

M&I
October 22, 2004 Draft
September 30, 2004 Draft
August 19, 2004 Draft
January 5, 2004 Draft
R.O. Draft 9-23-03 CVP M&I Form of Contract
R.O. 8-19-04 San Luis Unit Form of Contract
Contract No.
14-06-200-4173A-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 COALINGA
PROVIDING FOR PROJECT WATER SERVICE
FROM SAN LUIS UNIT AND DELTA DIVISION

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Exhibit A - Map of Contractor's Service Area

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

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

21 WITNESSETH, That:

EXPLANATORY RECITALS

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[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, (Project) California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

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

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

[4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-4173A, which established terms for the delivery to the Contractor of Project Water from October 28, 1968 through December 31, 2008, hereinafter referred to as the Existing Contract; and

[5th] WHEREAS, the United States and the Contractor have pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a binding agreement identified as Binding Agreement No. 14-06-200-4173A-BA, which sets out the terms pursuant to which the Contractor agreed to renew the Existing Contract before the expiration date after completion of the Programmatic Environmental Impact Statement (PEIS)

44 and other appropriate environmental documentation and negotiation of a renewal contract; and
45 which also sets out the consequences of a subsequent decision not to renew: and

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

51 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
52 environmental review necessary to provide for long-term renewal of the Existing Contract; and

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

56 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
57 of its obligations under the Existing Contract; and

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

64 [11th] WHEREAS, water obtained from the Central Valley Project has been relied upon
65 by urban areas within California for more than fifty (50) years, and is considered by the

66 Contractor as an essential portion of its water supply; and

67 [11.1] WHEREAS, at the time of execution of this Contract, the United States is the sole
68 source of water supply to the Contractor; and

69 [12th] WHEREAS, the economies of regions within the Central Valley Project,
70 including the Contractor-s, depend upon the continued availability of water, including water
71 service from the Central Valley Project; and

72 [13th] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28,
73 2000, the United States and the State of California adopted a general target of continuously
74 improving Delta water quality for all uses. The CALFED Agencies= target for providing safe,
75 reliable, and affordable drinking water in a cost-effective way, is to achieve either: (a) average
76 concentrations at Clinton Forebay and other southern and central Delta drinking water intakes of
77 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of public health
78 protection using a cost-effective combination of alternative source waters, source control and
79 treatment technologies; and

80 [14th] WHEREAS, the parties intend by this Contract to develop a more cooperative
81 relationship in order to achieve their mutual goals; and

82 [14.1] WHEREAS, the mutual goals of the United States and the Contractor include: to
83 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
84 repayment of the Project as required by law; to guard reasonably against Project Water
85 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
86 and to comply with all applicable environmental statutes, all consistent with the legal obligations
87 of the United States relative to the Project; and

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

92 [15.1] WHEREAS, the parties desire and intend that this Contract not provide a
93 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
94 Explanatory Recital immediately above; and

95 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
96 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

99 DEFINITIONS

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

102 (a) ACalendar Year@ shall mean the period January 1 through December 31,
103 both dates inclusive;

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

107 (c) ACondition of Shortage@ shall mean a condition respecting the Project

108 during any Year such that the Contracting Officer is unable to deliver sufficient water to meet
109 the Contract Total;

110 (d) AContracting Officer@ shall mean the Secretary of the Interior-s duly
111 authorized representative acting pursuant to this Contract or applicable Federal Reclamation law
112 or regulation;

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

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

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

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

126 (h-i) Omitted;

127 (j) "Full Cost Rate" shall mean an annual rate, as determined by the
128 Contracting Officer that shall amortize the expenditures for construction properly allocable to the

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

137 (k-l) Omitted;

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

141 (n) Omitted;

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

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

151 (q) "Operation and Maintenance" or "O&M" shall mean normal and
152 reasonable care, control, operation, repair, replacement (other than Capital replacement), and
153 maintenance of 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
156 the Delta Division Facilities pursuant to written agreement(s) with the United States. When this
157 Contract was entered into, the Operating Non-Federal Entity(ies) was (were) the San Luis &
158 Delta-Mendota Water Authority and, with respect to the San Luis Unit facilities, the California
159 Department of Water Resources, and Westlands Water District;

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

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

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

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

171 (w) "Recent Historic Average" shall mean the most recent five year average of

172 the final forecast of Water Made Available to the Contractor pursuant to this Contract or its
173 preceding contract(s);

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

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

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

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

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

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

189 TERM OF CONTRACT

190 2. (a) This Contract shall be effective March 1, 2005, through February 28,
191 2045. This Contract, when effective, supercedes the Existing Contract. In the event the

192 Contractor wishes to renew the Contract beyond February 28, 2045, the Contractor shall submit
193 a request for renewal in writing to the Contracting Officer no later than two years prior to the
194 date this Contract expires.

