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Delta Division
Contract No.
14-06-200-4305A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
BANTA-CARBONA IRRIGATION DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	1-5
1	Definitions.....	5-9
2	Term of Contract.....	9-12
3	Water to be Made Available and Delivered to the Contractor.....	13-17
4	Time for Delivery of Water	17-18
5	Point of Diversion and Responsibility for Distribution of Water	18-20
6	Measurement of Water Within the Contractor's Service Area.....	20-22
7	Rates and Method of Payment for Water.....	22-28
8	Non-Interest Bearing Operation and Maintenance Deficits.....	28
9	Sales, Transfers, or Exchanges of Water	29-30
10	Application of Payments and Adjustments.....	30-31
11	Temporary Reductions--Return Flows	31-32
12	Constraints on the Availability of Water	32-34
13	Unavoidable Groundwater Percolation.....	34
14	Rules and Regulations.....	34
15	Water and Air Pollution Control.....	35
16	Quality of Water	35
17	Water Acquired by the Contractor Other Than From the United States.....	35-38
18	Opinions and Determinations	37-39
19	Coordination and Cooperation.....	39-41
20	Charges for Delinquent Payments	41

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
21	Equal Opportunity.....	41-42
22	General Obligation--Benefits Conditioned Upon Payment	42-43
23	Compliance With Civil Rights Laws and Regulations	43
24	Privacy Act Compliance	43-44
25	Contractor to Pay Certain Miscellaneous Costs.....	44
26	Water Conservation	44-46
27	Existing or Acquired Water or Water Rights.....	46
28	Operation and Maintenance by Operating Non-Federal Entity	46-48
29	Contingent on Appropriation or Allotment of Funds	48
30	Books, Records, and Reports	48
31	Assignment Limited--Successors and Assigns Obligated	49
32	Severability	49-50
33	Resolution of Disputes.....	50
34	Officials Not to Benefit.....	50
35	Changes in Contractor's Service Area.....	50-51
36	Federal Laws.....	51
37	Notices	51
38	Confirmation of Contract.....	51
	Signature Page	52

Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 BANTA-CARBONA IRRIGATION DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE DELTA DIVISION

10 THIS CONTRACT, made this ____ day of _____, 2005, in pursuance
11 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
12 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
13 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
14 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat.
15 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
16 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
17 OF AMERICA, hereinafter referred to as the United States, and the BANTA-CARBONA
18 IRRIGATION DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of
19 California, duly organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for

24 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
25 restoration, generation and distribution of electric energy, salinity control, navigation and other
26 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the
27 San Joaquin River and their tributaries; and

28 [2nd] WHEREAS, the United States constructed the Delta-Mendota Canal and related
29 facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the
30 terms of this Contract; and

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

33 [4th] WHEREAS, the Contractor and the United States entered into Contract
34 No. 14-06-200-4305A, which established terms for the delivery to the Contractor of Project Water
35 from the Delta Division Facilities from February 14, 1969, through February 28, 1995; and

36 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
37 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
38 interim renewal contract(s) identified as Contract No(s). 14-06-200-4305A-IR1, 14-06-200-4305A-
39 IR2, 14-06-200-4305A-IR3, 14-06-200-4305A-IR4, 14-06-200-4305A-IR5, 14-06-200-4305A-IR6,
40 14-06-200-4305A-IR7, and 14-06-200-4305A-IR8, the current of which is hereinafter referred to as
41 the Existing Contract, which provided for the continued water service to the Contractor from
42 March 1, 1995, through February 28, 2006; and

43 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
44 Existing Contract following completion of appropriate environmental documentation, including a
45 programmatic environmental impact statement (PEIS) pursuant to the National Environmental

46 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
47 CVPIA and the potential renewal of all existing contracts for Project Water; and

48 [6.1] WHEREAS, pursuant to a June 5, 2001, “Agreement for Assignment of Entitlement
49 to CVP Water Between the City of Tracy and the Banta-Carbona Irrigation District,” the Contractor
50 assigned to the City of Tracy 5,000 acre-feet of the Contractor’s entitlement to Project Water under
51 Contract No. 14-06-200-4305-IR7, which assignment is reflected in the decreased quantity of Water
52 Made Available under subdivision (a) of Article 3 of this Contract; and

53 [6.2] WHEREAS, on February 27, 2004, the Contractor, the United States and the City of
54 Tracy entered into an “Agreement for Assignment of Portion of Water Service Contract”
55 (“Assignment Agreement”), wherein the United States approved the assignment of 5,000 acre-feet
56 of water under Contractor No. 14-06-200-4305A-IR7, as then being implemented through Contract
57 No. 14-06-200-4305A-B, to the City of Tracy; and

