

M&I Only
 SCC Draft 10/22-2004
 SCC Draft 09/30-2004
 SCC Draft 08/19-2004
 SCC Draft 01/05-2004
 R. O. Draft 09/23-2003 CVP M&I Form of Contract
 R. O. Draft 08/19-2004 San Luis Unit Form of Contract
 Contract No.
 14-06-200-8033A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
 AND STATE OF CALIFORNIA PROVIDING FOR PROJECT WATER SERVICE
 TO THE MENDOTA WATERFOWL MANAGEMENT AREA HEADQUARTERS
 FROM SAN LUIS UNIT AND DELTA DIVISION

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4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND STATE OF CALIFORNIA PROVIDING FOR PROJECT WATER SERVICE
7 TO THE MENDOTA WATERFOWL MANAGEMENT AREA HEADQUARTERS
8 FROM SAN LUIS UNIT AND DELTA DIVISION

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

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

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

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

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

34 [4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-
35 06-200-8033A, which established terms for the delivery to the Contractor of Project Water from
36 January 1, 1976 through December 31, 2008, hereinafter referred to as the Existing Contract; and

37 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
38 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
39 binding agreement identified as Binding Agreement No. 14-06-200-8033A-BA, which sets out
40 the terms pursuant to which the Contractor agreed to renew the Existing Contract before the
41 expiration date after completion of the Programmatic Environmental Impact Statement (PEIS)
42 and other appropriate environmental documentation and negotiation of a renewal contract; and

43 which also sets out the consequences of a subsequent decision not to renew: and

44 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal the
45 Existing Contract following completion of appropriate environmental documentation, including
46 a PEIS pursuant to the National Environmental Policy Act (NEPA) analyzing the direct and
47 indirect impacts and benefits of implementing the CVPIA and the potential renewal of all
48 existing contracts for Project Water; and

49 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
50 environmental review necessary to provide for long-term renewal of the Existing Contract; and

51 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
52 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
53 of the State of California, for water service from the Central Valley Project; and

54 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
55 of its obligations under the Existing Contract; and

56 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
57 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
58 reasonable and beneficial use and/or has demonstrated projected future demand for water use
59 such that the Contractor has the capability and expects to utilize fully for reasonable and
60 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
61 and

62 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon

63 by urban areas within California for more than fifty (50) years, and is considered by the
64 Contractor as an essential portion of its water supply; and

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

68 [13th] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28,
69 2000, the United States and the State of California adopted a general target of continuously
70 improving Delta water quality for all uses. The CALFED Agencies' target for providing safe,
71 reliable, and affordable drinking water in a cost-effective way, is to achieve either: (a) average
72 concentrations at Clinton Forebay and other southern and central Delta drinking water intakes of
73 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of public health
74 protection using a cost-effective combination of alternative source waters, source control and
75 treatment technologies; and

76 [14th] WHEREAS, the parties intend by this Contract to develop a more cooperative
77 relationship in order to achieve their mutual goals; and

78 [14.1] WHEREAS, the mutual goals of the United States and the Contractor include: to
79 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
80 repayment of the Project as required by law; to guard reasonably against Project Water
81 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
82 and to

83 comply with all applicable environmental statutes, all consistent with the legal obligations of the
84 United States relative to the Project; and

85 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract
86 assignments, rescheduling and conveyance of Project Water and non-Project water under this
87 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the
88 beneficial use of water; and

89 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a
90 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
91 Explanatory Recital immediately above; and

92 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
93 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

96 DEFINITIONS

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

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

101 (b) "Charges" shall mean the payments required by Federal Reclamation law
102 in addition to the Rates and Tiered Pricing Component specified in this Contract as determined
103 annually by the Contracting Officer pursuant to this Contract;

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

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

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

112 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
113 permitted to provide Project Water under this Contract which is referred to as the headquarters of
114 the Mendota Wildlife Area. The headquarters consists of five houses, a conference hall, and a
115 workshop, all of which are located at 4333 South Santa Fe Grade, Mendota, California,
116 approximately one acre of land, which may be modified from time to time in accordance with
117 Article 35 of this Contract without amendment of this Contract;

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

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

125 (h-i) Omitted;

126 (j) "Full Cost Rate" shall mean an annual rate, as determined by the

127 Contracting Officer that shall amortize the expenditures for construction properly allocable to the

128 Project Irrigation or M&I functions, as appropriate, of facilities in service including all operation

129 and maintenance deficits funded, less payments, over such periods as may be required under

130 Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the

131 construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding

132 at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982,

133 and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The

134 Full-Cost Rate includes actual operation, maintenance, and replacement costs consistent with

135 Section 426.2 of the Rules and Regulations for the RRA;

136 (k-l) Omitted;

137 (m) "Irrigation Water" shall mean water made available from the Project that

138 is used primarily in the production of agricultural crops or livestock, including domestic use

139 incidental thereto, and watering of livestock;

140 (n) Omitted;

141 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other

142 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for

143 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)

144 which are kept for personal enjoyment or water delivered to landholdings operated in units of

145 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer

146 that the use of water delivered to any such landholding is a use described in subdivision (m) of
147 this Article;

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

150 (q) "Operation and Maintenance" or "O&M" shall mean normal and
151 reasonable care, control, operation, repair, replacement (other than Capital replacement), and
152 maintenance of Project facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 2005, through February 28, 2045. This Contract, when effective, supersedes the Existing Contract. In the event the Contractor wishes to renew the Contract beyond February 28, 2045, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two years prior to the date this Contract expires.

