent five-year average of
212 the final forecast of water made available to the Contractor pursuant to this Contract or its

213 preceding contract(s);

214 (y) "Secretary" shall mean the Secretary of the Interior, a duly appointed
215 successor, or an authorized representative acting pursuant to any authority of the Secretary and

216 through any agency of the Department of the Interior;

217 (aa) "Water Delivered" or "Delivered Water" shall mean Project Water
218 diverted for use by the Contractor at the point(s) of delivery approved by the Contracting

219 Officer;

220 (bb) "Water Made Available" shall mean the estimated amount of Project
221 Water that can be delivered to the Contractor for the upcoming year as declared by the

222 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

223 (cc) "Water Scheduled" shall mean Project Water Made Available to the
224 Contractor for which times and quantities for delivery have been established by the Contractor

225 and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

226 (dd) "Year" shall mean the period from and including March 1 of each

227 Calendar Year through the last day of February of the following Calendar Year.

228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250

TERM OF CONTRACT

2. (a) This Contract shall renew the Existing contract, and replace contract numbers 14-06-200-4305A-IR13B and 7-07-20-W0045-IR13B and shall be effective January 1, 2014, through February 29, 2016, and thereafter will be renewed as described in this Article. Except as provided in subdivision (b) of this Article, until completion of all appropriate environmental review, and provided that the Contractor has complied with all the terms and conditions of the Contract in effect for the period immediately preceding the requested successive interim renewal contract, this Contract will be renewed, upon request of the Contractor, for successive interim periods each of which shall be no more than two Years in length. Also, except as provided in subdivision (b) of this Article, in order to promote orderly and cost effect contract administration, the terms and conditions in subsequent interim renewal contracts shall be identical to the terms and conditions in the interim renewal contract immediately preceding the subsequent interim renewal: *Provided, however,* That each party preserves the right to propose modification(s) in any interim renewal contract other than those described in subdivision (b) of this Article, in which case the parties shall negotiate in good faith appropriate modification(s) to be included in any successive interim renewal contracts. Said modification(s) of each successive interim renewal contract shall be agreed upon within a reasonable time prior to expiration of the then-existing interim renewal contract. Nothing in this Article shall in any way alter the obligation that, upon final completion of necessary environmental documentation, the Secretary shall, pursuant to Federal Reclamation law, upon request of the Contractor, enter into a long-term renewal contract for a period of forty Years and shall thereafter renew such long-term renewal contracts for successive periods not to exceed forty Years each.

251 (b) The parties have engaged and if necessary will continue to engage in good
252 faith negotiations intended to permit the execution of a forty Year long-term renewal contract
253 contemplated by Section 3404(c) of the CVPIA, hereinafter referred to as a “long-term renewal
254 contract”. The parties recognize the possibility that this schedule may not be met without further
255 negotiations. Accordingly: in the event (i) the Contractor and the Contracting Officer have
256 reached agreement on the terms of the Contractor’s long-term renewal contract or (ii) the
257 Contractor and Contracting Officer have not completed the negotiations on the Contractor’s
258 long-term renewal contract, believe that further negotiations on that contract would be beneficial,
259 and mutually commit to continue to negotiate to seek to reach agreement, but (iii) all
260 environmental documentation required to allow execution of the Contractor’s long-term renewal
261 contract have not been completed in time to allow execution by December 31, 2013, then
262 (iv), the parties will expeditiously complete the environmental documentation required of each of
263 them in order to execute the Contractor’s long-term renewal contract at the earliest practicable
264 date. In addition, the Contractor’s then current interim renewal contract will be renewed without
265 change upon the request of either party through the agreed-upon effective date of the
266 Contractor’s long-term renewal contract, through or, in the absence of agreement on the terms of
267 the Contractor’s long-term renewal contract, through the next succeeding February 28.

268 (c) The omission of language in this interim renewal contract providing for
269 conversion of this interim renewal contract or any subsequent renewals thereof to a repayment
270 contract, pursuant to the Act of July 2, 1956 (70 Stat. 483), shall not prejudice the Contractor’s
271 right to assert a right to have such language included in subsequent renewals of this interim
272 renewal contract or to exercise such conversion, all as provided by law, or to negotiate the
273 language regarding such conversion to be included in subsequent renewal contracts.

