

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.
14-06-200-4619A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
CITY OF AVENAL
PROVIDING FOR PROJECT WATER SERVICE
FROM SAN LUIS UNIT AND DELTA DIVISION

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-5
1	Definitions	5-9
2	Term of Contract.....	10-11
3	Water to be Made Available and Delivered to the Contractor	11-15
4	Time for Delivery of Water	15-16
5	Point of Diversion and Responsibility for Distribution of Water	16-18
6	Measurement of Water Within the Contractor's Service Area.....	18-20
7	Rates and Method of Payment for Water.....	20-26
8	Non-Interest Bearing Operation and Maintenance Deficits	26
9	Sales, Transfers, or Exchanges of Water	26-28
10	Application of Payments and Adjustments.....	28-29
11	Temporary Reductions--Return Flows	29-30
12	Constraints on the Availability of Water	30-31
13	Unavoidable Groundwater Percolation.....	31
14	Rules and Regulations	31
15	Water and Air Pollution Control.....	31
16	Quality of Water	32
17	Water Acquired by the Contractor Other Than From the United States	32-34
18	Opinions and Determinations	34-35

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
19	Coordination and Cooperation.....	35-36
20	Charges for Delinquent Payments	37
21	Equal Opportunity.....	37-38
22	General Obligation--Benefits Conditioned Upon Payment	38-39
23	Compliance With Civil Rights Laws and Regulations	39
24	Privacy Act Compliance	39
25	Contractor to Pay Certain Miscellaneous Costs	39-40
26	Water Conservation	40-41
27	Existing or Acquired Water or Water Rights.....	41-42
28	Operation and Maintenance by San Luis & Delta-Mendota Water Authority	42-44
28.1	Operation and Maintenance by California Department of Water Resources ..	44-45
29	Contingent on Appropriation or Allotment of Funds	46
30	Books, Records, and Reports.....	46
31	Assignment Limited--Successors and Assigns Obligated	46-47
32	Severability	47
33	Resolution of Disputes.....	48
34	Officials Not to Benefit.....	48
35	Changes in Contractor's Service Area.....	48-49
36	Federal Laws.....	49
37	Notices	49
38	Confirmation of Contract.....	49
	Signature Page	50

Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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.
14-06-200-4619A-LTR1

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

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 CITY OF AVENAL
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM SAN LUIS UNIT AND DELTA DIVISION

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

20 WITNESSETH, That:

EXPLANATORY RECITALS

21
22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for 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 the
27 San Joaquin River and their tributaries; and

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

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

34 (3.1) WHEREAS, on June 23, 1986, the Contractor assumed Contract
35 No. 14-06-200-4619A between the United States of America and Avenal Community Services
36 District; and

37 [4th] WHEREAS, the Contractor and the United States entered into Contract
38 No. 14-06-200-4619A, which established terms for the delivery to the Contractor of Project Water
39 from November 29, 1969, through December 31, 2008, hereinafter referred to as the Existing
40 Contract; and

41 [5th] WHEREAS, the United States and the Contractor have pursuant to Subsection
42 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a
43 binding agreement identified as Binding Agreement No. 14-06-200-4619A-BA, which sets out the
44 terms pursuant to which the Contractor agreed to renew the Existing Contract before the expiration
45 date after completion of the Programmatic Environmental Impact Statement (PEIS) and other
46 appropriate environmental documentation and negotiation of a renewal contract; and which also sets
47 out the consequences of a subsequent decision not to renew; and

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

53 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
54 environmental review necessary to provide for long-term renewal of the Existing Contract; and

55 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
56 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
57 State of California, for water service from the Central Valley Project; and

58 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
59 its obligations under the Existing Contract; and

60 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
61 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and

62 beneficial use and/or has demonstrated projected future demand for water use such that the
63 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
64 quantity of Project Water to be made available to it pursuant to this Contract; and

65 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon by
66 urban areas within California for more than 50 years, and is considered by the Contractor as an
67 essential portion of its water supply; and

68 [11.1] WHEREAS, at the time of execution of this Contract, the United States is the sole
69 source of water supply to the Contractor; and