(b) Omitted.

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

(d) The Contracting Officer shall make a determination 10 years after the date of execution of this Contract, and every 5 years thereafter during the term of this Contract, of whether a conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that during the term of this contract, all authorized project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such

209 allocation is made, and subject to satisfaction of the conditions set out in this subdivision of this
210 Article, this contract shall, at the request of the Contractor, be converted to a contract under said
211 subsection (c)(1) of Section 9, subject to applicable Federal law and under stated terms and
212 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for
213 such conversion to occur shall be a determination by the Contracting Officer that, account being
214 taken of the amount credited to return by the Contractor as provided for under Federal
215 Reclamation law, the remaining amount of construction costs assignable for ultimate return by
216 the Contractor can probably be repaid to the United States within the term of a contract under
217 said subsection (c)(1) of Section 9. If the remaining amount of costs that are properly assignable
218 to the Contractor cannot be determined during the term of this Contract, the Contracting Officer
219 shall notify the Contractor, and provide the reason(s) why such a determination could not be
220 made. Further, the Contracting Officer shall make such a determination as soon thereafter as
221 possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out
222 above, conversion to a contract under said subsection (c)(1) of Section 9.

223 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

224 3. (a) During each Year, consistent with all applicable State water rights,
225 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
226 this Contract, the Contracting Officer shall make available for delivery to the Contractor 10 acre-
227 feet of water for M&I purposes. The Water Delivered to the Contractor in accordance with this
228 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this
229 Contract.

230 (b) Because the capacity of the Central Valley Project to deliver Project
231 Water has been constrained in recent years and may be constrained in the future due to many
232 factors including hydrologic conditions and implementation of Federal and State laws, the
233 likelihood of the Contractor actually receiving the amount of water set out in subdivision (a) of
234 this Article in any given Year is uncertain. The Contracting Officer's most recent modeling
235 referenced in the PEIS projected that Contract Total set forth in this Contract will not be
236 available to the Contractor in many years. During the most recent five years, the Recent Historic
237 Average of water made available to the Contractor was 10 acre-feet. Nothing in subdivision (b)
238 of this Article shall affect the rights and obligations of the parties under any provision of this
239 Contract.

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

242 (d) The Contractor shall make reasonable and beneficial use of all water
243 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
244 groundwater banking programs, surface water storage programs, and other similar programs
245 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
246 Contractor's Service Area which are consistent with applicable State law and result in use
247 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
248 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
249 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
250 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,

251 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
252 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater
253 banking programs, surface water storage programs, and other similar programs utilizing Project
254 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
255 Service Area may be permitted upon written approval of the Contracting Officer, which approval
256 will be based upon environmental documentation, Project Water rights, and Project operational
257 concerns. The Contracting Officer will address such concerns in regulations, policies, or
258 guidelines.

259 (e) The Contractor shall comply with requirements applicable to the
260 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
261 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act (ESA) of 1973,
262 as amended, that are within the Contractor's legal authority to implement. The Existing
263 Contract, which evidences in excess of 29 years of diversions for M&I purposes of the quantities
264 of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
265 developing an appropriate baseline for the biological assessment prepared pursuant to the ESA,
266 and any other needed environmental review. Nothing herein shall be construed to prevent the
267 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
268 respect to any biological opinion or other environmental documentation referred to in this
269 Article.

270 (f) Following the declaration of Water Made Available under Article 4 of this
271 Contact, the Contracting Officer will make a determination whether Project Water, or other

272 water available to the Project, can be made available to the Contractor in addition to the Contract
273 Total under Article 3 of this Article during the Year without adversely impacting other Project
274 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
275 Contractor prior to making such a determination. If the Contracting Officer determines that
276 Project Water, or other water available to the Project, can be made available to the Contractor,
277 the Contracting Officer will announce the availability of such water and shall so notify the
278 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
279 and other Project Contractors capable of taking such water to determine the most equitable and
280 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
281 water, the Contracting Officer shall make such water available to the Contractor in accordance
282 with applicable statutes, regulations, guidelines, and policies.

283 (g) The Contractor may request permission to reschedule for use during the
284 subsequent Year some or all of the Water Made Available to the Contractor during the current
285 Year referred to as “rescheduled water”. The Contractor may request permission to use during
286 the current Year a quantity of Project Water which may be made available by the United States
287 to the Contractor during the subsequent Year referred to as “preuse”. The Contracting Officer’s
288 written approval may permit such uses in accordance with applicable statutes, regulations,
289 guidelines, and policies. Subject to existing long-term contractual commitments, water rights
290 and operational constraints, long-term Project Contractors shall have a first right to acquire such
291 water, including Project Water made available pursuant to Section 215 of the RRA.