274 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

275 3. (a) During each Year, consistent with all applicable State water rights,
276 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
277 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to
278 20,000 acre-feet of water for M&I purposes; *Provided*, That 2,500 acre-feet of this amount
279 represents an “Unexercised Option” for which the Contractor must provide proof to the
280 Contracting Officer that the option has been exercised prior to 2,500 acre-feet of Assigned Water
281 being made available. *Provided*, however, during the two month period of January and February
282 of Year 2014, the Contracting Officer shall make available for delivery to the Contractor that
283 portion of the 2013 allocation of Project Water unused by the Contractor under the Existing
284 Contract. Water Delivered to the Contractor in accordance with this subdivision shall be
285 scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

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

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

298 (d) The Contractor shall make reasonable and beneficial use of all Project
299 Water or other water furnished pursuant to this Contract. Groundwater recharge programs
300 (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and
301 other similar programs utilizing Project Water or other water furnished pursuant to this Contract
302 conducted within the Contractor's Service Area which are consistent with applicable State law
303 and result in use consistent with Federal Reclamation law will be allowed; *Provided*, That any
304 direct recharge program(s) is (are) described in the Contractor's Water Conservation Plan
305 submitted pursuant to Article 25 of this Contract; *Provided, further*, That such Water
306 Conservation Plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so
307 that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable
308 for such uses and in compliance with Federal Reclamation law. Groundwater recharge
309 programs, groundwater banking programs, surface water storage programs, and other similar
310 programs utilizing Project Water or other water furnished pursuant to this Contract conducted
311 outside the Contractor's Service Area may be permitted upon written approval of the Contracting
312 Officer, which approval will be based upon environmental documentation, Project Water rights,
313 and Project operational concerns. The Contracting Officer will address such concerns in
314 regulations, policies, or guidelines.

315 (e) The Contractor shall comply with requirements applicable to the
316 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
317 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973, as
318 amended, which are within the Contractor's legal authority to implement. The Existing Contract,

319 which evidences in excess of thirty-nine years of diversions for M&I purposes of the quantities
320 of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
321 developing an appropriate baseline for the biological assessment prepared pursuant to the
322 Endangered Species Act, and any other needed environmental review. Nothing herein shall be
323 construed to prevent the Contractor from challenging or seeking judicial relief in a court of
324 competent jurisdiction with respect to any biological opinion or other environmental
325 documentation referred to in this Article.

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

339 (g) The Contractor may request permission to reschedule for use during the
340 subsequent Year some or all of the Water Made Available to the Contractor during the current
341 Year referred to as “rescheduled water.” The Contractor may request permission to use during

342 the current Year, a quantity of Project Water which may be made available by the United States
343 to the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s
344 written approval may permit such uses in accordance with applicable statutes, regulations,
345 guidelines, and policies.

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

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

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

364 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
365 Contract to use Project Water.

366 TIME FOR DELIVERY OF WATER

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

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

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

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

392 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

393 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
394 Contract shall be delivered to the Contractor at a turnout from the Delta-Mendota Canal and at
395 any additional point or points of delivery either on Project facilities or another location or
396 locations mutually agreed to in writing by the Contracting Officer and the Contractor.

397 (b) The Contracting Officer, either directly or indirectly through its written
398 agreement(s) with the Operating Non-Federal Entity(ies) shall make all reasonable efforts to
399 maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the
400 Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

401 (c) The Contractor shall not deliver Project Water to land outside the
402 Contractor's Service Area unless approved in advance by the Contracting Officer.

403 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
404 measured and recorded with equipment furnished, installed, operated, and maintained by the
405 United States, the Operating Non-Federal Entity or other appropriate entity at the point or points
406 of delivery established pursuant to subdivision (a) of this Article. Upon the request of either
407 party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the
408 responsible Operating Non-Federal Entity, the accuracy of such measurements and shall take any
409 necessary steps to adjust any errors appearing therein. For any period of time when accurate

410 measurements have not been made, the Contracting Officer shall consult with the Contractor and
411 the responsible Operating Non-Federal Entity prior to making a final determination of the
412 quantity delivered for that period of time.

413 (e) Absent a separate contrary written agreement with the Contractor, neither
414 the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the
415 control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor
416 pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article.
417 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
418 account of damage or claim of damage of any nature whatsoever for which there is legal
419 responsibility, including property damage, personal injury, or death arising out of or connected
420 with the control, carriage, handling, use, disposal, or distribution of such Water Delivered
421 beyond such delivery points, except for any damage or claim arising out of: (i) acts or omissions
422 of the Contracting Officer or any of its officers, employees, agents, or assigns, including any
423 responsible Operating Non-Federal Entity, with the intent of creating the situation resulting in
424 any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers,
425 employees, agents, or assigns, including any responsible Operating Non-Federal Entity;
426 (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns
427 including any responsible Operating Non-Federal Entity; or (iv) damage or claims resulting from
428 a malfunction of facilities owned and/or operated by the United States or responsible Operating
429 Non-Federal Entity; *Provided*, That the Contractor is not the Operating Non-Federal Entity that
430 owned or operated the malfunctioning facility(ies) from which the damage claim arose.