58 [6.3] WHEREAS, the Existing Contract reflects completion of the assignment referenced
59 in 6.1 above, by reducing the quantity of Project Water made available to the Contractor from
60 25,000 to 20,000 acre-feet; and

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

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

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

68 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
69 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
70 beneficial use and/or has demonstrated projected future demand for water use such that the
71 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
72 quantity of Project Water to be made available to it pursuant to this Contract; and

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

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

78 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
79 partnerships to pursue measures to improve water supply, water quality, and reliability of the
80 Project for all Project purposes; and

81 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
82 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
83 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
84 reasonable balance among competing demands for use of Project Water; and to comply with all
85 applicable environmental statutes, all consistent with the legal obligations of the United States
86 relative to the Project; and

87 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
88 relationship in order to achieve their mutual goals; and

89 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract
90 assignments, rescheduling and conveyance of Project Water and non-Project water under this

91 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
92 use of water; and

93 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a
94 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
95 Explanatory Recital immediately above; and

96 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
97 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

100 DEFINITIONS

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

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

105 (b) “Charges” shall mean the payments required by Federal Reclamation law in
106 addition to the Rates and Tiered Pricing Component specified in this Contract as determined
107 annually by the Contracting Officer pursuant to this Contract;

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

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

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

116 (f) “Contractor's Service Area” shall mean the area to which the Contractor is
117 permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto,
118 which may be modified from time to time in accordance with Article 35 of this Contract without
119 amendment of this Contract;

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

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

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

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

133 (j) “Full Cost Rate” shall mean an annual rate, as determined by the Contracting
134 Officer that shall amortize the expenditures for construction properly allocable to the Project
135 irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits
136 funded, less payments, over such periods as may be required under Federal Reclamation law, or

137 applicable contract provisions. Interest will accrue on both the construction expenditures and
138 funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date
139 incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in
140 accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual
141 operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and
142 Regulations for the RRA;

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

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

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

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

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

159 (p) "M&I Full Cost Water Rate" shall mean the Full Cost Rate applicable to the
160 delivery of M&I Water;

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

164 (r) "Operating Non-Federal Entity" shall mean the entity, its successors or
165 assigns, which has the obligation to operate and maintain all or a portion of the Delta Division
166 Facilities pursuant to written agreement(s) with the United States. When this Contract was entered
167 into, the Operating Non-Federal Entity was the San Luis & Delta-Mendota Water Authority.

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

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

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

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

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

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

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

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

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

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

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

196 TERM OF CONTRACT

197 2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030,
198 and supercedes the Existing Contract. In the event the Contractor wishes to renew this Contract
199 beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the
200 Contracting Officer no later than two years prior to the date this Contract expires. The renewal of
201 this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be
202 governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to
203 the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

204 (b) (1) Under terms and conditions of a renewal contract that are mutually
205 agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time
206 of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject
207 to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to
208 the Contractor, shall be renewed for a period of 25 years.

209 (2) The conditions which must be met for this Contract to be renewed are:

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

222 (3) The terms and conditions of the renewal contract described in
223 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
224 consistent with the parties' respective legal rights and obligations, and in consideration of all
225 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
226 without limitation, the Contractor's need for continued delivery of Project Water; environmental

227 conditions affected by implementation of the Contract to be renewed, and specifically changes in
228 those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress
229 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the
230 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region
231 served by the Contractor.

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

240 (d) The Contracting Officer shall make a determination ten years after the date of
241 execution of this Contract, and every five years thereafter during the term of this Contract, of
242 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
243 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
244 Stat 483). The Contracting Officer shall also make a determination ten years after the date of
245 execution of this Contract and every five years thereafter during the term of this Contract of whether
246 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
247 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
248 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
249 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all

250 authorized Project construction expected to occur will have occurred, and on that basis the
251 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
252 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
253 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
254 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of
255 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
256 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
257 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
258 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
259 remaining amount of construction costs assignable for ultimate return by the Contractor can
260 probably be repaid to the United States within the term of a contract under subsection 9(d) or
261 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to
262 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall
263 notify the Contractor, and provide the reason(s) why such a determination could not be made.
264 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as
265 to permit, upon request of the Contractor and satisfaction of the conditions set out above,
266 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such
267 determination of costs has not been made at a time which allows conversion of this Contract during
268 the term of this Contract or the Contractor has not requested conversion of this Contract within such
269 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)
270 of this Article a provision that carries forth in substantially identical terms the provisions of this
271 subdivision.