70 [12th] WHEREAS, the economies of regions within the Central Valley Project, including the
71 Contractor's, depend upon the continued availability of water, including water service from the
72 Central Valley Project; and

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

82 [14th] WHEREAS, the parties intend by this Contract to develop a more cooperative

83 relationship in order to achieve their mutual goals; and

84 [14.1] WHEREAS, the mutual goals of the United States and the Contractor include: to
85 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
86 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
87 reasonable balance among competing demands for use of Project Water; and to comply with all
88 applicable environmental statutes, all consistent with the legal obligations of the United States
89 relative to the Project; and

90 [15th] WHEREAS, the Contractor has utilized or may utilize transfers, contract assignments,
91 rescheduling and conveyance of Project Water and non-Project water under this Contract as tools to
92 minimize the impacts of Conditions of Shortage and to maximize the beneficial use of water; and

93 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a disincentive
94 to the Contractor in continuing to carry out the beneficial activities set out in the Explanatory Recital
95 immediately above; and

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

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

100 DEFINITIONS

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

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

104 dates inclusive;

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

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

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

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

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

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

122 (g.1) "Delta Division Facilities" shall mean those existing and future Project
123 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
124 Tracy Pumping Plant, the O'Neill Forebay, the O'Neill Pumping/Generating Plant, and the San Luis

125 Reservoir, used to divert, store, and convey water to those Project Contractors entitled to receive
126 water conveyed through the Delta-Mendota Canal;

127 (h-i) Omitted;

128 (j) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting
129 Officer that shall amortize the expenditures for construction properly allocable to the Project
130 Irrigation or M&I functions, as appropriate, of facilities in service including all operation and
131 maintenance deficits funded, less payments, over such periods as may be required under Federal
132 Reclamation law, or applicable contract provisions. Interest will accrue on both the construction
133 expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or
134 from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be
135 calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full-Cost Rate
136 includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the
137 Rules and Regulations for the RRA;

138 (k-l) Omitted;

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

142 (n) Omitted;

143 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other than
144 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human
145 use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are

146 kept for personal enjoyment or water delivered to landholdings operated in units of less than
147 five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use
148 of water delivered to any such landholding is a use described in subdivision (m) of this Article;

149 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
150 delivery of M&I Water;

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

154 (r) “Operating Non-Federal Entity” shall mean the entity(ies), its (their)
155 successors or assigns, which has (have) the obligation to operate and maintain all or a portion of the
156 Delta Division Facilities pursuant to written agreement(s) with the United States. When this Contract
157 was entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis & Delta-Mendota
158 Water Authority, and with respect to San Luis Unit facilities, the California Department of Water
159 Resources;-s) “Project” shall mean the Central Valley Project owned by the United States and
160 managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

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

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

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

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

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

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

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

187 TERM OF CONTRACT

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

192 (b) Omitted.

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

201 (d) The Contracting Officer shall make a determination ten years after the date of
202 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
203 a conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation Project Act of
204 1939 can be accomplished. The Contracting Officer anticipates that during the term of this Contract,
205 all authorized project construction expected to occur will have occurred, and on that basis the

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

221 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

222 3. (a) During each Year, consistent with all applicable State water rights, permits,
223 and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this
224 Contract, the Contracting Officer shall make available for delivery to the Contractor 3,500 acre-feet
225 of water for M&I purposes. The Water Delivered to the Contractor in accordance with this
226 subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this

227 Contract.

228 (b) Because the capacity of the Central Valley Project to deliver Project Water has
229 been constrained in recent years and may be constrained in the future due to many factors including
230 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor
231 actually receiving the amount of water set out in subdivision (a) of this Article in any given Year is
232 uncertain. The Contracting Officer's most recent modeling referenced in the PEIS projected that
233 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
234 the most recent five years, the Recent Historic Average of water made available to the Contractor
235 was 3,199 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations
236 of the parties under any provision of this Contract.