195 (b) Omitted.

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

204 (d) The Contracting Officer shall make a determination 10 years after the date
205 of execution of this Contract, and every 5 years thereafter during the term of this Contract, of
206 whether a conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation
207 Project Act of 1939 can be accomplished. The Contracting Officer anticipates that during the
208 term of this contract, all authorized project construction expected to occur will have occurred,
209 and on that basis the Contracting Officer agrees upon such completion to allocate all costs that
210 are properly assignable to the Contractor, and agrees further that, at any time after such
211 allocation is made, and subject to satisfaction of the conditions set out in this subdivision of this
212 Article, this contract shall, at the request of the Contractor, be converted to a contract under said

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

225 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE ONTRACTOR

226 3. (a) During each Year, consistent with all applicable State water rights,
227 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
228 this Contract, the Contracting Officer shall make available for delivery to the Contractor 10,000
229 acre-feet of water for M&I purposes. The Water Delivered to the Contractor in accordance with
230 this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
231 this Contract.

232 (b) Because the capacity of the Central Valley Project to deliver Project
233 Water has been constrained in recent years and may be constrained in the future due to many
234 factors including hydrologic conditions and implementation of Federal and State laws, the

235 likelihood of the Contractor actually receiving the amount of water set out in subdivision (a) of
236 this Article in any given Year is uncertain. The Contracting Officer=s most recent modeling
237 referenced in the PEIS projected that Contract Total set forth in this Contract will not be
238 available to the Contractor in many years. During the most recent five years, the Recent Historic
239 Average of water made available to the Contractor was 9,140 acre-feet. Nothing in subdivision
240 (b) of this Article shall affect the rights and obligations of the parties under any provision of this
241 Contract.

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

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

257 Service Area may be permitted upon written approval of the Contracting Officer, which approval
258 will be based upon environmental documentation, Project Water rights, and Project operational
259 concerns. The Contracting Officer will address such concerns in regulations, policies, or
260 guidelines.

261 (e) The Contractor shall comply with requirements applicable to the
262 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
263 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act (ESA) of 1973,
264 as amended, that are within the Contractor's legal authority to implement. The Existing
265 Contract, which evidences in excess of 37 years of diversions for M&I purposes of the quantities
266 of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
267 developing an appropriate baseline for the biological assessment prepared pursuant to the ESA
268 and any other needed environmental review. Nothing herein shall be construed to prevent the
269 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
270 respect to any biological opinion or other environmental documentation referred to in this
271 Article.

272 (f) Following the declaration of Water Made Available under Article 4 of this
273 Contact, the Contracting Officer will make a determination whether Project Water, or other
274 water available to the Project, can be made available to the Contractor in addition to the Contract
275 Total under Article 3 of this Article during the Year without adversely impacting other Project
276 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
277 Contractor prior to making such a determination. If the Contracting Officer determines that
278 Project Water, or other water available to the Project, can be made available to the Contractor,

279 the Contracting Officer will announce the availability of such water and shall so notify the
280 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
281 and other Project Contractors capable of taking such water to determine the most equitable and
282 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
283 water, the Contracting Officer shall make such water available to the Contractor in accordance
284 with applicable statutes, regulations, guidelines, and policies.

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

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

301 subsequent renewal contracts.

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

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

314 TIME FOR DELIVERY OF WATER

315 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer
316 shall announce the Contracting Officer-s expected declaration of the Water Made Available.
317 Such declaration will be expressed in terms of both Water Made Available and the Recent
318 Historic Average and will be updated monthly, and more frequently if necessary, based on then-
319 current operational and hydrologic conditions and a new declaration with changes, if any, to the
320 Water Made Available will be made. The Contracting Officer shall provide forecasts of Project
321 operations and the basis of the estimate, with relevant supporting information, upon the written
322 request of the Contractor. Concurrently with the declaration of the Water Made Available, the

323 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

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

339 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

344 (b) The Contracting Officer, either directly or indirectly through its written

345 agreements(s) with the Operating Non-Federal Entity(ies), shall make all reasonable efforts to
346 maintain sufficient flows and levels of water in the Project facilities to deliver Project Water to
347 the Contractor at the point or points of delivery established pursuant to subdivision (a) of this
348 Article.