272 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

273 3. (a)(1) During each Year, consistent with all applicable State water rights, permits,
274 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
275 Contract, the Contracting Officer shall make available for delivery to the Contractor 20,000 acre-
276 feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in
277 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
278 Articles 4 and 7 of this Contract.

279 (a)(2) In the event that the assignment of rights to Project Water from the
280 Contractor to the City of Tracy is terminated pursuant to Section 13 of the Amendment to the
281 Agreement for Assignment of Entitlement to Project Water dated October 15, 2002, then upon
282 notice by the Contractor and the City of Tracy to the Contracting Officer, the quantity of Project
283 Water to be made available to the Contract under subdivision (a)(1) of Article 3 of this Contract
284 shall be increased by 5,000 acre-feet, and the quantity of Project Water to be made available to the
285 City of Tracy under its long-term contract with the Contracting Officer shall be reduced by 5,000-
286 acre-feet.

287 (b) Because the capacity of the Project to deliver Project Water has been
288 constrained in recent years and may be constrained in the future due to many factors including
289 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
290 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in
291 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected
292 that the Contract Total set forth in this Contract will not be available to the Contractor in many
293 years. During the most recent five years, the Recent Historic Average of Water Made Available to

294 the Contractor was 13,168 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights
295 and obligations of the parties under any provision of this Contract.

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

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

307 (d) The Contractor shall make reasonable and beneficial use of all water
308 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
309 groundwater banking programs, surface water storage programs, and other similar programs
310 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
311 Contractor's Service Area which are consistent with applicable State law and result in use consistent
312 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is
313 (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this
314 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses
315 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered
316 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation

317 law. Groundwater recharge programs, groundwater banking programs, surface water storage
318 programs, and other similar programs utilizing Project Water or other water furnished pursuant to
319 this Contract conducted outside the Contractor's Service Area may be permitted upon written
320 approval of the Contracting Officer, which approval will be based upon environmental
321 documentation, Project Water rights, and Project operational concerns. The Contracting Officer
322 will address such concerns in regulations, policies, or guidelines.

323 (e) The Contractor shall comply with requirements applicable to the Contractor
324 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
325 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
326 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
327 which evidences in excess of 36 years of diversions for irrigation and/or M&I purposes of the
328 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
329 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and
330 any other needed environmental review. Nothing herein shall be construed to prevent the
331 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
332 respect to any biological opinion or other environmental documentation referred to in this Article.

333 (f) Following the declaration of Water Made Available under Article 4 of this
334 Contract, the Contracting Officer will make a determination whether Project Water, or other water
335 available to the Project, can be made available to the Contractor in addition to the Contract Total
336 under this Article during the Year without adversely impacting other Project Contractors. At the
337 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
338 such a determination. If the Contracting Officer determines that Project Water, or other water
339 available to the Project, can be made available to the Contractor, the Contracting Officer will

340 announce the availability of such water and shall so notify the Contractor as soon as practical. The
341 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable
342 of taking such water to determine the most equitable and efficient allocation of such water. If the
343 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
344 such water available to the Contractor in accordance with applicable statutes, regulations,
345 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and
346 operational constraints, long-term Project Contractors shall have a first right to acquire such water,
347 including Project Water made available pursuant to Section 215 of the RRA.

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

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

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

366 (j) The Contracting Officer shall make reasonable efforts to protect the water
367 rights necessary for the Project and to provide the water available under this Contract. The
368 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
369 extent permitted by law, in administrative proceedings related to the Project Water rights; Provided,
370 That the Contracting Officer retains the right to object to the substance of the Contractor's position
371 in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall
372 recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

373 TIME FOR DELIVERY OF WATER

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

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

385 Officer, showing the monthly quantities of Project Water to be delivered by the United States to the
386 Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting
387 Officer shall use all reasonable means to deliver Project Water according to the approved schedule
388 for the Year commencing on such March 1.

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

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

397 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

406 (c) The Contractor shall deliver Irrigation Water in accordance with any
407 applicable land classification provisions of Federal Reclamation law and the associated regulations.

408 The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
409 approved in advance by the Contracting Officer.

410 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
411 measured and recorded with equipment furnished, installed, operated, and maintained by the
412 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
413 Non-Federal Entity, unless undertaken by the Contractor with the consent of the Contracting
414 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.
415 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause
416 to be investigated by the appropriate Operating Non-Federal Entity, the accuracy of such
417 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
418 period of time when accurate measurements have not been made, the Contracting Officer shall
419 consult with the Contractor and the appropriate Operating Non-Federal Entity, if any, prior to
420 making a final determination of the quantity delivered for that period of time.