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

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

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

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

265 (f) Following the declaration of Water Made Available under Article 4 of this
266 Contract, the Contracting Officer will make a determination whether Project Water, or other water
267 available to the Project, can be made available to the Contractor in addition to the Contract Total

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

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

287 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
288 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the

289 term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during
290 the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations
291 under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the
292 Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of Article 12 of
293 this Contract or applicable provisions of any subsequent renewal contracts.

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

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

305 TIME FOR DELIVERY OF WATER

306 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
307 announce the Contracting Officer's expected declaration of the Water Made Available. Such
308 declaration will be expressed in terms of both Water Made Available and the Recent Historic
309 Average and will be updated monthly, and more frequently if necessary, based on then-current

310 operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made
311 Available will be made. The Contracting Officer shall provide forecasts of Project operations and the
312 basis of the estimate, with relevant supporting information, upon the written request of the
313 Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer
314 shall provide the Contractor with the updated Recent Historic Average.

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

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

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

329 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

330 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this

331 Contract shall be delivered to the Contractor at Project facilities and any additional point or points of
332 delivery either on Project facilities or another location or locations mutually agreed to in writing by
333 the Contracting Officer and the Contractor.

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

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

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

351 (e) Absent a separate contrary written agreement with the Contractor, neither the
352 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
353 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
354 Contract beyond the point or points of delivery established pursuant to subdivision (a) of this Article.
355 The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
356 account of damage or claim of damage of any nature whatsoever for which there is legal
357 responsibility, including property damage, personal injury, or death arising out of or connected with
358 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such
359 point or points of delivery except for any damage or claim arising out of: (i) acts or omissions of the
360 Contracting Officer or any of its officers, employees, agents, and assigns, including any responsible
361 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage or
362 claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, and
363 assigns, including any responsible Operating Non-Federal Entity; (iii) negligence of the Contracting
364 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal
365 Entity(ies); or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated
366 by the United States or responsible Operating Non-Federal Entity(ies).

367 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

368 6. (a) The Contractor has established a measuring program satisfactory to the
369 Contracting Officer. The Contractor shall ensure that, unless the Contractor establishes an alternative
370 measurement program satisfactory to the Contracting Officer, all surface water delivered for M&I
371 purposes is measured at each M&I service connection. The water measuring devices or water

372 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The
373 Contractor shall be responsible for installing, operating, and maintaining and repairing all such
374 measuring devices and implementing all such water measuring methods at no cost to the United
375 States. The Contractor shall use the information obtained from such water measuring devices or
376 water measuring methods to ensure its proper management of the water; to bill water users for water
377 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by
378 customer class as defined in the Contractor's water conservation plan provided for in Article 26 of
379 this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing
380 and collecting any charges, assessments, or other revenues authorized by California law. The
381 Contractor shall include a summary of all its annual surface water deliveries in the annual report
382 described in subdivision (c) of Article 26.

383 (b) To the extent the information has not otherwise been provided, upon execution
384 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing
385 the measurement devices or water measuring methods being used or to be used to implement
386 subdivision (a) of this Article and identifying the M&I service connections or alternative
387 measurement programs approved by the Contracting Officer, at which such measurement devices or
388 water measuring methods are being used, and, if applicable, identifying the locations at which such
389 devices and/or methods are not yet being used including a time schedule for implementation at such
390 locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the
391 adequacy and necessary modifications, if any, of the measuring devices or water measuring methods
392 identified in the Contractor's report and if the Contracting Officer does not respond in such time, they

393 shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring
394 devices or methods are inadequate, the parties shall within 60 days following the Contracting
395 Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall
396 modify said measuring devices and/or measuring methods as required by the Contracting Officer to
397 ensure compliance with subdivision (a) of this Article.

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

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

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

407 RATES AND METHOD OF PAYMENT FOR WATER

408 7. (a) The Contractor shall pay the United States as provided in this Article for all
409 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance
410 with: (i) the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies
411 shall be amended, modified, or superseded only through a public notice and comment procedure; (ii)
412 applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other
413 applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds

414 transfer, or any other mechanism as may be agreed to in writing by the Contractor and the
415 Contracting

416 Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon
417 execution of this Contract are set forth in Exhibit "B," as may be revised annually.