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

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

363 (e) Absent a separate contrary written agreement with the Contractor, neither
364 the Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the
365 control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor
366 pursuant to this Contract beyond the point or points of delivery established pursuant to

367 subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers,
368 employees, agents, and assigns on account of damage or claim of damage of any nature
369 whatsoever for which there is legal responsibility, including property damage, personal injury, or
370 death arising out of or connected with the control, carriage, handling, use, disposal, or
371 distribution of such Water Delivered beyond such point or points of delivery except for any
372 damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its
373 officers, employees, agents, and assigns, including any responsible Operating Non-Federal
374 Entity(ies), with the intent of creating the situation resulting in any damage or claim; (ii) willful
375 misconduct of the Contracting Officer or any of its officers, employees, agents, and assigns,
376 including any responsible Operating Non-Federal Entity; (iii) negligence of the Contracting
377 Officer or any of its officers, employees, agents, and assigns including the Operating Non-
378 Federal Entity(ies); or (iv) damage or claims resulting from a malfunction of facilities owned
379 and/or operated by the United States or responsible Operating Non-Federal Entity(ies).

380 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

381 6. (a) The Contractor has established a measuring program satisfactory to the Contracting
382 Officer. The Contractor shall ensure that, unless the Contractor establishes an alternative
383 measurement program satisfactory to the Contracting Officer, all surface water delivered for
384 M&I purposes is measured at each M&I service connection. The water measuring devices or
385 water measuring methods of comparable effectiveness must be acceptable to the Contracting
386 Officer. The Contractor shall be responsible for installing, operating, and maintaining and
387 repairing all such measuring devices and implementing all such water measuring methods at no
388 cost to the United States. The Contractor shall use the information obtained from such water

389 measuring devices or water measuring methods to ensure its proper management of the water; to
390 bill water users for water delivered by the Contractor; and, if applicable, to record water
391 delivered for M&I purposes by customer class as defined in the Contractor's water conservation
392 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall
393 preclude the Contractor from establishing and collecting any charges, assessments, or other
394 revenues authorized by California law. The Contractor shall include a summary of all its annual
395 surface water deliveries in the annual report described in subdivision (c) of Article 26.

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

410 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
411 compliance with subdivision (a) of this Article.

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

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

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

421 RATES AND METHOD OF PAYMENT FOR WATER

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

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

434 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
435 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
436 period October 1, of the current Calendar Year, through September 30, of the following Calendar
437 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
438 to review and comment on such estimates. On or before September 15 of each Calendar Year,
439 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect
440 during the period October 1 of the current Calendar Year, through September 30, of the
441 following Calendar Year, and such notification shall revise Exhibit "B."

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

450 (c) At the time the Contractor submits the initial schedule for the delivery of
451 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
452 Contractor shall make an advance payment to the United States equal to the total amount payable
453 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water

454 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
455 Year. Before the end of the first month and before the end of each calendar month thereafter, the
456 Contractor shall make an advance payment to the United States, at the Rate(s) set under
457 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
458 during the second month immediately following. Adjustments between advance payments for
459 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
460 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
461 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
462 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
463 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
464 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
465 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
466 additional Project Water shall be delivered to the Contractor unless and until an advance
467 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
468 between the advance payments for the Water Scheduled and payments for the quantities of
469 Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable
470 but no later than April 30th of the following Year, or sixty (60) days after the delivery of Project
471 Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not
472 delivered by the last day of February.

473 (d) The Contractor shall also make a payment in addition to the Rate(s) in
474 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
475 appropriate Tiered Pricing Component then in effect, before the end of the month of delivery.

476 The payments shall be consistent with the quantities of M&I Water Delivered as shown in the
477 water delivery report for the subject month prepared by the Operating Non-Federal Entity(ies)
478 or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The water delivery
479 report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing
480 Component for Water Delivered. Adjustment for overpayment or underpayment of Charges
481 shall be made through the adjustment of payments due to the United States for Charges for the
482 next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing
483 Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

496 (h) The Contracting Officer shall keep its accounts pertaining to the
497 administration of the financial terms and conditions of its long-term contracts, in accordance

498 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
499 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
500 Contractor a detailed accounting of all Project and Contractor expense allocations, the
501 disposition of all Project and Contractor revenues, and a summary of all water delivery
502 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
503 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

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

520 of this Article and (ii) the M&I Full Cost Water Rate.

521 (2) Omitted.