431 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

432 6. (a) The Contractor has established a measuring program satisfactory to the
433 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I
434 purposes is measured at each M&I service connection. The water measuring devices or water
435 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.
436 The Contractor shall be responsible for installing, operating, and maintaining and repairing all
437 such measuring devices and implementing all such water measuring methods at no cost to the
438 United States. The Contractor shall use the information obtained from such water measuring
439 devices or water measuring methods to ensure its proper management of the water, to bill water
440 users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I
441 purposes by customer class as defined in the Contractor's water conservation plan provided for
442 in Article 25 of this Contract. Nothing herein contained, however, shall preclude the Contractor
443 from establishing and collecting any charges, assessments, or other revenues authorized by
444 California law. The Contractor shall include a summary of all its annual surface water deliveries
445 in the annual report described in subdivision (c) of Article 25.

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

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

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

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

468 (e) The Contractor shall inform the Contracting Officer and the Operating
469 Non-Federal Entity on or before the twentieth calendar day of each month of the quantity of
470 M&I Water taken during the preceding month.

471 RATES AND METHOD OF PAYMENT FOR WATER

472 7. (a) The Contractor shall pay the United States as provided in this Article for
473 all Delivered Water at Rates and Charges established in accordance with: (i) the Secretary's
474 then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended,
475 modified, or superseded only through a public notice and comment procedure; (ii) applicable
476 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other

477 applicable provisions of this Contract. Payments shall be made by cash transaction, wire
478 transfer, or any other mechanism as may be agreed to in writing by the Contractor and the
479 Contracting Officer. The Rates and Charges applicable to the Contractor upon execution of this
480 Contract are set forth in Exhibit "B", as may be revised annually.

481 (b) The Contracting Officer shall notify the Contractor of the Rates and
482 Charges, as follows:

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

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

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

522 (d) The Contractor shall also make a payment in addition to the Rate(s) in
523 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in
524 effect, before the end of the month of delivery. The payments shall be consistent with the
525 quantities of M&I Water Delivered as shown in the water delivery report for the subject month
526 prepared by the Operating Non-Federal Entity or, if there is no Operating Non-Federal Entity, by
527 the Contracting Officer. The water delivery report shall be deemed a bill for the payment of
528 Charges for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be
529 made through the adjustment of payments due to the United States for Charges for the next
530 month. Any amount to be paid for past due payment of Charges shall be computed pursuant to
531 Article 19 of this Contract.

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

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

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

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

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

559 (j) Omitted.

560 (k) For the term of this Contract, Rates under the respective ratesetting
561 policies will be established to recover only reimbursable O&M (including any deficits) and
562 capital costs of the Project, as those terms are used in the then-current Project ratesetting
563 policies, and interest, where appropriate, except in instances where a minimum Rate is applicable
564 in accordance with the relevant Project ratesetting policy. Changes of significance in practices
565 which implement the Contracting Officer's ratesetting policies will not be implemented until the

566 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
567 impact of the proposed change.

568 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
569 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates
570 adjusted upward or downward to reflect the changed costs of delivery (if any) of the transferred
571 Project Water to the transferee's point of delivery in accordance with the then-applicable CVP
572 Ratesetting Policy.

573 (m) Omitted.

574 (n) Omitted.

575 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

576 8. Omitted.

577 SALES, TRANSFERS, OR EXCHANGES OF WATER

578 9. (a) The right to receive Project Water provided for in this Contract may be
579 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
580 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
581 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
582 Water under this Contract may take place without the prior written approval of the Contracting
583 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
584 exchanges shall be approved absent all appropriate environmental documentation, including but
585 not limited to documents prepared pursuant to the National Environmental Policy Act and the
586 Endangered Species Act. Such environmental documentation should include, as appropriate, an
587 analysis of groundwater impacts and economic and social effects, including environmental
588 justice, of the proposed water transfers on both the transferor and transferee.

589 (b) In order to facilitate efficient water management by means of water
590 transfers of the type historically carried out among Project Contractors located within the same
591 geographical area and to allow the Contractor to participate in an accelerated water transfer
592 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
593 all necessary environmental documentation including, but not limited to documents prepared
594 pursuant to the National Environmental Policy Act and the Endangered Species Act analyzing
595 annual transfers within such geographical areas and the Contracting Officer shall determine
596 whether such transfers comply with applicable law. Following the completion of the
597 environmental documentation, such transfers addressed in such documentation shall be
598 conducted with advance notice to the Contracting Officer, but shall not require prior written
599 approval by the Contracting Officer. Such environmental documentation and the Contracting
600 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
601 prior to the expiration of the then-existing five year period. All subsequent environmental
602 documentation shall include an alternative to evaluate not less than the quantity of Project Water
603 historically transferred within the same geographical area.

604 (c) For a water transfer to qualify under subdivision (b) of this Article, such
605 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
606 years, for M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead
607 to land conversion; and be delivered to established cropland, wildlife refuges, groundwater
608 basins or municipal and industrial use; (ii) occur within a single Year; (iii) occur between a
609 willing seller and a willing buyer; (iv) convey water through existing facilities with no new
610 construction or modifications to facilities and be between existing Project Contractors and/or the
611 Contractor and the United States, Department of the Interior; and (v) comply with all applicable

612 Federal, State, and local or tribal laws and requirements imposed for protection of the
613 environment and Indian Trust Assets, as defined under Federal law.