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

431 Operating Non-Federal Entity, with the intent of creating the situation resulting in any damage or
432 claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,
433 and assigns, including the Operating Non-Federal Entity; (iii) negligence of the Contracting Officer
434 or any of its officers, employees, agents, and assigns including the Operating Non-Federal Entity; or
435 (iv) a malfunction of facilities owned and/or operated by the United States or the Operating
436 Non-Federal Entity.

437 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

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

453 (b) To the extent the information has not otherwise been provided, upon
454 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report
455 describing the measurement devices or water measuring methods being used or to be used to
456 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
457 service connections or alternative measurement programs approved by the Contracting Officer, at
458 which such measurement devices or water measuring methods are being used, and, if applicable,
459 identifying the locations at which such devices and/or methods are not yet being used including a
460 time schedule for implementation at such locations. The Contracting Officer shall advise the
461 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the
462 measuring devices or water measuring methods identified in the Contractor's report and if the
463 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
464 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,
465 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith
466 the earliest practicable date by which the Contractor shall modify said measuring devices and/or
467 measuring methods as required by the Contracting Officer to ensure compliance with subdivision
468 (a) of this Article.

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

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

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

478 RATES AND METHOD OF PAYMENT FOR WATER

479 7. (a) The Contractor shall pay the United States as provided in this Article for all
480 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
481 with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's
482 then-existing ratesetting policy for M&I Water, which ratesetting policies shall be amended,
483 modified, or superceded only through a public notice and comment procedure; (ii) applicable
484 Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable
485 provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer,
486 or any other mechanism as may be agreed to in writing by the Contractor and the Contracting
487 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
488 execution of this Contract are set forth in Exhibit "B," as may be revised annually.

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

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

497 period October 1 of the current Calendar Year, through September 30, of the following Calendar
498 Year, and such notification shall revise Exhibit "B."

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

506 (c) At the time the Contractor submits the initial schedule for the delivery of
507 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
508 shall make an advance payment to the United States equal to the total amount payable pursuant to
509 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
510 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
511 of the first month and before the end of each calendar month thereafter, the Contractor shall make
512 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
513 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
514 following. Adjustments between advance payments for Water Scheduled and payments at Rates
515 due for Water Delivered shall be made before the end of the following month; Provided, That any
516 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases
517 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied
518 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not
519 delivered to the Contractor in advance of such payment. In any month in which the quantity of

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

528 (d) The Contractor shall also make a payment in addition to the Rate(s) in
529 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
530 appropriate Tiered Pricing Component then in effect, before the end of the month following the
531 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
532 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
533 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
534 report for the subject month prepared by the Operating Non-Federal Entity or, if there is no
535 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
536 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
537 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
538 adjustment of payments due to the United States for Charges for the next month. Any amount to be
539 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
540 pursuant to Article 20 of this Contract.

541 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f),
542 or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable

543 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
544 Provided, That the Rate for Water Delivered under subdivision (d) of Article 3 of this Contract shall
545 be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision
546 (a) of this Article.

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

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

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

561 (i) The parties acknowledge and agree that the efficient administration of this
562 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
563 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,
564 and/or for making and allocating payments, other than those set forth in this Article may be in the
565 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to

566 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in
567 effect without amending this Contract.

568 (j) (1) Beginning at such time as deliveries of Project Water in a Year
569 exceed 80 percent of the Contract Total, then before the end of the month following the month of
570 delivery the Contractor shall make an additional payment to the United States equal to the
571 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
572 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
573 Contract Total, shall equal one-half of the difference between the Rate established under
574 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
575 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
576 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established
577 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
578 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article
579 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be
580 deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual
581 deliveries of each bear to the cumulative total Water Delivered.

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

588 through binding agreements executed with or approved by the Contracting Officer prior to use of
589 such water.

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

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

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

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

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

628 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

632 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

655 prior to the expiration of the then existing five-year period. All subsequent environmental
656 documentation shall include an alternative to evaluate not less than the quantity of Project Water
657 historically transferred within the same geographical area.

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

668 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

678 refund such overpayment in response to the notice to the Contractor that it has finalized the
679 accounts for the Year in which the overpayment was made.

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

685 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

700 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
701 such discontinuance or reduction.