292 (h) The Contractors’ right pursuant to Federal Reclamation law and applicable

293 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
294 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
295 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
296 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
297 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or
298 subdivision (b) of Article 12 of
299 this Contract or applicable provisions of any subsequent renewal contracts.

300 (i) Project Water furnished to the Contractor pursuant to this Contract may be
301 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract
302 upon written approval by the Contracting Officer in accordance with the terms and conditions of
303 such approval.

304 (j) The Contracting Officer shall make reasonable efforts to protect the water
305 rights necessary for the Project and to provide the water available under this Contract. The
306 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
307 extent permitted by law, in administrative proceedings related to the Project Water rights;
308 Provided, that the Contracting Officer retains the right to object to the substance of the
309 Contractor's position in such a proceeding; Provided further, That in such proceedings the
310 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
311 Contract to use Project Water.

312 TIME FOR DELIVERY OF WATER

313 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer

314 shall announce the Contracting Officer's expected declaration of the Water Made Available.
315 Such declaration will be expressed in terms of both Water Made Available and the Recent
316 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
317 current operational and hydrologic conditions and a new declaration with changes, if any, to the
318 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
319 operations and the basis of the estimate, with relevant supporting information, upon the written
320 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
321 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

332 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this
333 Contract, the United States shall deliver Project Water to the Contractor in accordance with the
334 initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any

335 written revision(s), thereto satisfactory to the Contracting Officer, submitted within a reasonable
336 time prior to the date(s) on which the requested change(s) is/are to be implemented.

337 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

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

355 investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity(ies) the
356 accuracy of such measurements and shall take any necessary steps to adjust any errors appearing
357 therein. For any period of time when accurate measurements have not been made, the
358 Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal
359 Entity(ies), if any, prior to making a final determination of the quantity delivered for that period
360 of time.

361 (e) Absent a separate contrary written agreement with the Contractor, neither
362 the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the
363 control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor
364 pursuant to this Contract beyond the point or points of delivery established pursuant to
365 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
366 employees, agents, and assigns on account of damage or claim of damage of any nature
367 whatsoever for which there is legal responsibility, including property damage, personal injury, or
368 death arising out of or connected with the control, carriage, handling, use, disposal, or
369 distribution of such Water Delivered beyond such point or points of delivery except for any
370 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its
371 officers, employees, agents, and assigns, including any responsible Operating Non-Federal
372 Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii) willful
373 misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
374 including any responsible Operating Non-Federal Entity; (iii) negligence of the Contracting
375 Officer or any of its officers, employees, agents, and assigns including the Operating Non-

376 Federal Entity(ies); or (iv) damage or claims resulting from a malfunction of facilities owned
377 and/or operated by the United States or responsible Operating Non-Federal Entity(ies).

378 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

379 6. (a) The Contractor has established a measuring program satisfactory to the
380 Contracting Officer. The Contractor shall ensure that, unless the Contractor establishes an
381 alternative measurement program satisfactory to the Contracting Officer, all surface water
382 delivered for M&I purposes is measured at each M&I service connection. The water measuring
383 devices or water measuring methods of comparable effectiveness must be acceptable to the
384 Contracting Officer. The Contractor shall be responsible for installing, operating, and
385 maintaining and repairing all such measuring devices and implementing all such water
386 measuring methods at no cost to the United States. The Contractor shall use the information
387 obtained from such water measuring devices or water measuring methods to ensure its proper
388 management of the water; to bill water users for water delivered by the Contractor; and, if
389 applicable, to record water delivered for M&I purposes by customer class as defined in the
390 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein
391 contained, however, shall preclude the Contractor from establishing and collecting any charges,
392 assessments, or other revenues authorized by California law. The Contractor shall include a
393 summary of all its annual surface water deliveries in the annual report described in subdivision
394 (c) of Article 26.

395 (b) To the extent the information has not otherwise been provided, upon

396 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
397 report describing the measurement devices or water measuring methods being used or to be used
398 to implement subdivision (a) of this Article and identifying the M&I service connections or
399 alternative measurement programs approved by the Contracting Officer, at which such
400 measurement devices or water measuring methods are being used, and, if applicable, identifying
401 the locations at which such devices and/or methods are not yet being used including a time
402 schedule for implementation at such locations. The Contracting Officer shall advise the
403 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of
404 the measuring devices or water measuring methods identified in the Contractor's report and if the
405 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
406 Contracting Officer notifies the Contractor that the measuring devices or methods are
407 inadequate, the parties shall within 60 days following the Contracting Officer's response,
408 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
409 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
410 compliance with subdivision (a) of this Article.

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

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

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

420 RATES AND METHOD OF PAYMENT FOR WATER

421 7. (a) The Contractor shall pay the United States as provided in this Article for
422 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
423 accordance with: (i) the Secretary's then-existing ratesetting policy for M&I Water. Such
424 ratesetting policies shall be amended, modified, or superceded only through a public notice and
425 comment procedure; (ii) applicable Federal Reclamation law and associated rules and
426 regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be
427 made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to
428 in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing
429 Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit
430 "B," as may be revised annually.