614 APPLICATION OF PAYMENTS AND ADJUSTMENTS

615 10. (a) The amount of any overpayment by the Contractor of the Contractor's
616 O&M, Capital, and deficit (if any) obligations for the Year shall be applied first to any current
617 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
618 more than one thousand dollars shall be refunded at the Contractor's request. In lieu of a refund,
619 any amount of such overpayment at the option of the Contractor may be credited against
620 amounts to become due to the United States by the Contractor. With respect to overpayment,
621 such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or
622 claiming to have the right to the use of any of the Project Water supply provided for herein. All
623 credits and refunds of overpayments shall be made within thirty days of the Contracting Officer
624 obtaining direction as to how to credit or refund such overpayment in response to the notice to
625 the Contractor that it has finalized the accounts for the Year in which the overpayment was
626 made.

627 (b) All advances for miscellaneous costs incurred for work requested by the
628 Contractor pursuant to Article 24 of this Contract shall be adjusted to reflect the actual costs
629 when the work has been completed. If the advances exceed the actual costs incurred, the
630 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
631 advances, the Contractor will be billed for the additional costs pursuant to Article 24 of this
632 Contract.

633 TEMPORARY REDUCTIONS—RETURN FLOWS

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

639 (b) The Contracting Officer or Operating Non-Federal Entity may temporarily
640 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for
641 the purposes of investigation, inspection, maintenance, repair, or replacement of any of the
642 Project facilities or any part thereof necessary for the delivery of Project Water to the Contractor,
643 but so far as feasible the Contracting Officer or Operating Non-Federal Entity will give the
644 Contractor due notice in advance of such temporary discontinuance or reduction, except in case
645 of emergency, in which case no notice need be given; *Provided*, That the United States shall use
646 its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of
647 service after such reduction or discontinuance, and if requested by the Contractor, the United
648 States will, if possible, deliver the quantity of Project Water which would have been delivered
649 hereunder in the absence of such discontinuance or reduction.

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

656

CONSTRAINTS ON THE AVAILABILITY OF WATER

657

12. (a) In its operation of the Project, the Contracting Officer will use all

658

reasonable means to guard against a Condition of Shortage in the quantity of water to be made

659

available to the Contractor pursuant to this Contract. In the event the Contracting Officer

660

determines that a Condition of Shortage appears probable, the Contracting Officer will notify the

661

Contractor of said determination as soon as practicable.

662

(b) If there is a Condition of Shortage because of errors in physical operations

663

of the Project, drought, other physical causes beyond the control of the Contracting Officer or

664

actions taken by the Contracting Officer to meet current and future legal obligations, except as

665

provided in Article 17 of this Contract, then no liability shall accrue against the United States or

666

any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

667

(c) Omitted.

668

(d) Project Water furnished under this Contract will be allocated in

669

accordance with the then-existing "Central Valley Project M&I Water Shortage Policy". Such

670

policy shall be amended, modified, or superseded only through a public notice and comment

671

procedure. The parties agree that as of the date of execution of this Contract, the Assigned

672

Water will only be afforded irrigation water reliability under the existing Central Valley Project

673

M&I Water Shortage Policy.

674

(e) By entering into this Contract, the Contractor does not waive any legal

675

rights or remedies it may have to file or participate in any administrative or judicial proceeding

676

contesting (i) the sufficiency of the "Central Valley Project M&I Water Shortage Policy," (ii) the

677

substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in which

678

such policy is implemented in order to allocate Project Water between municipal and industrial

679 and irrigation purposes; *Provided*, That the Contractor has commenced any such judicial
680 challenge or any administrative procedures necessary to institute any judicial challenge within
681 six months of the policy becoming final. By agreeing to the foregoing, the Contracting Officer
682 does not waive any legal defenses or remedies that it may then have to assert in such a
683 proceeding. Nothing contained herein shall be interpreted to validate or invalidate the “Central
684 Valley Project M&I Water Shortage Policy.”

685 UNAVOIDABLE GROUNDWATER PERCOLATION

686 13. Omitted.

687 RULES, REGULATIONS, AND DETERMINATIONS

688 14. (a) The parties agree that the delivery of M&I Water or the use of Federal
689 facilities pursuant to this Contract is subject to Federal Reclamation law, as amended and
690 supplemented, and the rules and regulations promulgated by the Secretary of the Interior under
691 Federal Reclamation law.

692 (b) The Contracting Officer shall have the right to make determinations
693 necessary to administer this Contract that are consistent with its provisions, the laws of the
694 United States and the State of California, and the rules and regulations promulgated by the
695 Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

696 PROTECTION OF WATER AND AIR QUALITY

697 15. (a) Project facilities used to make available and deliver water to the
698 Contractor shall be operated and maintained in the most practical manner to maintain the quality
699 of the water at the highest level possible as determined by the Contracting Officer; *Provided*,
700 That the United States does not warrant the quality of the water delivered to the Contractor and is
701 under no obligation to furnish or construct water treatment facilities to maintain or improve the
702 quality of water delivered to the Contractor.