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

708 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

719 (c) In any Year in which there may occur a Condition of Shortage for any of the
720 reasons specified in subdivision (b) of this Article, and subject to subdivision (d) of this Article, the
721 Contracting Officer will first allocate the available Project Water consistent with the Central Valley
722 Project M&I Water Shortage Policy in its form on the effective date of this Contract for determining

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

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

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

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

741 (4) The available supply shall be multiplied by the Contractor's
742 proportionate share and the result shall be the quantity of Project Water made available by the
743 United States to the Contractor for the relevant Year in accordance with the schedule developed by
744 the Contracting Officer under subdivision (c)(1) of this Article 12, but in no event shall such
745 amount exceed the Contract Total. In the event the Contracting Officer subsequently determines

746 that the Contracting Officer can increase or needs to decrease the available supply for delivery from
747 Delta Division Facilities to long-term water service and repayment Contractors during the relevant
748 Year, such additions or reductions to the available supply shall be apportioned consistent with
749 subparagraphs (1) through (4), inclusive.

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

760 UNAVOIDABLE GROUNDWATER PERCOLATION

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

765 RULES AND REGULATIONS

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

770

WATER AND AIR POLLUTION CONTROL

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

774

QUALITY OF WATER

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

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

789 (c) Omitted.

790

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

791

792 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
793 other than from the United States and Irrigation Water furnished pursuant to the terms of this
794 Contract may be simultaneously transported through the same distribution facilities of the

795 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
796 and non-Project water were constructed without funds made available pursuant to Federal
797 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
798 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation
799 Water must be established through the certification requirements as specified in the Acreage
800 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands
801 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be
802 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the
803 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with
804 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to
805 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the
806 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,
807 the Contracting Officer will calculate annually the cost to the Federal Government, including
808 interest of storing or delivering non-Project water, which for purposes of this Contract shall be
809 determined as follows: The quotient shall be the unpaid distribution system costs divided by the
810 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the
811 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the
812 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
813 excess or full cost land within the Contractor's Service Area that receives non-Project water through
814 Federally financed or constructed facilities. The incremental fee calculation methodology will
815 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide
816 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review

817 and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is
818 adopted it shall supercede this provision.

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

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

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

835 (3) Neither the United States nor the Operating Non-Federal Entity shall
836 be responsible for control, care, or distribution of the non-Project water before it is introduced into
837 or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to
838 defend and indemnify the United States and the Operating Non-Federal Entity, and their respective
839 officers, agents, and employees, from any claim for damage to persons or property, direct or

840 indirect, resulting from the act(s) of the Contractor, its officers, employees, agents, or assigns, in (i)
841 extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
842 into Project facilities.

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

846 (5) After Project purposes are met, as determined by the Contracting
847 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
848 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
849 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
850 any such remaining capacity being made available to non-Project contractors. Other Project
851 Contractors shall have a second priority to any remaining capacity of facilities declared to be
852 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
853 any such remaining capacity being made available to non-Project contractors.

854 OPINIONS AND DETERMINATIONS

855 18. (a) Where the terms of this Contract provide for actions to be based upon the
856 opinion or determination of either party to this Contract, said terms shall not be construed as
857 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
858 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
859 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
860 unreasonable opinion or determination. Each opinion or determination by either party shall be
861 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall

862 affect or alter the standard of judicial review applicable under Federal law to any opinion or
863 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

869 COORDINATION AND COOPERATION

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

880 (b) Within 120 days following the effective date of this Contract, the Contractor,
881 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
882 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
883 amended as necessary separate and apart from this Contract. The goal of this process shall be to

884 provide, to the extent practicable, the means of mutual communication and interaction regarding
885 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

903 (d) Without limiting the contractual obligations of the Contracting Officer under
904 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
905 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or

906 other interested stakeholders or to make decisions in a timely fashion as needed to protect health,
907 safety or the physical integrity of structures or facilities.

908 CHARGES FOR DELINQUENT PAYMENTS

909 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
910 on delinquent installments or payments. When a payment is not received by the due date, the
911 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
912 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
913 charge to cover additional costs of billing and processing the delinquent payment. When a payment
914 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
915 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
916 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
917 payment.

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

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

926 EQUAL OPPORTUNITY

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

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

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

940 (c) The Contractor will send to each labor union or representative of workers
941 with which it has a collective bargaining agreement or other contract or understanding, a notice, to

942 be provided by the Contracting Officer, advising the said labor union or workers' representative of
943 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965,
944 and shall post copies of the notice in conspicuous places available to employees and applicants for
945 employment.

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

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

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

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

970 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

983 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

984 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
985 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
986 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
987 as well as with their respective implementing regulations and guidelines imposed by the U.S.
988 Department of the Interior and/or Bureau of Reclamation.

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

995 (c) The Contractor makes this agreement in consideration of and for the purpose
996 of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal
997 financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation,
998 including installment payments after such date on account of arrangements for Federal financial
999 assistance which were approved before such date. The Contractor recognizes and agrees that such
1000 Federal assistance will be extended in reliance on the representations and agreements made in this
1001 Article, and that the United States reserves the right to seek judicial enforcement thereof.