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

420 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
421 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
422 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
423 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
424 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
425 Officer shall notify the Contractor in writing of the Charges to be in effect during the period
426 October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and
427 such notification shall revise Exhibit "B."

428 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
429 make available to the Contractor an estimate of the Rates and Tiered Pricing Components for Project
430 Water for the following Year and the computations and cost allocations upon which those Rates are
431 based. The Contractor shall be allowed not less than two months to review and comment on such
432 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
433 shall provide the Contractor with the final Rates and Tiered Pricing Components to be in effect for

434 the upcoming Year, and such notification shall revise Exhibit “B.”

435 (c) At the time the Contractor submits the initial schedule for the delivery of
436 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
437 shall make an advance payment to the United States equal to the total amount payable pursuant to the
438 applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
439 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
440 of the first month and before the end of each calendar month thereafter, the Contractor shall make an
441 advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the
442 Water Scheduled to be delivered pursuant to this Contract during the second month immediately
443 following. Adjustments between advance payments for Water Scheduled and payments at Rates due
444 for Water Delivered shall be made before the end of the following month; Provided, That any revised
445 schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the
446 amount of Water Delivered pursuant to this Contract during any month shall be accompanied with
447 appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered
448 to the Contractor in advance of such payment. In any month in which the quantity of Water
449 Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid
450 for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and
451 until an advance payment at the Rates then in effect for such additional Project Water is made. Final
452 adjustment between the advance payments for the Water Scheduled and payments for the quantities
453 of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
454 but no later than April 30th of the following Year, or 60 days after the delivery of Project Water

455 “rescheduled” under subdivision (g) of Article 3 of this Contract if such water is not delivered by the
456 last day of February.

457 (d) The Contractor shall also make a payment in addition to the Rate(s) in
458 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
459 appropriate Tiered Pricing Component then in effect, before the end of the month of delivery. The
460 payments shall be consistent with the quantities of M&I Water Delivered as shown in the water
461 delivery report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is
462 no Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
463 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
464 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
465 adjustment of payments due to the United States for Charges for the next month. Any amount to be
466 paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant
467 to Article 20 of this Contract.

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

474 (f) Payments to be made by the Contractor to the United States under this

475 Contract may be paid from any revenues available to the Contractor.

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

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

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

495 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed

496 80 percent of the Contract Total, then before the end of the month following the month of delivery
497 the Contractor shall make an additional payment to the United States equal to the applicable Tiered
498 Pricing Component. The Tiered Pricing Component for the amount of Water Delivered in excess of
499 80 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
500 the one-half of the difference between the Rate established under subdivision (a) of this Article and
501 the M&I Full Cost Water Rate. The Tiered Pricing Component for the amount of Water Delivered
502 which exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate
503 established under subdivision (a) of this Article and (ii) the M&I Full Cost Water Rate.

504 (2) Omitted.

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

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

517 change.

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

522 (m) Omitted.

523 (n) The Contractor asserts that it is not legally obligated to pay any Project deficits
524 claimed by the United States to have accrued as of the date of this Contract or deficit-related interest
525 charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or
526 remedies it may have with respect to such disputed issues. Notwithstanding the execution of this
527 Contract and payments made hereunder, the Contractor may challenge in the appropriate
528 administrative or judicial forums: (1) the existence, computation, or imposition of any deficit
529 charges accruing during the term of the Existing Contract; (2) interest accruing on any such deficits;
530 (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United
531 States of payments made by the Contractor under its Existing Contract; and (5) the application of
532 such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to
533 the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of
534 these issues, and credits for payments heretofore made, provided that the basis for such ruling is
535 applicable to the Contractor.

536 8. Omitted.

537 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

558 determination shall be reviewed every five years and updated, as necessary, prior to the expiration of
559 the then existing five-year period. All subsequent environmental documentation shall include an
560 alternative to evaluate not less than the quantity of Project Water historically transferred within the
561 same geographical area.

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

572 APPLICATION OF PAYMENTS AND ADJUSTMENTS

573 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
574 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
575 the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000
576 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at
577 the option of the Contractor, may be credited against amounts to become due to the United States by
578 the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole

579 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the
580 Project Water supply provided for herein. All credits and refunds of overpayments shall be made
581 within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such
582 overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year
583 in which the overpayment was made.