431 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges,
432 and Tiered Pricing Components as follows:

433 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
434 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
435 period October 1, of the current Calendar Year, through September 30, of the following Calendar
436 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
437 to review and comment on such estimates. On or before September 15 of each Calendar Year,

438 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect
439 during the period October 1 of the current Calendar Year, through September 30, of the
440 following Calendar Year, and such notification shall revise Exhibit “B.”

441 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
442 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Components
443 for Project Water for the following Year and the computations and cost allocations upon which
444 those Rates are based. The Contractor shall be allowed not less than two months to review and
445 comment on such computations and cost allocations. By December 31 of each Calendar Year,
446 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
447 Components to be in effect for the upcoming Year, and such notification shall revise Exhibit
448 “B.”

449 (c) At the time the Contractor submits the initial schedule for the delivery of
450 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
451 Contractor shall make an advance payment to the United States equal to the total amount payable
452 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
453 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
454 Year. Before the end of the first month and before the end of each calendar month thereafter, the
455 Contractor shall make an advance payment to the United States, at the Rate(s) set under
456 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
457 during the second month immediately following. Adjustments between advance payments for
458 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of

459 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
460 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
461 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
462 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
463 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
464 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
465 additional Project Water shall be delivered to the Contractor unless and until an advance
466 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
467 between the advance payments for the Water Scheduled and payments for the quantities of
468 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
469 but no later than April 30th of the following Year, or (60) days after the delivery of Project
470 Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not
471 delivered by the last day of February.

472 (d) The Contractor shall also make a payment in addition to the Rate(s) in
473 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
474 appropriate Tiered Pricing Component then in effect, before the end of the month of delivery.
475 The payments shall be consistent with the quantities of M&I Water Delivered as shown in the
476 water delivery report for the subject month prepared by the Operating Non-Federal Entity or, if
477 there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report
478 shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component
479 for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made

480 through the adjustment of payments due to the United States for Charges for the next month.

481 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall
482 be computed pursuant to Article 20 of this Contract.

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

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

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

495 (h) The Contracting Officer shall keep its accounts pertaining to the
496 administration of the financial terms and conditions of its long-term contracts, in accordance
497 with applicable Federal standards, so as to reflect the application of Project costs and revenues.

498 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
499 Contractor a detailed accounting of all Project and Contractor expense allocations, the
500 disposition of all Project and Contractor revenues, and a summary of all water delivery

501 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
502 to resolve any discrepancies or disputes relating to accountings, reports, or information.

503 (i) The parties acknowledge and agree that the efficient administration of this
504 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
505 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components,
506 and/or for making and allocating payments, other than those set forth in this Article may be in
507 the mutual best interest of the parties, it is expressly agreed that the parties may enter into
508 agreements to modify the mechanisms, policies, and procedures for any of those purposes while
509 this Contract is in effect without amending this Contract.

510 (j) (1) Beginning at such time as deliveries of Project Water in a Year
511 exceed 80 percent of the Contract Total, then before the end of the month following the month of
512 delivery the Contractor shall make an additional payment to the United States equal to the
513 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
514 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of
515 the Contract Total, shall equal the one-half of the difference between the Rate established under
516 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing
517 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
518 shall equal the difference between (i) the Rate established under subdivision (a) of this Article
519 and (ii) the M&I Full Cost Water Rate.

520 (2) Omitted.

521 (3) For purposes of determining the applicability of the Tiered Pricing
522 Component pursuant to this Article, Water Delivered shall include Project Water that the
523 Contractor transfers to others but shall not include Project Water transferred and delivered to the
524 Contractor, nor shall it include the additional water provided to the Contractor under the
525 provisions of subdivision (f) of Article 3 of this Contract.

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

534 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
535 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates
536 adjusted upward or downward to reflect the changed costs of delivery (if any) of the transferred
537 Project Water to the transferee’s point of delivery in accordance with the then applicable CVP
538 Ratesetting Policy.

539 (m) Omitted.

540 (n) Omitted

541 8. Omitted.

542 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

563 require prior written approval by the Contracting Officer. Such environmental documentation
564 and the Contracting Officer's compliance determination shall be reviewed every five years and
565 updated, as necessary, prior to the expiration of the then existing five-year period. All
566 subsequent environmental documentation shall include an alternative to evaluate not less than
567 the quantity of Project Water historically transferred within the same geographical area.

568 (c) For a water transfer to qualify under subdivision (b) of this Article, such
569 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3)
570 years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater
571 activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and
572 be delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur
573 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
574 through existing facilities with no new construction or modifications to facilities and be between
575 existing Project Contractors and/or the Contractor and the United States, Department of the
576 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and
577 requirements imposed for protection of the environment and Indian Trust Assets, as defined
578 under Federal law.