1002 PRIVACY ACT COMPLIANCE

1003 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1004 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1005 seq.) in maintaining Landholder acreage certification and reporting records, required to be
1006 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform
1007 Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1008 (b) With respect to the application and administration of the criminal penalty
1009 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible
1010 for maintaining the certification and reporting records referenced in (a) above are considered to be
1011 employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1012 (c) The Contracting Officer or a designated representative shall provide the
1013 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
1014 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
1015 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information
1016 contained in the Landholder's certification and reporting records.

1017 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
1018 Reclamation to be the System Manager who shall be responsible for making decisions on denials
1019 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
1020 authorized to grant requests by individuals for access to their own records.

1021 (e) The Contractor shall forward promptly to the System Manager each proposed
1022 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
1023 2.71; notify the requester accordingly of such referral; and provide the System Manager with
1024 information and records necessary to prepare an appropriate response to the requester. These
1025 requirements do not apply to individuals seeking access to their own certification and reporting
1026 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the
1027 Privacy Act as a basis for the request.

1028 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1029 25. In addition to all other payments to be made by the Contractor pursuant to this
1030 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1031 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1032 direct cost incurred by the United States for work requested by the Contractor associated with this
1033 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1034 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1035 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1036 administration.

1037 WATER CONSERVATION

1038 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1039 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1040 implementing an effective water conservation and efficiency program based on the Contractor's
1041 water conservation plan that has been determined by the Contracting Officer to meet the
1042 conservation and efficiency criteria for evaluating water conservation plans established under
1043 Federal law. The water conservation and efficiency program shall contain definite water
1044 conservation objectives, appropriate economically feasible water conservation measures, and time

1045 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract
1046 shall be contingent upon the Contractor's continued implementation of such water conservation
1047 program. In the event the Contractor's water conservation plan or any revised water conservation
1048 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
1049 determined by the Contracting Officer to meet such criteria, due to circumstances which the
1050 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1051 made under this Contract so long as the Contractor diligently works with the Contracting Officer to
1052 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately
1053 begins implementing its water conservation and efficiency program in accordance with the time
1054 schedules therein.

1055 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1056 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1057 the Best Management Practices identified by the time frames issued by the California Urban Water
1058 Conservation Council for such M&I Water unless any such practice is determined by the
1059 Contracting Officer to be inappropriate for the Contractor.

1060 (c) The Contractor shall submit to the Contracting Officer a report on the status
1061 of its implementation of the water conservation plan on the reporting dates specified in the then
1062 existing conservation and efficiency criteria established under Federal law.

1063 (d) At five-year intervals, the Contractor shall revise its water conservation plan
1064 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1065 plans established under Federal law and submit such revised water management plan to the
1066 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the

1067 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1068 evaluating water conservation plans established under Federal law.

1069 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1070 shall be described in the Contractor's water conservation plan.

1071 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1072 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1073 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1074 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1075 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1076 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1077 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1078 Federal Reclamation law.

1079 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1080 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1081 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San
1082 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement
1083 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &
1084 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the
1085 rights or obligations of the Contractor or the United States hereunder.

1086 (b) The Contracting Officer has previously notified the Contractor in writing that
1087 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1088 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1089 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water

1090 Authority, or to any successor approved by the Contracting Officer under the terms and conditions
1091 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis
1092 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or
1093 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1094 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or
1095 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1096 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such
1097 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1098 such successor shall not relieve the Contractor of its obligation to pay directly to the United States
1099 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the
1100 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1101 payments on behalf of the United States in accordance with the separate agreement identified in
1102 subdivision (a) of this Article.

1103 (c) For so long as the O&M of any portion of the Project facilities serving the
1104 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1105 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1106 Rates for Water Delivered under this Contract representing the cost associated with the activity
1107 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1108 or its successor.

1109 (d) In the event the O&M of the Project facilities operated and maintained by the
1110 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1111 United States during the term of this Contract, the Contracting Officer shall so notify the
1112 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the

1113 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing
1114 the O&M costs of the portion of such Project facilities which have been re-assumed. The
1115 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the
1116 contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit
1117 “B” directly to the United States in compliance with Article 7 of this Contract.

1118 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1119 29. The expenditure or advance of any money or the performance of any obligation of
1120 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1121 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1122 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1123 or allotted.