703 (b) The Contractor shall comply with all applicable water and air pollution
704 laws and regulations of the United States and the State of California; and shall obtain all required
705 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
706 delivery of water by the Contractor; and shall be responsible for compliance with all Federal,
707 State, and local water quality standards applicable to surface and subsurface drainage and/or
708 discharges generated through the use of Federal or Contractor facilities or Project water provided
709 by the Contractor within the Contractor’s Project Water Service Area.

710 (c) This article shall not affect or alter any legal obligations of the Secretary
711 to provide drainage or other discharge services.

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

714 16. (a) Omitted.

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

720 (1) The Contractor may introduce non-Project water into Project
721 facilities and deliver said water to lands within the Contractor's Service Area, subject to
722 payment to the United States and/or to any applicable Operating Non-Federal Entity of an
723 appropriate rate as determined by the applicable CVP Ratesetting Policy and the RRA
724 each as amended, modified or superseded from time to time. In addition, if electrical
725 power is required to pump non-Project water through the facilities, the Contractor shall
726 be responsible for obtaining the necessary power and paying the necessary charges
727 therefore.

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

734 (3) Neither the United States nor the Operating Non-Federal Entity
735 shall be responsible for control, care or distribution of the non-Project water before it is
736 introduced into or after it is delivered from the Project facilities. The Contractor hereby
737 releases and agrees to defend and indemnify the United States and the Operating Non-
738 Federal Entity, and their respective officers, agents, and employees, from any claim for
739 damage to persons or property, direct or indirect, resulting from the Contractor's or its
740 officers', employees', agents' or assigns', act of (i) extracting or diverting non-Project
741 water from any source, or (ii) diverting such non-Project water into Project facilities.

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

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

750 OPINIONS AND DETERMINATIONS

751 17. Where the terms of this Contract provide for actions to be based upon the opinion
752 or determination of either party to this Contract, said terms shall not be construed as permitting
753 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
754 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
755 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
756 or unreasonable opinion or determination. Each opinion or determination by either party shall be

757 provided in a timely manner. Nothing in Article 17 of this Contract is intended to or shall affect
758 or alter the standard of judicial review applicable under Federal law to any opinion or
759 determination implementing a specific provision of Federal law embodied in statute or
760 regulation.

761 COORDINATION AND COOPERATION

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

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

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

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

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

786 (2) The Secretary will, as appropriate, pursue program and project
787 implementation and authorization in coordination with Project contractors to improve the
788 water supply, water quality, and reliability of the Project for all Project purposes.

789 (3) The Secretary will coordinate with Project contractors and the
790 State of California to seek improved water resource management.

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

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

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

801 CHARGES FOR DELINQUENT PAYMENTS

802 19. (a) The Contractor shall be subject to interest, administrative, and penalty
803 charges on delinquent payments. If a payment is not received by the due date, the Contractor
804 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
805 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
806 addition to the interest charge, an administrative charge to cover additional costs of billing and
807 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
808 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
809 payment is delinquent beyond the due date, based on the remaining balance of the payment due
810 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
811 collection services associated with a delinquent payment.

812 (b) The interest rate charged shall be the greater of either the rate prescribed
813 quarterly in the Federal Register by the Department of the Treasury for application to overdue
814 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
815 determined as of the due date and remain fixed for the duration of the delinquent period.

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

819 EQUAL OPPORTUNITY

820 20. During the performance of this Contract, the Contractor agrees as follows:

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

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

835 (c) The Contractor will send to each labor union or representative of workers
836 with which it has a collective bargaining agreement or other contract or understanding, a notice,
837 to be provided by the Contracting Officer, advising the said labor union or workers'
838 representative of the Contractor's commitments under Section 202 of Executive Order 11246 of

839 September 24, 1965, and shall post copies of the notice in conspicuous places available to
840 employees and applicants for employment.

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

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

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

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

865 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

866 21. (a) The obligation of the Contractor to pay the United States as provided in
867 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
868 obligation may be distributed among the Contractor's water users and notwithstanding the
869 default of individual water users in their obligations to the Contractor.

870 (b) The payment of charges becoming due pursuant to this Contract is a
871 condition precedent to receiving benefits under this Contract. The United States shall not make
872 water available to the Contractor through Project facilities during any period in which the
873 Contractor is in arrears in the advance payment of water rates, any operation and maintenance
874 charges due the United States or is in arrears for more than 12 months in the payment of any
875 construction charges due the United States. The Contractor shall not deliver water under the
876 terms and conditions of this Contract for lands or parties which are in arrears in the advance

877 payment of water rates or operation and maintenance charges as levied or established by the
878 Contractor.