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

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

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

540 (m) Omitted

541 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is
542 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
543 of the date of this Contract or deficit-related interest charges thereon. By entering into this
544 Contract, the Contractor does not waive any legal rights or remedies that it may have with
545 respect to such disputed issues. Notwithstanding the execution of this Contract and payments
546 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
547 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
548 term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2)
549 interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in
550 the Rates; (4) the application by the United States of payments made by the Contractor under its
551 Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the
552 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
553 shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project
554 M&I contractor on any of these issues, and credits for payments heretofore made, provided that
555 the basis for such ruling is applicable to the Contractor.

556 8. Omitted.

557 SALES, TRANSFERS, OR EXCHANGES OF WATER

558 9. (a) The right to receive Project Water provided for in this Contract may be
559 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
560 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
561 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
562 Water under this Contract may take place without the prior written approval of the Contracting

563 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
564 exchanges shall be approved absent all appropriate environmental documentation, including but
565 not limited to documents prepared pursuant to the NEPA and the ESA. Such environmental
566 documentation should include, as appropriate, an analysis of groundwater impacts and economic
567 and social effects, including environmental justice, of the proposed water transfers on both the
568 transferor and transferee.

569 (b) In order to facilitate efficient water management by means of water
570 transfers of the type historically carried out among Project Contractors located within the same
571 geographical area and to allow the Contractor to participate in an accelerated water transfer
572 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
573 all necessary environmental documentation including, but not limited to documents prepared
574 pursuant to the NEPA and the ESA analyzing annual transfers within such geographical areas
575 and the Contracting Officer shall determine whether such transfers comply with applicable law.
576 Following the completion of the environmental documentation, such transfers addressed in such
577 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
578 require prior written approval by the Contracting Officer. Such environmental documentation
579 and the Contracting Officer's compliance determination shall be reviewed every five years and
580 updated, as necessary, prior to the expiration of the then existing five year period. All
581 subsequent environmental documentation shall include an alternative to evaluate not less than
582 the quantity of Project Water historically transferred within the same geographical area.

583 (c) For a water transfer to qualify under subdivision (b) of this Article, such
584 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three (3)

585 years, for M&I use, groundwater recharge, groundwater banking, or similar groundwater
586 activities, surface water storage, or fish and wildlife resources; not lead to land conversion; and
587 be delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur
588 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
589 through existing facilities with no new construction or modifications to facilities and be between
590 existing Project Contractors and/or the Contractor and the United States, Department of the
591 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and
592 requirements imposed for protection of the environment and Indian Trust Assets, as defined
593 under Federal law.

594 APPLICATION OF PAYMENTS AND ADJUSTMENTS

595 10. (a) The amount of any overpayment by the Contractor of the Contractor-s
596 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
597 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
598 more than (\$1,000) shall be refunded at the Contractor-s request. In lieu of a refund, any amount
599 of such overpayment at the option of the Contractor, may be credited against amounts to become
600 due to the United States by the Contractor. With respect to overpayment, such refund or
601 adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to
602 have the right to the use of any of the Project Water supply provided for herein. All credits and
603 refunds of overpayments shall be made within thirty (30) days of the Contracting Officer
604 obtaining direction as to how to credit or refund such overpayment in response to the notice to
605 the Contractor that it has finalized the accounts for the Year in which the overpayment was
606 made.

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

612 TEMPORARY REDUCTIONS--RETURN FLOWS

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

618 (b) The Contracting Officer or Operating Non-Federal Entity(ies) may
619 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein
620 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of
621 any of the Project facilities or any part thereof necessary for the delivery of Project Water to the
622 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity(ies)
623 will give the Contractor due notice in advance of such temporary discontinuance or reduction,
624 except in case of emergency, in which case no notice need be given; Provided, That the United
625 States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon
626 resumption of service after such reduction or discontinuance, and if requested by the Contractor,
627 the United States will, if possible, deliver the quantity of Project Water which would have been
628 delivered hereunder in the absence of such discontinuance or reduction.

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

635 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

646 (c) Omitted.

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

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

651 rights or remedies it may have to file or participate in any administrative or judicial proceeding
652 contesting; (i) the sufficiency of the Central Valley Project M&I Water Shortage Policy; (ii) the
653 substance of such a policy; (iii) the applicability of such a policy; or (iv) the manner in which
654 such policy is implemented in order to allocate Project Water between M&I and irrigation
655 purposes; Provided, That the Contractor has commenced any such judicial challenge or any
656 administrative procedures necessary to institute any judicial challenge within 6 months of the
657 policy becoming final. By agreeing to the foregoing, the Contracting Officer does not waive any
658 legal defenses or remedies that it may have to assert in such a proceeding. Nothing contained
659 herein shall be interpreted to validate or invalidate the Central Valley Project M&I Water
660 Shortage Policy.

661 13. Omitted.