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

589 TEMPORARY REDUCTIONS--RETURN FLOWS

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

595 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may temporarily
596 discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the
597 purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
598 facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but so far

599 as feasible the Contracting Officer or Operating Non-Federal Entity(ies) will give the Contractor due
600 notice in advance of such temporary discontinuance or reduction, except in case of emergency, in
601 which case no notice need be given; Provided, That the United States shall use its best efforts to
602 avoid any discontinuance or reduction in such service. Upon resumption of service after such
603 reduction or discontinuance, and if requested by the Contractor, the United States will, if possible,
604 deliver the quantity of Project Water which would have been delivered hereunder in the absence of
605 such discontinuance or reduction.

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

612 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

618 (b) If there is a Condition of Shortage because of errors in physical operations of
619 the Project, drought, other physical causes beyond the control of the Contracting Officer or actions

620 taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a)
621 of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
622 agents, or employees for any damage, direct or indirect, arising therefrom.

623 (c) Omitted.

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

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

637 13. Omitted

638 RULES AND REGULATIONS

639 14. The parties agree that the delivery of M&I Water or use of Federal facilities pursuant
640 to this Contract is subject to the applicable provisions of Federal Reclamation law and any applicable

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

642 WATER AND AIR POLLUTION CONTROL

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

646
647 QUALITY OF WATER

648 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to
649 this Contract shall be operated and maintained to enable the United States to deliver Project Water to
650 the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act
651 of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat.
652 3050) or other existing Federal laws. The United States is under no obligation to construct or furnish
653 water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor
654 pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the
655 Contractor pursuant to this Contract.

656 (b) The O&M of Project facilities shall be performed in such manner as is
657 practicable to maintain the quality of raw water made available through such facilities at the highest
658 level reasonably attainable as determined by the Contracting Officer.

659 WATER ACQUIRED BY THE CONTRACTOR
660 OTHER THAN FROM THE UNITED STATES

661 17. (a) Omitted.

662 (b) Water or water rights now owned or hereafter acquired by the Contractor,
663 other than from the United States, may be stored, conveyed, and/or diverted through Project facilities,
664 subject to the completion of appropriate environmental documentation, with the approval of the

665 Contracting Officer and the execution of any contract determined by the Contracting Officer to be
666 necessary, consistent with the following provisions:

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

674 (2) Delivery of such non-Project water in and through Project facilities
675 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as
676 determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other
677 Project water service contractors; (iii) interfere with the delivery of contractual water entitlements to
678 any other Project water service contractors; or (iv) interfere with the physical maintenance of the
679 Project facilities.

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

685 or indirect, resulting from the acts(s) the Contractor or its officers, employees, agents, or assigns, in
686 (i) extracting or diverting non-Project water from any source, or (ii) diverting such non-Project water
687 into Project facilities.

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

691 (5) After Project purposes are met, as determined by the Contracting
692 Officer, the United States and the Project Contractors entitled to Project Water from Delta Division
693 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be available
694 by the Contracting Officer for conveyance and transportation of non-Project water prior to any such
695 remaining capacity being made available to non-Project contractors. Other Project Contractors shall
696 have a second priority to any remaining capacity of facilities declared to be available by the
697 Contracting Officer for conveyance and transportation of non-Project water prior to any such
698 remaining capacity being made available to non-Project contractors.

699 OPINIONS AND DETERMINATIONS

700 18. (a) Where the terms of this Contract provide for actions to be based upon the
701 opinion or determination of either party to this Contract, said terms shall not be construed as
702 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
703 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
704 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or
705 unreasonable opinion or determination. Each opinion or determination by either party shall be

706 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
707 affect or alter the standard of judicial review applicable under Federal law to any opinion or
708 determination implementing a specific provision of Federal law embodied in statute or regulation.