579 APPLICATION OF PAYMENTS AND ADJUSTMENTS

580 10. (a) The amount of any overpayment by the Contractor of the Contractor's
581 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
582 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
583 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount

584 of such overpayment at the option of the Contractor, may be credited against amounts to become
585 due to the United States by the Contractor. With respect to overpayment, such refund or
586 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to
587 have the right to the use of any of the Project Water supply provided for herein. All credits and
588 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
589 direction as to how to credit or refund such overpayment in response to the notice to the
590 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

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

596 TEMPORARY REDUCTIONS--RETURN FLOWS

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

602 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may
603 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein
604 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of

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

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

619 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

626 of the Project, drought, other physical causes beyond the control of the Contracting Officer or
627 actions taken by the Contracting Officer to meet legal obligations then, except as provided in
628 subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or
629 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

630 (c) Omitted.

631 (d) Project Water furnished under this Contract will be allocated in
632 accordance with the then-existing Project M&I Water Shortage Policy. Such policy shall be
633 amended, modified, or superseded only through a public notice and comment procedure.

634 (e) By entering into this Contract, the Contractor does not waive any legal
635 rights or remedies it may have to file or participate in any administrative or judicial proceeding
636 contesting (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the
637 substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in which
638 such policy is implemented in order to allocate Project Water between M&I and irrigation
639 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
640 administrative procedures necessary to institute any judicial challenge within 6 months of the
641 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any
642 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained
643 herein shall be interpreted to validate or invalidate the Central Valley Project M&I Water
644 Shortage Policy.

645 13. Omitted.

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RULES AND REGULATIONS

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14. The parties agree that the delivery of M&I Water or use of Federal facilities

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pursuant to this Contract is subject to the applicable provisions of Federal Reclamation law and

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any applicable rules and regulations promulgated by the Secretary of the Interior under such law.

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WATER AND AIR POLLUTION CONTROL

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15. The Contractor, in carrying out this Contract, shall comply with all applicable

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water and air pollution laws and regulations of the United States and the State of California, and

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shall obtain all required permits or licenses from the appropriate Federal, State, or local

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authorities.

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QUALITY OF WATER

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16. (a) Project facilities used to deliver Project Water to the Contractor pursuant

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to this Contract shall be operated and maintained to enable the United States to deliver Project

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Water to the Contractor in accordance with the water quality standards specified in subsection

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2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of

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October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no

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obligation to construct or furnish water treatment facilities to maintain or to improve the quality

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of Water Delivered to the Contractor pursuant to this Contract. The United States does not

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warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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(b) The O&M of Project facilities shall be performed in such manner as is

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practicable to maintain the quality of raw water made available through such facilities at the

666 highest level reasonably attainable as determined by the Contracting Officer.

667 WATER ACQUIRED BY THE CONTRACTOR
668 OTHER THAN FROM THE UNITED STATES

669 17. (a) Omitted.

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

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

682 (2) Delivery of such non-Project water in and through Project facilities
683 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
684 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
685 available to other Project water service contractors; (iii) interfere with the delivery of contractual

686 water entitlements to any other Project water service contractors; or (iv) interfere with the
687 physical maintenance of the Project facilities.

688 (3) Neither the United States nor the Operating Non-Federal
689 Entity(ies) shall be responsible for control, care or distribution of the non-Project water before it
690 is introduced into or after it is delivered from the Project facilities. The Contractor hereby
691 releases and agrees to defend and indemnify the United States and the Operating Non-Federal
692 Entity(ies), and their respective officers, agents, and employees, from any claim for damage to
693 persons or property, direct or indirect, resulting from the acts(s) the Contractor or its officers,
694 employees, agents, or assigns, in (i) extracting or diverting non-Project water from any source, or
695 (ii) diverting such non-Project water into Project facilities.

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

699 (5) After Project purposes are met, as determined by the Contracting
700 Officer, the United States and the Project Contractors entitled to Project Water from Delta
701 Division Facilities shall share priority to utilize the remaining capacity of the facilities declared
702 to be available by the Contracting Officer for conveyance and transportation of non-Project
703 water prior to any such remaining capacity being made available to non-Project contractors.
704 Other Project Contractors shall have a second priority to any remaining capacity of facilities
705 declared to be available by the Contracting Officer for conveyance and transportation of non-
706 Project water prior to any such remaining capacity being made available to non-Project

707 contractors.

708 OPINIONS AND DETERMINATIONS

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

719 (b) The Contracting Officer shall have the right to make determinations
720 necessary to administer this Contract that are consistent with the expressed and implied
721 provisions of this Contract, the laws of the United States and of the State of California, and the
722 rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be
723 made in consultation with the Contractor to the extent reasonably practicable.

724 COORDINATION AND COOPERATION

725 19. (a) In order to further their mutual goals and objectives, the Contracting
726 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and

727 with other affected Project Contractors, in order to improve the operation and management of the
728 Project. The communication, coordination, and cooperation regarding operations and
729 management shall include, but not be limited to, any action which will or may materially affect
730 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
731 Project financial matters including, but not limited to, budget issues. The communication,
732 coordination, and cooperation provided for hereunder shall extend to all provisions of this
733 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,
734 and determinations to be made by the respective party.