662 RULES AND REGULATIONS

663 14. The parties agree that the delivery of M&I Water or use of Federal facilities
664 pursuant to this Contract is subject to the applicable provisions of Federal Reclamation law and
665 any applicable rules and regulations promulgated by the Secretary of the Interior under such law.

666 WATER AND AIR POLLUTION CONTROL

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

671 QUALITY OF WATER

672 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
673 to this Contract shall be operated and maintained to enable the United States to deliver Project

674 Water to the Contractor in accordance with the water quality standards specified in subsection
675 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October
676 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no
677 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
678 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
679 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

683 WATER ACQUIRED BY THE CONTRACTOR
684 OTHER THAN FROM THE UNITED STATES

685 17. (a) Omitted.

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

691 (1) The Contractor may introduce non-Project water into Project
692 facilities and deliver said water to lands within the Contractor's Service Area, subject to payment
693 to the United States and/or to any applicable Operating Non-Federal Entity of an appropriate rate
694 as determined by the CVP Ratesetting Policy and the RRA each as amended, modified or
695 superceded from time to time. In addition, if electrical power is required to pump non-Project

696 water through the facilities, the Contractor shall be responsible for obtaining the necessary
697 power and paying the necessary charges therefore.

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

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

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

715 (5) After Project purposes are met, as determined by the Contracting
716 Officer, the United States and the Project Contractors entitled to Project Water from Delta
717 Division Facilities shall share priority to utilize the remaining capacity of the facilities declared

718 to be available by the Contracting Officer for conveyance and transportation of non-Project
719 water prior to any such remaining capacity being made available to non-Project contractors.
720 Other Project Contractors shall have a second priority to any remaining capacity of facilities
721 declared to be available by the Contracting Officer for conveyance and transportation of non-
722 Project water prior to any such remaining capacity being made available to non-Project
723 contractors.

724 OPINIONS AND DETERMINATIONS

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

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

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COORDINATION AND COOPERATION

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

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

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

(1) The Contracting Officer will, at the request of the Contractor,

762 assist in the development of integrated resource management plans for the Contractor. Further,
763 the Contracting Officer will, as appropriate, seek authorizations for implementation of
764 partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

780 CHARGES FOR DELINQUENT PAYMENTS

781 20. (a) The Contractor shall be subject to interest, administrative and penalty
782 charges on delinquent installments or payments. When a payment is not received by the due
783 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
784 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
785 administrative charge to cover additional costs of billing and processing the delinquent payment.

786 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
787 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
788 due date. Further, the Contractor shall pay any fees incurred for debt collection services
789 associated with a delinquent payment.

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

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

798 EQUAL OPPORTUNITY

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

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

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

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

820 (d) The Contractor will comply with all provisions of Executive Order No.

821 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
822 the Secretary of Labor.

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

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

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

844 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

857 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

858 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
859 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
860 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
861 laws, as well as with their respective implementing regulations and guidelines imposed by the
862 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

877 24. Omitted.

878

879

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

880 25. In addition to all other payments to be made by the Contractor pursuant to this
881 Contract, the Contractor shall pay to the United States, within (60) days after receipt of a bill and
882 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
883 of direct cost incurred by the United States for work requested by the Contractor associated with
884 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
885 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
886 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
887 contract administration.

888

WATER CONSERVATION

889 26. (a) Prior to the delivery of water provided from or conveyed through
890 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
891 shall be implementing an effective water conservation and efficiency program based on the
892 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
893 the conservation and efficiency criteria for evaluating water conservation plans established under
894 Federal law. The water conservation and efficiency program shall contain definite water
895 conservation objectives, appropriate economically feasible water conservation measures, and
896 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
897 Contract shall be contingent upon the Contractor's continued implementation of such water
898 conservation program. In the event the Contractor's water conservation plan or any revised
899 water conservation plan completed pursuant to subdivision (d) of this Article 26 have not yet

900 been determined by the Contracting Officer to meet such criteria, due to circumstances which the
901 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall
902 be made under this Contract so long as the Contractor diligently works with the Contracting
903 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
904 immediately begins implementing its water conservation and efficiency program in accordance
905 with the time schedules therein.

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

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

914 (d) At five year intervals, the Contractor shall revise its water conservation
915 plan to reflect the then current conservation and efficiency criteria for evaluating water
916 conservation plans established under Federal law and submit such revised water management
917 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
918 determine if the water conservation plan meets Reclamation's then current conservation and
919 efficiency criteria for evaluating water conservation plans established under Federal law.