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

881 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

882 22. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
883 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
884 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title
885 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub.
886 L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the
887 applicable implementing regulations and any guidelines imposed by the U.S. Department of the
888 Interior and/or Bureau of Reclamation.

889 (b) These statutes prohibit any person in the United States from being
890 excluded from participation in, being denied the benefits of, or being otherwise subjected to
891 discrimination under any program or activity receiving financial assistance from the Bureau of
892 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
893 Contract, the Contractor agrees to immediately take any measures necessary to implement this
894 obligation, including permitting officials of the United States to inspect premises, programs, and
895 documents.

896 (c) The Contractor makes this agreement in consideration of and for the
897 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
898 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
899 Reclamation, including installment payments after such date on account of arrangements for
900 Federal financial assistance which were approved before such date. The Contractor recognizes
901 and agrees that such Federal assistance will be extended in reliance on the representations and
902 agreements made in this article and that the United States reserves the right to seek judicial
903 enforcement thereof.

904 (d) Complaints of discrimination against the Contractor shall be investigated
905 by the Contracting Officer's Office of Civil Rights.

906 PRIVACY ACT COMPLIANCE

907 23. Omitted.

908 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

909 24. In addition to all other payments to be made by the Contractor pursuant to this
910 Contract, the Contractor shall pay to the United States, within sixty days after receipt of a bill

911 and detailed statement submitted by the Contracting Officer to the Contractor for such specific
912 items of direct cost incurred by the United States for work requested by the Contractor associated
913 with this Contract plus indirect costs in accordance with applicable Bureau of Reclamation
914 policies and procedures. All such amounts referred to in this Article shall not exceed the amount
915 agreed to in writing in advance by the Contractor. This Article shall not apply to costs for
916 routine contract administration.

917 WATER CONSERVATION

918 25. (a) Prior to the delivery of water provided from or conveyed through
919 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
920 shall be implementing an effective water conservation and efficiency program based on the
921 Contractor's water conservation plan that has been determined by the Contracting Officer to
922 meet the conservation and efficiency criteria for evaluating water conservation plans established
923 under Federal law. The water conservation and efficiency program shall contain definite water
924 conservation objectives, appropriate economically feasible water conservation measures, and
925 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
926 Contract shall be contingent upon the Contractor's continued implementation of such water
927 conservation program. In the event the Contractor's water conservation plan or any revised
928 water conservation plan completed pursuant to subdivision (d) of this Article have not yet been
929 determined by the Contracting Officer to meet such criteria, due to circumstances which the
930 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
931 made under this Contract so long as the Contractor diligently works with the Contracting Officer
932 to obtain such determination at the earliest practicable date, and thereafter the Contractor

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

935 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
936 Article 3 of this Contract equal or exceed two thousand acre-feet per Year, the Contractor shall
937 implement the “Best Management Practices” identified by the time frames issued by the
938 California Urban Water Conservation Council for such M&I Water unless any such practice is
939 determined by the Contracting Officer to be inappropriate for the Contractor.

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

943 (d) At five year intervals, the Contractor shall revise its water conservation
944 plan to reflect the then-current conservation and efficiency criteria for evaluating water
945 conservation plans established under Federal law and submit such revised water management
946 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
947 determine if the water conservation plan meets Reclamation’s then-current conservation and
948 efficiency criteria for evaluating water conservation plans established under Federal law.

949 (e) If the Contractor is engaged in direct groundwater recharge, such activity
950 shall be described in the Contractor’s water conservation plan.

951 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

952 26. Except as specifically provided in Article 16 of this Contract, the provisions of
953 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
954 hereafter acquired by the Contractor or any user of such water within the Contractor’s Service
955 Area. Any such water shall not be considered Project Water under this Contract. In addition,

956 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
957 any water user within the Contractor's Service Area acquires or has available under any other
958 contract pursuant to Federal Reclamation law.

959 OPERATION AND MAINTENANCE BY NON-FEDERAL ENTITY

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

966 (b) The Contracting Officer has previously notified the Contractor in writing
967 that the O&M of a portion of the Project facilities which serve the Contractor has been
968 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and
969 therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
970 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under
971 the terms and conditions of the separate agreement between the United States and the Operating
972 Non-Federal Entity San Luis & Delta Mendota Water Authority described in subdivision (a) of
973 this Article, all Rates, Charges, or assessments of any kind, including any assessment for reserve
974 funds, which the Operating Non-Federal Entity San Luis & Delta Mendota Water Authority or
975 such successor determines, sets, or establishes for the O&M of the portion of the Project
976 facilities operated and maintained by the Operating Non-Federal Entity San Luis &
977 Delta-Mendota Water Authority or such successor. Such direct payments to the Operating
978 Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor shall not

979 relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
980 of the Project Rates and Charges except to the extent the Operating Non-Federal Entity San Luis
981 & Delta-Mendota Water Authority collects payments on behalf of the United States in
982 accordance with the separate agreement identified in subdivision (a) of this Article.