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

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

745 (1) The Contracting Officer will, at the request of the Contractor,
746 assist in the development of integrated resource management plans for the Contractor. Further,
747 the Contracting Officer will, as appropriate, seek authorizations for implementation of

748 partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

764 CHARGES FOR DELINQUENT PAYMENTS

765 20. (a) The Contractor shall be subject to interest, administrative and penalty
766 charges on delinquent installments or payments. When a payment is not received by the due
767 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
768 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
769 administrative charge to cover additional costs of billing and processing the delinquent payment.
770 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional

771 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
772 due date. Further, the Contractor shall pay any fees incurred for debt collection services
773 associated with a delinquent payment.

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

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

782 EQUAL OPPORTUNITY

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

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

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

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

804 (d) The Contractor will comply with all provisions of Executive Order No.
805 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
806 the Secretary of Labor.

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

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

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

828 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

833 (b) The payment of charges becoming due hereunder is a condition precedent
834 to receiving benefits under this Contract. The United States shall not make water available to the
835 Contractor through Project facilities during any period in which the Contractor may be in arrears
836 in the advance payment of water rates due the United States. The Contractor shall not furnish

837 water made available pursuant to this Contract for lands or parties which are in arrears in the
838 advance payment of water rates levied or established by the Contractor.(c) With respect to
839 subdivision (b) of this Article, the Contractor shall have no obligation to require advance
840 payment for water rates which it levies.

841 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

842 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
843 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
844 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
845 laws, as well as with their respective implementing regulations and guidelines imposed by the
846 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

861 24. Omitted.

862 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

863 25. In addition to all other payments to be made by the Contractor pursuant to this
864 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
865 detailed statement submitted by the Contracting Officer to the Contractor for such specific items

866 of direct cost incurred by the United States for work requested by the Contractor associated with
867 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
868 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
869 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
870 contract administration.

871 WATER CONSERVATION

872 26. (a) Prior to the delivery of water provided from or conveyed through
873 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
874 shall be implementing an effective water conservation and efficiency program based on the
875 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
876 the conservation and efficiency criteria for evaluating water conservation plans established under
877 Federal law. The water conservation and efficiency program shall contain definite water
878 conservation objectives, appropriate economically feasible water conservation measures, and
879 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
880 Contract shall be contingent upon the Contractor's continued implementation of such water
881 conservation program. In the event the Contractor's water conservation plan or any revised
882 water conservation plan completed pursuant to subdivision (d) of this Article 26 have not yet
883 been determined by the Contracting Officer to meet such criteria, due to circumstances which the
884 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall
885 be made under this Contract so long as the Contractor diligently works with the Contracting
886 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor

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

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

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

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

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

905 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

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

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

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

921 (b) The Contracting Officer has previously notified the Contractor in writing
922 that the O&M of a portion of the Project facilities which serve the Contractor has been
923 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
924 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
925 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under
926 the terms and conditions of the separate agreement between the United States and the Operating
927 Non-Federal Entity San Luis & Delta-Mendota Water Authority, described in subdivision (a) of
928 this Article, all rates, charges, or assessments of any kind, including any assessment for reserve

929 funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or
930 such successor determines, sets, or establishes for the O&M of the portion of the Project
931 facilities operated and maintained by the Operating Non-Federal Entity or such successor. Such
932 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water
933 Authority, or such successor shall not relieve the Contractor of its obligation to pay directly to
934 the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
935 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf
936 of the United States in accordance with the separate agreement identified in subdivision (a) of
937 this Article.

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

944 (d) In the event the O&M of the Project facilities operated and maintained by
945 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by
946 the United States during the term of this Contract, the Contracting Officer shall so notify the
947 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
948 the portion of the Rates to be paid by the Contractor for Project Water under this Contract
949 representing the O&M costs of the portion of such Project facilities which have been re-

950 assumed. The Contractor shall, thereafter, in the absence of written notification from the
951 Contracting Officer to the contrary, pay the Rates, Charges, and the Tiered Pricing Component
952 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of
953 this Contract.

954 OPERATION AND MAINTENANCE BY CALIFORNIA DEPARTMENT OF WATER
955 RESOURCES

956 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor,
957 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
958 California Department of Water Resources, an Operating Non-Federal Entity by a separate
959 agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity
960 California Department of Water Resources. This separate agreement shall not interfere with or
961 affect the rights or obligations of the Contractor or the United States hereunder.