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

714 COORDINATION AND COOPERATION

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

724 (b) Within 120 days following the effective date of this Contract, the Contractor,
725 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
726 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be

727 amended as necessary separate and apart from this Contract. The goal of this process shall be to
728 provide, to the extent practicable, the means of mutual communication and interaction regarding
729 significant decisions concerning Project operation and management on a real-time basis.

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

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

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

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

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

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

746 (d) Without limiting the contractual obligations of the Contracting Officer under
747 the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the

748 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
749 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
750 physical integrity of structures or facilities.

751 CHARGES FOR DELINQUENT PAYMENTS

752 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
753 on delinquent installments or payments. When a payment is not received by the due date, the
754 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
755 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
756 charge to cover additional costs of billing and processing the delinquent payment. When a payment
757 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of
758 six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
759 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
760 payment.

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

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

769 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

813 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

814 22. (a) The obligation of the Contractor to pay the United States as provided in this

815 Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation
816 may be distributed among the Contractor's water users and notwithstanding the default of individual
817 water users in their obligations to the Contractor.

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

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

826 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

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

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

845 24. Omitted.

846 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

855 WATER CONSERVATION

856 26. (a) Prior to the delivery of water provided from or conveyed through Federally
857 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
858 implementing an effective water conservation and efficiency program based on the Contractor's water
859 conservation plan that has been determined by the Contracting Officer to meet the conservation and
860 efficiency criteria for evaluating water conservation plans established under Federal law. The water
861 conservation and efficiency program shall contain definite water conservation objectives, appropriate
862 economically feasible water conservation measures, and time schedules for meeting those objectives.
863 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
864 continued implementation of such water conservation program. In the event the Contractor's water
865 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
866 this Article 26 have not yet been determined by the Contracting Officer to meet such criteria, due to

867 circumstances which the Contracting Officer determines are beyond the control of the Contractor,
868 water deliveries shall be made under this Contract so long as the Contractor diligently works with the
869 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter the
870 Contractor immediately begins implementing its water conservation and efficiency program in
871 accordance with the time schedules therein.

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

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

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

886 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall

887 be described in the Contractor's water conservation plan.

888 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

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

898 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
899 responsibility for funding a portion of the costs of such O&M, have been transferred to the San Luis
900 & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement (8-07-
901 20-X0354) between the United States and the Operating Non-Federal Entity San Luis & Delta-
902 Mendota Water Authority. That separate agreement shall not interfere with or affect the rights or
903 obligations of the Contractor or the United States hereunder.

904 (b) The Contracting Officer has previously notified the Contractor in writing that
905 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
906 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
907 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water
908 Authority, or to any successor approved by the Contracting Officer under the terms and conditions of

909 the separate agreement between the United States and the Operating Non-Federal Entity San Luis &
910 Delta-Mendota Water Authority, described in subdivision (a) of this Article, all rates, charges, or
911 assessments of any kind, including any assessment for reserve funds, which the Operating
912 Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor determines, sets,
913 or establishes for the O&M of the portion of the Project facilities operated and maintained by the
914 Operating Non-Federal Entity or such successor. Such direct payments to the Operating Non-Federal
915 Entity San Luis & Delta-Mendota Water Authority, or such successor shall not relieve the Contractor
916 of its obligation to pay directly to the United States the Contractor's share of the Project Rates,
917 Charges, and Tiered Pricing Component(s) except to the extent the Operating Non-Federal Entity
918 collects payments on behalf of the United States in accordance with the separate agreement identified
919 in subdivision (a) of this Article.

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

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

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

935 OPERATION AND MAINTENANCE BY CALIFORNIA DEPARTMENT OF WATER
936 RESOURCES

937 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor, and
938 responsibility for funding a portion of the costs of such O&M, have been transferred to the California
939 Department of Water Resources, an Operating Non-Federal Entity by a separate agreement (14-06-
940 200-9755) between the United States and Operating Non-Federal Entity California Department of
941 Water Resources. This separate agreement shall not interfere with or affect the rights or obligations
942 of the Contractor or the United States hereunder.