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

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

998 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

999 28. The expenditure or advance of any money or the performance of any obligation of
1000 the United States under this Contract shall be contingent upon appropriation or allotment of
1001 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1002 obligations under this Contract. No liability shall accrue to the United States in case funds are
1003 not appropriated or allotted.

1004

BOOKS, RECORDS, AND REPORTS

1005 29. (a) The Contractor shall establish and maintain accounts and other books and
1006 records pertaining to administration of the terms and conditions of this Contract, including the
1007 Contractor's financial transactions; water supply data; project operation, maintenance, and
1008 replacement logs; Project land and rights-of-way use agreements; the water users' land-use (crop
1009 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1010 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
1011 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
1012 and regulations, each party to this Contract shall have the right during office hours to examine
1013 and make copies of the other party's books and records relating to matters covered by this
1014 Contract.

1015 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1016 books, records, or other information shall be requested from the Contractor by the Contracting
1017 Officer unless such books, records, or information are reasonably related to the administration or
1018 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1019 time within which to provide the requested books, records, or information.

1020 (c) At such time as the Contractor provides information to the Contracting
1021 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1022 to the Operating Non-Federal Entity.

1023 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

1024 30. (a) The provisions of this Contract shall apply to and bind the successors and
1025 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1026 therein shall be valid until approved in writing by the Contracting Officer.

1027 (b) The assignment of any right or interest in this Contract by either party
1028 shall not interfere with the rights or obligations of the other party to this Contract absent the
1029 written concurrence of said other party.

1030 (c) The Contracting Officer shall not unreasonably condition or withhold
1031 approval of any proposed assignment.

1032 SEVERABILITY

1033 31. In the event that a person or entity who is neither (i) a party to a Project contract,
1034 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1035 (iii) an association or other form of organization whose primary function is to represent parties to
1036 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1037 enforceability of a provision included in this Contract and said person, entity, association, or
1038 organization obtains a final court decision holding that such provision is legally invalid or
1039 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1040 the parties to this Contract shall use their best efforts to (i) within thirty days of the date of such
1041 final court decision identify by mutual agreement the provisions in this Contract which must be
1042 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1043 The time periods specified above may be extended by mutual agreement of the parties. Pending
1044 the completion of the actions designated above, to the extent it can do so without violating any
1045 applicable provisions of law, the United States shall continue to make the quantities of Project
1046 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1047 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1048 RESOLUTION OF DISPUTES

1049 32. Should any dispute arise concerning any provisions of this Contract, or the
1050 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1051 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1052 Officer referring any matter to Department of Justice, the party shall provide to the other party
1053 thirty days' written notice of the intent to take such action; *Provided*, That such notice shall not
1054 be required where a delay in commencing an action would prejudice the interests of the party

1055 that intends to file suit. During the thirty day notice periods, the Contractor and the Contracting
1056 Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically
1057 provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor
1058 or the United States may have.

1059 OFFICIALS NOT TO BENEFIT

1060 33. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1061 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1062 manner as other water users or landowners.

1063 CHANGES IN CONTRACTOR'S SERVICE AREA

1064 34. (a) While this Contract is in effect, no change may be made in the
1065 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1066 or otherwise, except upon the Contracting Officer's written consent.

1067 (b) Within thirty days of receipt of a request for such a change, the
1068 Contracting Officer will notify the Contractor of any additional information required by the
1069 Contracting Officer for processing said request, and both parties will meet to establish a mutually
1070 agreeable schedule for timely completion of the process. Such process will analyze whether the
1071 proposed change is likely to: (i) result in the use of Project Water contrary to the terms of this
1072 Contract; (ii) impair the ability of the Contractor to pay for Project Water furnished under this
1073 Contract or to pay for any Federally-constructed facilities for which the Contractor is
1074 responsible; and (iii) have an impact on any Project Water rights applications, permits, or
1075 licenses. In addition, the Contracting Officer shall comply with the National Environmental
1076 Policy Act and the Endangered Species Act. The Contractor will be responsible for all costs
1077 incurred by the Contracting Officer in this process, and such costs will be paid in accordance
1078 with Article 24 of this Contract.

1079

FEDERAL LAWS

1080 35. By entering into this Contract, the Contractor does not waive its rights to contest
1081 the validity or application in connection with the performance of the terms and conditions of this
1082 Contract of any Federal law or regulation; *Provided*, That the Contractor agrees to comply with
1083 the terms and conditions of this Contract unless and until relief from application of such Federal
1084 law or regulation to the implementing provision of the Contract is granted by a court of
1085 competent jurisdiction.