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

922 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

930 OPERATION AND MAINTENANCE BY SAN LUIS & DELTA-MENDOTA WATER
931 AUTHORITY

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

938 (b) The Contracting Officer has previously notified the Contractor in writing
939 that the O&M of a portion of the Project facilities which serve the Contractor has been
940 transferred to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority,
941 and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity San Luis &
942 Delta-Mendota Water Authority, or to any successor approved by the Contracting Officer under
943 the terms and conditions of the separate agreement between the United States and the Operating

944 Non-Federal Entity San Luis & Delta-Mendota Water Authority, described in subdivision (a) of
945 this Article, all rates, charges, or assessments of any kind, including any assessment for reserve
946 funds, which the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, or
947 such successor determines, sets, or establishes for the O&M of the portion of the Project
948 facilities operated and maintained by the Operating Non-Federal Entity or such successor. Such
949 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water
950 Authority, or such successor shall not relieve the Contractor of its obligation to pay directly to
951 the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing
952 Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf
953 of the United States in accordance with the separate agreement identified in subdivision (a) of
954 this Article.

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

961 (d) In the event the O&M of the Project facilities operated and maintained by
962 the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by
963 the United States during the term of this Contract, the Contracting Officer shall so notify the
964 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
965 the portion of the Rates to be paid by the Contractor for Project Water under this Contract

966 representing the O&M costs of the portion of such Project facilities which have been re-
967 assumed. The Contractor shall, thereafter, in the absence of written notification from the
968 Contracting Officer to the contrary, pay the Rates, Charges, and the Tiered Pricing Component
969 specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of
970 this Contract.

971 OPERATION AND MAINTENANCE BY CALIFORNIA DEPARTMENT OF
972 WATER RESOURCES

973 28.1 (a) The O&M of a portion of the Project facilities which serve the Contractor,
974 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
975 California Department of Water Resources, an Operating Non-Federal Entity by a separate
976 agreement (14-06-200-9755) between the United States and Operating Non-Federal Entity
977 California Department of Water Resources. This separate agreement shall not interfere with or
978 affect the rights or obligations of the Contractor or the United States hereunder.

979 (b) The Contracting Officer has previously notified the Contractor in writing
980 that the O&M of a portion of the Project facilities which serve the Contractor has been
981 transferred to Operating Non-Federal Entity California Department of Water Resources, and the
982 Contractor shall pay directly to Operating Non-Federal Entity San Luis & Delta-Mendota Water
983 Authority, or to any successor approved by the Contracting Officer under the terms and
984 conditions of the separate agreement between the United States and Operating Non-Federal
985 Entity San Luis & Delta-Mendota Water Authority, described in subdivision (a) of Article 28 of
986 this Contract, all rates, charges, or assessments of any kind, including any assessment for reserve
987 funds, which Operating Non-Federal Entity California Department of Water Resources, or such

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

996 (c) For so long as the O&M of any portion of the Project facilities serving the
997 Contractor is performed by Operating Non-Federal Entity California Department of Water
998 Resources, or any successor thereto, the Contracting Officer shall adjust those components of the
999 Rates for Water Delivered under this Contract representing the cost associated with the activity
1000 being performed by Operating Non-Federal Entity California Department of Water Resources, or
1001 its successor.

1002 (d) In the event the O&M of the Project facilities operated and maintained by
1003 Operating Non-Federal Entity California Department of Water Resources, is re-assumed by the
1004 United States during the term of this Contract, the Contracting Officer shall so notify the
1005 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include
1006 the portion of the Rates, Charges, and the Tiered Pricing Component to be paid by the Contractor
1007 for Project Water under this Contract representing the O&M costs of the portion of such Project
1008 facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written
1009 notification from the Contracting Officer to the contrary, pay the Rates, Charges, and the Tiered

1010 Pricing Component specified in the revised Exhibit “B” directly to the United States in
1011 compliance with Article 7 of this Contract.

1012 OPERATION AND MAINTENANCE BY WESTLANDS WATER DISTRICT

1013 28.2 (a) The O&M of a portion of the Project facilities which serve the
1014 Contractor, and responsibility for funding a portion of the costs of such O&M, have been
1015 transferred to the Westlands Water District, the Operating Non-Federal Entity Westlands Water
1016 District by a separate contract (14-06-200-2020A) between the United States and Westlands
1017 Water District, the Operating Non-Federal Entity Westlands Water District . That above
1018 referenced contract shall not interfere with or affect the rights or obligations of the Contractor or
1019 the United States hereunder.