1124 BOOKS, RECORDS, AND REPORTS

1125 30. (a) The Contractor shall establish and maintain accounts and other books and
1126 records pertaining to administration of the terms and conditions of this Contract, including: the
1127 Contractor's financial transactions, water supply data, and Project land and right-of-way
1128 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1129 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1130 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1131 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1132 the right during office hours to examine and make copies of the other party's books and records
1133 relating to matters covered by this Contract.

1134 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1135 records, or other information shall be requested from the Contractor by the Contracting Officer
1136 unless such books, records, or information are reasonably related to the administration or
1137 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1138 time within which to provide the requested books, records, or information.

1139 (c) At such time as the Contractor provides information to the Contracting
1140 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1141 the Operating Non-Federal Entity.

1142 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1143 31. (a) The provisions of this Contract shall apply to and bind the successors and
1144 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1145 therein shall be valid until approved in writing by the Contracting Officer.

1146 (b) The assignment of any right or interest in this Contract by either party shall
1147 not interfere with the rights or obligations of the other party to this Contract absent the written
1148 concurrence of said other party.

1149 (c) The Contracting Officer shall not unreasonably condition or withhold
1150 approval of any proposed assignment.

1151 SEVERABILITY

1152 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1153 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1154 association or other form of organization whose primary function is to represent parties to Project
1155 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1156 enforceability of a provision included in this Contract and said person, entity, association, or
1157 organization obtains a final court decision holding that such provision is legally invalid or
1158 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1159 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1160 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1161 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1162 specified above may be extended by mutual agreement of the parties. Pending the completion of
1163 the actions designated above, to the extent it can do so without violating any applicable provisions
1164 of law, the United States shall continue to make the quantities of Project Water specified in this

1165 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1166 found to be legally invalid or unenforceable in the final court decision.

1167 RESOLUTION OF DISPUTES

1168 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1169 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1170 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1171 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1172 notice of the intent to take such action; Provided, That such notice shall not be required where a
1173 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1174 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1175 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1176 waive or abridge any right or remedy that the Contractor or the United States may have.

1177 OFFICIALS NOT TO BENEFIT

1178 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1179 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1180 manner as other water users or landowners.

1181 CHANGES IN CONTRACTOR'S SERVICE AREA

1182 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1183 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1184 except upon the Contracting Officer's written consent.

1185 (b) Within 30 days of receipt of a request for such a change, the Contracting
1186 Officer will notify the Contractor of any additional information required by the Contracting Officer
1187 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1188 timely completion of the process. Such process will analyze whether the proposed change is likely
1189 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability

1190 of the Contractor to pay for Project Water furnished under this Contract or to pay for any
1191 Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on
1192 any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall
1193 comply with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by
1194 the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of
1195 this Contract.

1196 FEDERAL LAWS

1197 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1198 validity or application in connection with the performance of the terms and conditions of this
1199 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1200 terms and conditions of this Contract unless and until relief from application of such Federal law or
1201 regulation to the implementing provision of the Contract is granted by a court of competent
1202 jurisdiction.

1203 NOTICES

1204 37. Any notice, demand, or request authorized or required by this Contract shall be
1205 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1206 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California
1207 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board
1208 of Directors of the Banta-Carbona Irrigation District, 3514 West Lehman Road, Tracy, California
1209 95304 or P. O. Box 299, Tracy, California 95378-0299. The designation of the addressee or the
1210 address may be changed by notice given in the same manner as provided in this Article for other
1211 notices.

1212 CONFIRMATION OF CONTRACT

1213 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1214 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1215 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1216 validation proceedings, and all pertinent supporting records of the court approving and confirming
1217 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1218 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1219 year first above written.

1220 THE UNITED STATES OF AMERICA

1221 By: _____
1222 Regional Director, Mid-Pacific Region
1223 Bureau of Reclamation

1224 (SEAL)