1086

NOTICES

1087 36. Any notice, demand, or request authorized or required by this Contract shall be
1088 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1089 delivered to the Area Manager, South-Central California Area Office, Mid-Pacific Region,
1090 Bureau of Reclamation, 1243 N Street, Fresno, CA 93721, and on behalf of the United States,
1091 when mailed, postage prepaid, or delivered to the City Manager, c/o Public Works Department,
1092 520 Tracy Blvd., Tracy CA 95376. The designation of the addressee or the address may be
1093 changed by notice given in the same manner as provided in this article for other notices.

1094

CONFIRMATION OF CONTRACT

1095 37. Promptly after the execution of this Contract, the Contractor shall provide
1096 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1097 Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the
1098 Contractor. This Contract shall not be binding on the United States until such evidence has been
1099 provided to the Contracting Officer's satisfaction.

CONTRACT DRAFTING CONSIDERATIONS

1100 38. This Contract has been, negotiated and reviewed by the parties hereto,
1101 each of whom is sophisticated in the matters to which this Contract pertains. The double-spaced
1102 articles of this Contract have been drafted, negotiated, and reviewed by the parties, and no one
1103 party shall be considered to have drafted the stated articles.

1104 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1105 the day and year first above written.

1106 UNITED STATES OF AMERICA

1107 By: _____
1108 Regional Director, Mid-Pacific Region
1109 Bureau of Reclamation

1110 CITY OF TRACY

1111 By: _____
1112 City Manager

1113 Attest:

1114 By: _____
1115 Secretary

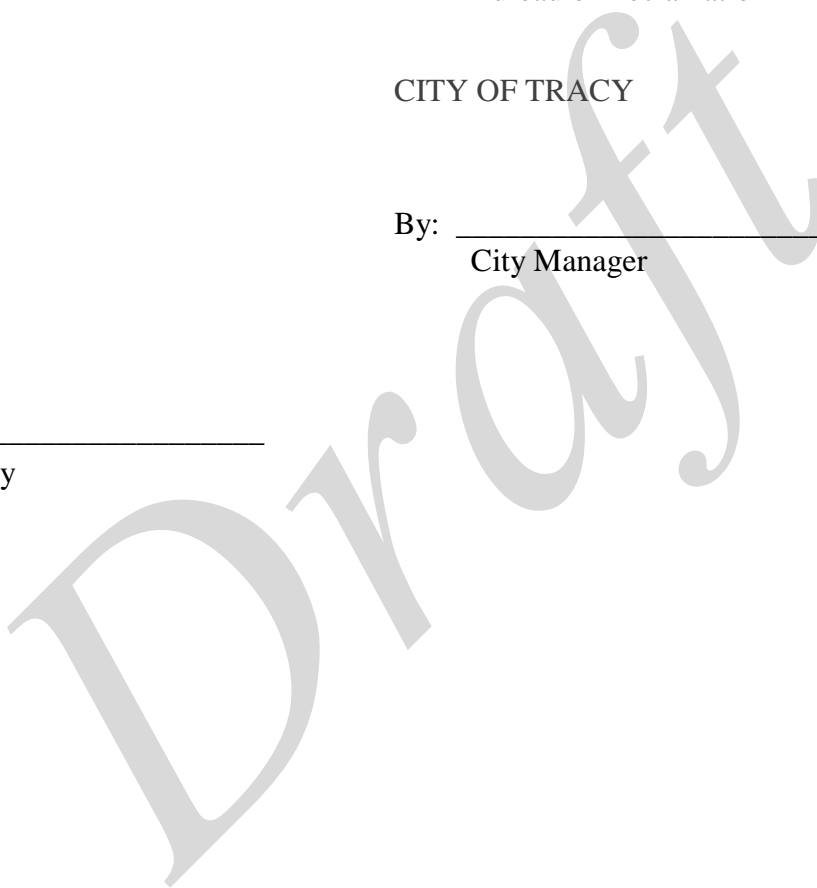


EXHIBIT A

[Map or Description of Service Area]

Draft

DRAFT EXHIBIT B
City Of Tracy
2013 Rates and Charges
(Per Acre-Foot)

	M&I Water
COST-OF-SERVICE (COS) RATE	
Construction Cost	\$22.00
O&M Cost	
Water Marketing	\$4.69
Storage	\$9.92
Conveyance ¹	
Conveyance Pumping	\$0.37
American Recovery and Reinvestment Act ²	\$0.00
Other Costs	\$0.00
Deficit Cost Component	\$0.00
TOTAL COS RATE	\$36.98
CHARGES AND ASSESSMENTS (<i>Payments in addition to Rates</i>)	
P.L. 102-575 Surcharge	
Restoration Fund Payments [Section 3407(d)(2)(A)]	\$19.58
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.05

EXPLANATORY NOTES

- 1 Conveyance and Conveyance Pumping Operation and Maintenance Costs were removed for ratesetting purposes and are to be direct billed.

Recent historic use, as defined in the CVP M&I Water Shortage Policy, is _____ acre-feet.

Additional detail of rate components is available on the Internet at

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>