1020 (b) The Contracting Officer has previously notified the Contractor in
1021 writing that the O&M of a portion of the Project facilities which serve the Contractor has been
1022 transferred to the Operating Non-Federal Entity Westlands Water District . Therefore, the
1023 Contractor shall enter into a separate agreement with the Operating Non-Federal Entity
1024 Westlands Water District that provides for the terms and conditions pursuant to which the
1025 Operating Non-Federal Entity Westlands Water District will deliver Project Water to the
1026 Contractor through the portion of the Project facilities operated and maintained by the Operating
1027 Non-Federal Entity Westlands Water District, including the amount(s) the Contractor is to pay
1028 the Operating Non-Federal Entity Westlands Water District for that service. The Contractor
1029 shall pay directly to the Operating Non-Federal Entity Westlands Water District , or to any
1030 successor approved by the Contracting Officer, all rates, charges, or assessments of any kind,
1031 including any assessment for reserve funds, described in the separate agreement referred to

1032 above or any amendatory or replacement agreement approved by the Contracting Officer, which
1033 the Operating Non-Federal Entity Westlands Water District and or such successor determines,
1034 sets, or establishes for the Operating Non-Federal Entity Westlands Water District or such
1035 successor. Such direct payments to the Operating Non-Federal Entity Westlands Water District
1036 or such successor shall not relieve the Contractor of its obligation to pay directly to the United
1037 States the Contractor-s share of the Project Rates, Charges, and Tiered Pricing Components
1038 referred to in this Contract.

1039 (c) For so long as the O&M of any portion of the Project facilities serving the
1040 Contractor is performed by the Operating Non-Federal Entity Westlands Water District , or any
1041 successor thereto, the Contracting Officer shall adjust those components of the Rates for Water
1042 Delivered under this Contract representing the cost associated with the activity being performed
1043 by the Operating Non-Federal Entity Westlands Water District or its successor.

1044 (d) In the event the O&M of the Project facilities operated and maintained by
1045 the Operating Non-Federal Entity Westlands Water District is re-assumed by the United States
1046 during the term of this Contract, the Contracting Officer shall so notify the Contractor, in
1047 writing, and present to the Contractor a revised Exhibit AB” which shall include the portion of
1048 the Rates, Charges, and the Tiered Pricing Component to be paid by the Contractor for Project
1049 Water under this Contract representing the O&M costs of the portion of such Project facilities
1050 which have been re-assumed. The Contractor shall, thereafter, in the absence of written
1051 notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered
1052 Pricing Component(s) specified in the revised Exhibit AB@ directly to the United States in
1053 compliance with Article 7 of this Contract.

1054 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1055 29. The expenditure or advance of any money or the performance of any obligation of
1056 the United States under this Contract shall be contingent upon appropriation or allotment of
1057 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1058 obligations under this Contract. No liability shall accrue to the United States in case funds are
1059 not appropriated or allotted.

1060 BOOKS, RECORDS, AND REPORTS

1061 30. (a) The Contractor shall establish and maintain accounts and other books and
1062 records pertaining to administration of the terms and conditions of this Contract, including: the
1063 Contractor's financial transactions, water supply data, and Project land and right-of-way
1064 agreements; water use data; and other matters that the Contracting Officer may require. Reports
1065 thereon shall be furnished to the Contracting Officer in such form and on such date or dates as
1066 the Contracting Officer may require. Subject to applicable Federal laws and regulations, each
1067 party to this Contract shall have the right during office hours to examine and make copies of the
1068 other party's books and records relating to matters covered by this Contract.

1069 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1070 books, records, or other information shall be requested from the Contractor by the Contracting
1071 Officer unless such books, records, or information are reasonably related to the administration or
1072 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1073 time within which to provide the requested books, records, or information.

1074 (c) At such time as the Contractor provides information to the Contracting
1075 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1076 to the Operating Non-Federal Entity(ies).

1077 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1078 31. (a) The provisions of this Contract shall apply to and bind the successors and
1079 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1080 therein shall be valid until approved in writing by the Contracting Officer.

1081 (b) The assignment of any right or interest in this Contract by either party

1082 shall not interfere with the rights or obligations of the other party to this Contract absent the
1083 written concurrence of said other party.

1084 (c) The Contracting Officer shall not unreasonably condition or withhold
1085 approval of any proposed assignment.