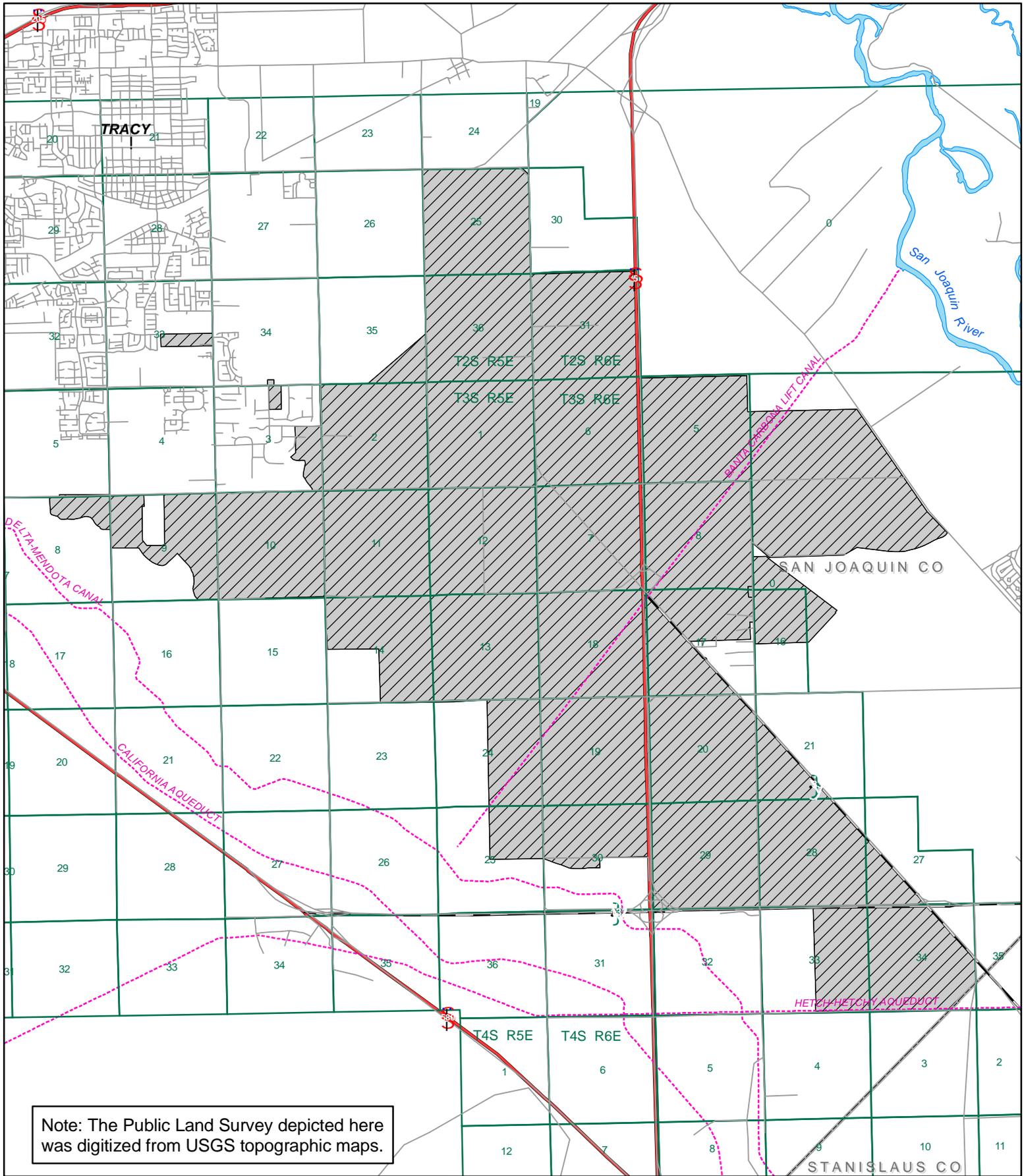
1225 BANTA-CARBONA IRRIGATION DISTRICT
1226

1227 By: _____
1228 President of the Board of Directors

1229 Attest:

1230 By: _____
1231 Secretary of the Board of Directors

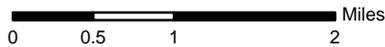
1232 (H:\PUB 440\ltrc\Final Draft LTRC's – Fresno, Tracy\09-24-04 BantaCarbona ID Final Draft
1233 LTRC with exhibits.doc)



Note: The Public Land Survey depicted here was digitized from USGS topographic maps.

Banta Carbona I.D.

Contract No. 14-06-200-4305A-LTR1
EXHIBIT A



-  Contractor's Service Area
-  District Boundary

EXHIBIT B
BANTA-CARBONA IRRIGATION DISTRICT
Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the contract to reflect the current Rates and Charges.

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>	
	<u>Irrigation</u> <u>Water</u>	<u>M&I</u> <u>Water 1/</u>
Capital Rates	\$ 9.03	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
CFO/PFR Adj. Rate 2/	<u>1.36</u>	
TOTAL COST-OF-SERVICE-RATES	<u>\$23.81</u>	<u>1/</u>
<u>FULL-COST RATES</u>		
<u>Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.</u>	<u>\$37.16</u>	
<u>Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.</u>	<u>\$44.31</u>	
<u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>

1/ To be provided as needed. Contractor does not currently receive M&I water and is not projected to take any in the near future.

2/ Rate represents Chief Financial Officers (CFO) adjustment and Provision for Replacement (PFR) credit for option 2 cost deferment to be distributed over 5-year period beginning with 2003 water rates.

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