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

952 for the O&M of the portion of the Project facilities operated and maintained by Operating Non-
953 Federal Entity California Department of Water Resources, or such successor. Such direct payments
954 to Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or such successor shall
955 not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share
956 of the Project Rates, Charges, and Tiered Pricing Components except to the extent the Operating
957 Non-Federal Entity collects payments on behalf of the United States in accordance with the separate
958 agreement identified in subdivision (a) of Article 28 of this Contract.

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

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

973 specified in the revised Exhibit “B” directly to the United States in compliance with Article 7 of this
974 Contract.

975 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

976 29. The expenditure or advance of any money or the performance of any obligation of the
977 United States under this Contract shall be contingent upon appropriation or allotment of funds.
978 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
979 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
980 or allotted.

981 BOOKS, RECORDS, AND REPORTS

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

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

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

998 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1021 Contract available to the Contractor pursuant to the provisions of this Contract which were not found
1022 to be legally invalid or unenforceable in the final court decision.

1023 RESOLUTION OF DISPUTES

1024 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1025 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1026 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1027 any matter to Department of Justice, the party shall provide to the other party 30 days' written notice
1028 of the intent to take such action; Provided, That such notice shall not be required where a delay in
1029 commencing an action would prejudice the interests of the party that intends to file suit. During the
1030 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in an attempt
1031 to resolve the dispute. Except as specifically provided, nothing herein is intended to waive or abridge
1032 any right or remedy that the Contractor or the United States may have.

1033 OFFICIALS NOT TO BENEFIT

1034 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1035 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1036 manner as other water users or landowners.

1037 CHANGES IN CONTRACTOR'S SERVICE AREA

1038 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1039 Service Area by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1040 except upon the Contracting Officer's written consent.

1041 (b) Within 30 days of receipt of a request for such a change, the Contracting
1042 Officer will notify the Contractor of any additional information required by the Contracting Officer
1043 for processing said request, and both parties will meet to establish a mutually agreeable schedule for

1044 timely completion of the process. Such process will analyze whether the proposed change is likely
1045 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of
1046 the Contractor to pay for Project Water furnished under this Contract or to pay for any
1047 Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on
1048 any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall
1049 comply with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by the
1050 Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of this
1051 Contract.

1052 FEDERAL LAWS

1053 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1054 validity or application in connection with the performance of the terms and conditions of this
1055 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1056 terms and conditions of this Contract unless and until relief from application of such Federal law or
1057 regulation to the implementing provision of the Contract is granted by a court of competent
1058 jurisdiction.

1059 NOTICES

1060 37. Any notice, demand, or request authorized or required by this Contract shall be
1061 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1062 to the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1063 97321, and on behalf of the United States, when mailed, postage prepaid, or delivered to the City of
1064 Avenal, 919 Skyline Boulevard, Avenal, California 93204. The designation of the addressee or the
1065 address may be changed by notice given in the same manner as provided in this Article for other
1066 notices.

1067 CONFIRMATION OF CONTRACT

1068 38. The Contractor, after the execution of this Contract, shall furnish to the Contracting
1069 Officer evidence that pursuant to the law of the State of California, the Contractor is a legally
1070 constituted entity and the Contract is lawful, valid, and binding on the Contractor. This Contract
1071 shall not be binding on the United States until such evidence has been provided to the Contracting
1072 Officers satisfaction.

1073 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
year first above written.

1074 THE UNITED STATES OF AMERICA

1075 By: _____
1076 Regional Director, Mid-Pacific Region
1077 Bureau of Reclamation

1078 (SEAL)