962 (b) The Contracting Officer has previously notified the Contractor in writing
963 that the O&M of a portion of the Project facilities which serve the Contractor has been
964 transferred to Operating Non-Federal Entity California Department of Water Resources, and the
965 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
966 Authority, or to any successor approved by the Contracting Officer under the terms and
967 conditions of the separate agreement between the United States and Operating Non-Federal
968 Entity San Luis & Delta-Mendota Water Authority, described in subdivision (a) of Article 28 of
969 this Contract, all rates, charges, or assessments of any kind, including any assessment for reserve
970 funds, which Operating Non-Federal Entity California Department of Water Resources, or such
971 successor determines, sets, or establishes for the O&M of the portion of the Project facilities

972 operated and maintained by Operating Non-Federal Entity California Department of Water
973 Resources, or such successor. Such direct payments to Operating Non-Federal Entity San Luis
974 & Delta-Mendota Water Authority, or such successor shall not relieve the Contractor of its
975 obligation to pay directly to the United States the Contractor's share of the Project Rates,
976 Charges, and Tiered Pricing Components except to the extent the Operating Non-Federal Entity
977 collects payments on behalf of the United States in accordance with the separate agreement
978 identified in subdivision (a) of Article 28 of this Contract.

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

985 (d) In the event the O&M of the Project facilities operated and maintained by
986 Operating Non-Federal Entity California Department of Water Resources is re-assumed by the
987 United States during the term of this Contract, the Contracting Officer shall so notify the
988 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
989 the portion of the Rates, Charges, and the Tiered Pricing Component to be paid by the
990 Contractor for Project Water under this Contract representing the O&M costs of the portion of
991 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
992 absence of written notification from the Contracting Officer to the contrary, pay the Rates,

993 Charges, and the Tiered Pricing Component specified in the revised Exhibit “B” directly to the
994 United States in compliance with Article 7 of this Contract.

995 OPERATION AND MAINTENANCE BY WESTLANDS WATER DISTRICT

996 28.2 (a) The O&M of a portion of the Project facilities which serve the
997 Contractor, and responsibility for funding a portion of the costs of such O&M, have been
998 transferred to the Westlands Water District, the Operating Non-Federal Entity Westlands Water
999 District by a separate contract (14-06-200-2020A) between the United States and Westlands
1000 Water District, the Operating Non-Federal Entity Westlands Water District. That above
1001 referenced contract shall not interfere with or affect the rights or obligations of the Contractor or
1002 the United States hereunder.

1003 (b) The Contracting Officer has previously notified the Contractor in writing
1004 that the O&M of a portion of the Project facilities which serve the Contractor has been
1005 transferred to the Operating Non-Federal Entity Westlands Water District. Therefore, the
1006 Contractor has entered into a separate agreement with the Operating Non-Federal Entity
1007 Westlands Water District providing the terms and conditions pursuant to which the Operating
1008 Non-Federal Entity Westlands Water District will deliver Project Water to the Contractor
1009 through the portion of the Project facilities operated and maintained by the Operating Non-
1010 Federal Entity Westlands Water District, including the amount(s) the Contractor is to pay the
1011 Operating Non-Federal Entity Westlands Water District for that service. The Contractor shall
1012 pay directly to the Operating Non-Federal Entity Westlands Water District , or to any successor
1013 approved by the Contracting Officer, all rates, charges, or assessments of any kind, including

1014 any assessment for reserve funds, described in the separate agreement referred to above or any
1015 amendatory or replacement agreement approved by the Contracting Officer, which the Operating
1016 Non-Federal Entity Westlands Water District and or such successor determines, sets, or
1017 establishes for the Operating Non-Federal Entity Westlands Water District or such successor.
1018 Such direct payments to the Operating Non-Federal Entity Westlands Water District or such
1019 successor shall not relieve the Contractor of its obligation to pay directly to the United States the
1020 Contractor's share of the Project Rates, Charges, and Tiered Pricing Components referred to in
1021 this Contract.

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

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

1035 Component specified in the revised Exhibit "B" directly to the United States in compliance with
1036 Article 7 of this Contract.

1037 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1038 29. The expenditure or advance of any money or the performance of any obligation of
1039 the United States under this Contract shall be contingent upon appropriation or allotment of
1040 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1041 obligations under this Contract. No liability shall accrue to the United States in case funds are
1042 not appropriated or allotted.

1043 BOOKS, RECORDS, AND REPORTS

1044 30. (a) The Contractor shall establish and maintain accounts and other books and
1045 records pertaining to administration of the terms and conditions of this Contract, including: the
1046 Contractor's financial transactions, water supply data, and Project land and right-of-way
1047 agreements; water use data; and other matters that the Contracting Officer may require. Reports
1048 thereon shall be furnished to the Contracting Officer in such form and on such date or dates as
1049 the Contracting Officer may require. Subject to applicable Federal laws and regulations, each
1050 party to this Contract shall have the right during office hours to examine and make copies of the
1051 other party's books and records relating to matters covered by this Contract.

1052 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1053 books, records, or other information shall be requested from the Contractor by the Contracting
1054 Officer unless such books, records, or information are reasonably related to the administration or
1055 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1056 time within which to provide the requested books, records, or information.

1057 (c) At such time as the Contractor provides information to the Contracting
1058 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1059 to the Operating Non-Federal Entity(ies).

1060 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1061 31. (a) The provisions of this Contract shall apply to and bind the successors and
1062 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1063 therein shall be valid until approved in writing by the Contracting Officer.

1064 (b) The assignment of any right or interest in this Contract by either party
1065 shall not interfere with the rights or obligations of the other party to this Contract absent the
1066 written concurrence of said other party.