1086 SEVERABILITY

1087 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1088 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1089 an association or other form of organization whose primary function is to represent parties to
1090 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1091 enforceability of a provision included in this Contract and said person, entity, association, or
1092 organization obtains a final court decision holding that such provision is legally invalid or
1093 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1094 the parties to this Contract shall use their best efforts to (i) within thirty (30) days of the date of
1095 such final court decision identify by mutual agreement the provisions in this Contract which
1096 must be revised and (ii) within three (3) months thereafter promptly agree on the appropriate
1097 revision(s). The time periods specified above may be extended by mutual agreement of the
1098 parties. Pending the completion of the actions designated above, to the extent it can do so
1099 without violating any applicable provisions of law, the United States shall continue to make the
1100 quantities of Project Water specified in this Contract available to the Contractor pursuant to the
1101 provisions of this Contract which were not found to be legally invalid or unenforceable in the
1102 final court decision.

1103 RESOLUTION OF DISPUTES

1104 33. Should any dispute arise concerning any provisions of this Contract, or the
1105 parties= rights and obligations thereunder, the parties shall meet and confer in an attempt to
1106 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1107 Officer referring any matter to Department of Justice, the party shall provide to the other party
1108 thirty (30) days= written notice of the intent to take such action; Provided, That such notice shall
1109 not be required where a delay in commencing an action would prejudice the interests of the party
1110 that intends to file suit. During the thirty (30) -day notice period, the Contractor and the
1111 Contracting Officer shall meet and confer in an attempt to resolve the dispute. Except as
1112 specifically provided, nothing herein is intended to waive or abridge any right or remedy that the
1113 Contractor or the United States may have.

1114 OFFICIALS NOT TO BENEFIT

1115 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1116 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1117 manner as other water users or landowners.

1118 CHANGES IN CONTRACTOR-S SERVICE AREA

1119 35. (a) While this Contract is in effect, no change may be made in the
1120 Contractor's Service Area by inclusion or exclusion of lands, dissolution, consolidation, merger,
1121 or otherwise, except upon the Contracting Officer's written consent.

1122 (b) Within (30) days of receipt of a request for such a change, the Contracting
1123 Officer will notify the Contractor of any additional information required by the Contracting
1124 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1125 schedule for timely completion of the process. Such process will analyze whether the proposed

1126 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1127 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1128 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1129 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1130 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1131 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1132 be paid in accordance with Article 25 of this Contract.

1133 FEDERAL LAWS

1134 36. By entering into this Contract, the Contractor does not waive its rights to contest
1135 the validity or application in connection with the performance of the terms and conditions of this
1136 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1137 the terms and conditions of this Contract unless and until relief from application of such Federal
1138 law or regulation to the implementing provision of the Contract is granted by a court of
1139 competent jurisdiction.

1140

NOTICES

1141 37. Any notice, demand, or request authorized or required by this Contract shall be
1142 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1143 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1144 California 97321, and on behalf of the United States, when mailed, postage prepaid, or delivered
1145 to the City Council of the City of Coalinga, 160 West Elm, Coalinga, California 93210. The
1146 designation of the addressee or the address may be changed by notice given in the same manner
1147 as provided in this Article for other notices.

1148

CONFIRMATION OF CONTRACT

1149

1150 38. The Contractor, after the execution of this Contract, shall furnish to the
1151 Contracting Officer evidence that pursuant to the law of the State of California, the Contractor is
1152 a legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This
1153 contract shall not be binding on the United States until such evidence has been provided to the
1154 Contracting Officers satisfaction.
1155

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day

1156
1157 and year first above written.

1158 THE UNITED STATES OF AMERICA

1159 By: _____
1160 Regional Director, Mid-Pacific Region
1161 Bureau of Reclamation

1162 (SEAL)

1163 Approved as to form:

1164 _____
1165 City Attorney

1166 CITY OF COALINGA

1167 By: _____
1168 Mayor

1169 Attest:

1170 By: _____
1171 City Clerk

1172 (H:\pub 440\LTRC\Final Draft LTRC's\19022094 City of Coalinga Final Draft LTRC with
1173 exhibits.doc)

Contract No.14-06-200-4173A-LTR1

EXHIBIT A
MAP

EXHIBIT B
CITY OF COALINGA
Water Rates and Charges

WATER RATES FOR CITY OF COALINGA

	<u>2004 Rates Per Acre-Foot</u>
	<u>M&I Water</u>
COST-OF-SERVICE (COS) RATE:	
Capital Rate:	\$26.17
O&M Rates:	
Water Marketing	\$3.68
Storage	\$5.78
Conveyance	*
Direct Pumping (Project Use Energy)	\$3.86
Tracy Pumping	*
	*
Deficit Rates:	
Non-Interest Bearing	
Interest Bearing	\$37.23
TOTAL COS RATE:	\$76.72
CONTRACT RATE: **	\$13.32
M&I FULL-COST RATE:	\$94.27
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.

*** 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).