1079 Approved as to form:

1080 _____
1081 City Attorney

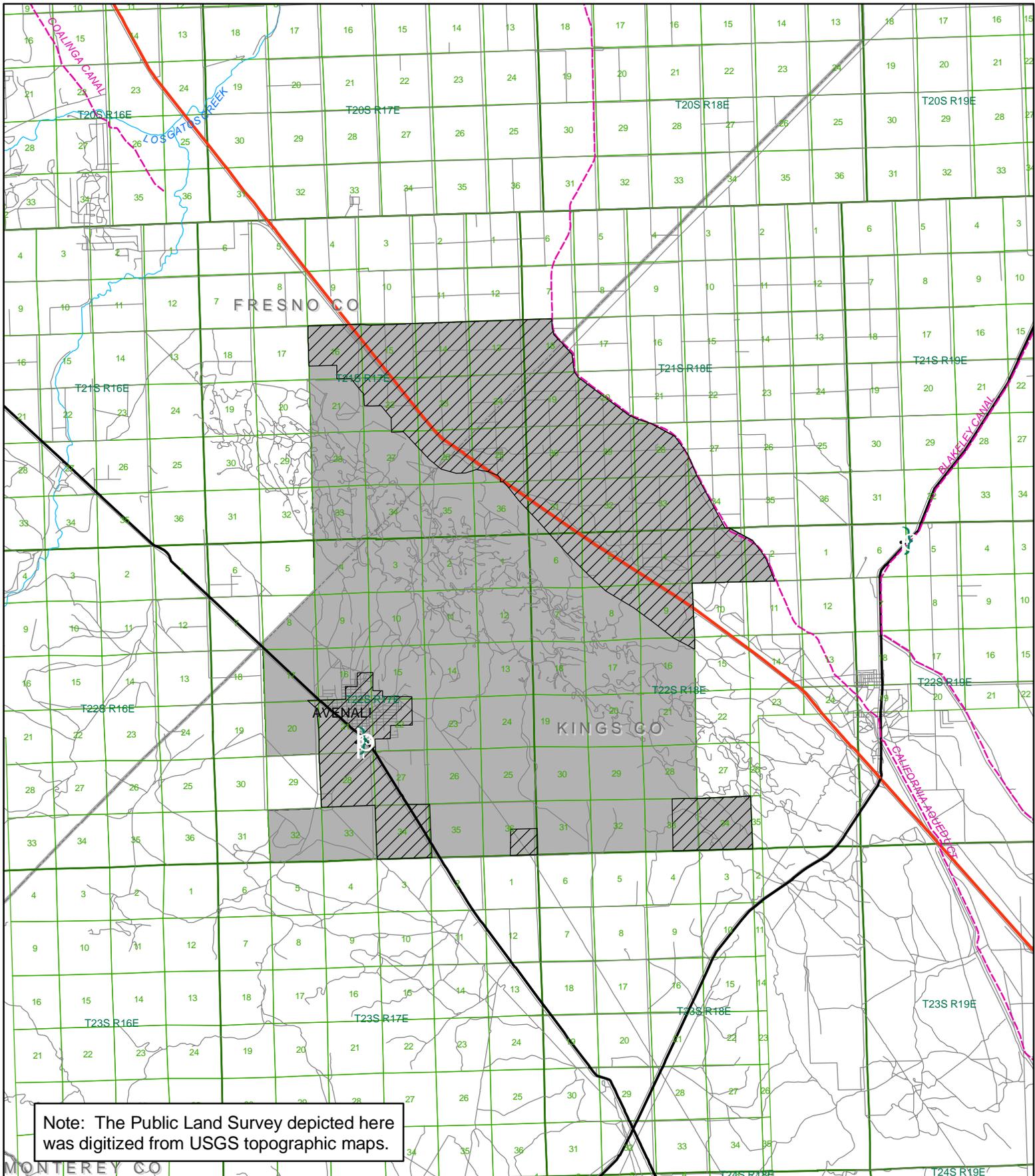
1082 CITY OF AVENAL

1083 By: _____
1084 Mayor

1085 Attest:

1086 By: _____
1087 City Clerk

1088 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-22-04 City of Avenal Final Draft
1089 LTRC's with exhibits.



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

City of Avenal

Contract No. 14-06-200-4619A-LTR1
Exhibit A



- District Boundary
- Contractor's Service Area



EXHIBIT B
CITY OF AVENAL
Water Rates and Charges

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

	<u>2004 Rates Per Acre-Foot</u>
	<u>M&I Water</u>
COST-OF-SERVICE (COS) RATE:	
Capital Rate:	\$26.32
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	\$54.73
CFO/PFR Adj Rate: **	\$1.95
TOTAL COS RATE:	\$94.39
CONTRACT RATE: ***	\$16.45
M&I FULL-COST RATE:	\$110.84
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.

*** 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).