1067 (c) The Contracting Officer shall not unreasonably condition or withhold
1068 approval of any proposed assignment.

1069 SEVERABILITY

1070 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1071 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1072 an association or other form of organization whose primary function is to represent parties to
1073 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1074 enforceability of a provision included in this Contract and said person, entity, association, or
1075 organization obtains a final court decision holding that such provision is legally invalid or
1076 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1077 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1078 final court decision identify by mutual agreement the provisions in this Contract which must be
1079 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1080 The time periods specified above may be extended by mutual agreement of the parties. Pending
1081 the completion of the actions designated above, to the extent it can do so without violating any

1082 applicable provisions of law, the United States shall continue to make the quantities of Project
1083 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1084 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1085 RESOLUTION OF DISPUTES

1086 33. Should any dispute arise concerning any provisions of this Contract, or the
1087 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1088 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1089 Officer referring any matter to Department of Justice, the party shall provide to the other party
1090 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1091 required where a delay in commencing an action would prejudice the interests of the party that
1092 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1093 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1094 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1095 United States may have.

1096 OFFICIALS NOT TO BENEFIT

1097 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1098 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1099 manner as other water users or landowners.

1100 CHANGES IN CONTRACTOR'S SERVICE AREA

1101 35. (a) While this Contract is in effect, no change may be made in the
1102 Contractor's Service Area by inclusion or exclusion of lands, dissolution, consolidation, merger,
1103 or otherwise, except upon the Contracting Officer's written consent.

1104 (b) Within 30 days of receipt of a request for such a change, the Contracting

1105 Officer will notify the Contractor of any additional information required by the Contracting
1106 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1107 schedule for timely completion of the process. Such process will analyze whether the proposed
1108 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1109 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1110 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1111 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1112 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1113 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1114 be paid in accordance with Article 25 of this Contract.

1115 FEDERAL LAWS

1116 36. By entering into this Contract, the Contractor does not waive its rights to contest
1117 the validity or application in connection with the performance of the terms and conditions of this
1118 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1119 the terms and conditions of this Contract unless and until relief from application of such Federal
1120 law or regulation to the implementing provision of the Contract is granted by a court of
1121 competent jurisdiction.

1122 NOTICES

1123 37. Any notice, demand, or request authorized or required by this Contract shall be
1124 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1125 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1126 California 97321, and on behalf of the United States, when mailed, postage prepaid, or delivered
1127 to the California Department of Fish and Game, Office of General Council, 1416 Ninth Street,
1128 12th Floor, Sacramento, California 95814. The designation of the addressee or the address may
1129 be changed by notice given in the same manner as provided in this Article for other notices.

1130 CONFIRMATION OF CONTRACT

1131 38. The Contractor, after the execution of this Contract, shall furnish to the
1132 Contracting Officer evidence that pursuant to the law of the State of California, the Contractor is
1133 a legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This
1134 contract shall not be binding on the United States until such evidence has been provided to the
1135 Contracting Officers satisfaction.

1136 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1137 and year first above written.

1138 THE UNITED STATES OF AMERICA

1139 By: _____
1140 Regional Director, Mid-Pacific Region
1141 Bureau of Reclamation

1142 (SEAL)

1143 CALIFORNIA DEPARTMENT OF FISH &
1144 GAME

1145 By: _____
1146 Director

1147 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-22-04 CA Fish and Game Final Draft
1148 LTRC with exhibits.doc

EXHIBIT B
CALIFORNIA DEPARTMENT OF FISH AND GAME
Water Rates and Charges]

| | <u>2004 Rates Per Acre-Foot</u> |
|--|---------------------------------|
| | <u>M&I Water</u> |
| COST-OF-SERVICE (COS) RATE: | |
| Capital Rate: | \$16.81 |
| O&M Rates: | |
| Water Marketing | \$5.01 |
| Storage | \$6.38 |
| Conveyance | * |
| Direct Pumping (Project Use Energy) | |
| Tracy Pumping | * |
| Deficit Rates: | |
| Non-Interest Bearing | |
| Interest Bearing | \$9.63 |
| CFO/PFR Adj Rate: ** | \$1.75 |
| TOTAL COST-OF-SERVICE RATES (COS): | \$39.58 |
| CONTRACT RATE: *** | \$13.14 |
| M&I FULL-COST RATE: | \$49.99 |
| Tiered Pricing Component >80% <=90% of Contract Total [Full Cost Rate - COS Rate /2]: | |
| Tiered Pricing Component >90% of Contract Total [Full Cost Rate - COS Rate]: | |
| SURCHARGES UNDER P.L. 102-575 TO RESTORATION FUND**** | \$15.64 |

* Conveyance and Conveyance Pumping Operation and maintenance costs were Removed for ratesetting purposes and are to be billed directly to the water authorities.

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

Contract No. 14-06-200-8033A-LTR1

*** Water deliveries are to be paid at the contract rate. Contract rate consists of the total O&M rate plus the CFO/PFR adjusted rate component.

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