

Irrigation and M&I
 Rev. R. O. Draft 10/20-2004
 Rev. SCCAO Draft 10/17-2004
 Rev. SCCAO Draft 03/19-2004
 Rev. SCCAO Draft 09/22-2003
 Rev. SCCAO Draft 02/06-2002
 SCCAO Draft 11/16-2000
 Contract No.
 14-06-200-8601A-LTR1

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 CENTRAL VALLEY PROJECT, CALIFORNIA

LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
 AND KERN-TULARE WATER DISTRICT
 PROVIDING FOR PROJECT WATER SERVICE

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Exhibit A - Map of Contractor's Service Area

Exhibit B - Rates and Charges

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UNITED STATES
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LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
AND KERN-TULARE WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE

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, 1992

16

(106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law and pursuant

17

to the California Central Valley Project Act [Part 3, Division 6 (commencing at Section 11100)

18

of the California Water Code] and the California Water Resources Development Bond Act

19

[Chapter 8, Part 6, Division 6 (commencing at Section 12930) of the California Water Code,]

20

and all acts of the California legislature amendatory thereto or supplementary thereof, among

21

THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, the

22

DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA, hereinafter

23

referred to as DWR, and KERN-TULARE WATER DISTRICT, hereinafter referred

24 to as the Contractor, a public agency of the State of California, duly organized, existing, and
25 acting pursuant to the laws thereof;

26 WITNESSETH, That:

27 EXPLANATORY RECITALS

28 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
29 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
30 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
31 and restoration, generation and distribution of electric energy, salinity control, navigation and
32 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
33 and the San Joaquin River and their tributaries; and

34 [2nd] WHEREAS, the United States constructed the Project facilities, which will be
35 used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract;
36 and

37 [2.2] WHEREAS, as provided herein, Project Water may be made available to the
38 Contractor from the Sacramento-San Joaquin Delta and/or the Friant Division and delivered to
39 the Contractor through appropriate federal, state and/or local facilities; and

40 [2.3] WHEREAS, DWR is engaged in the operation of the State Water Resources
41 Development System pursuant to the laws of the State of California involving the development,
42 transportation, and delivery of water supplies to public agencies throughout the State of
43 California; and

44 [2.4] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the
45 Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost
46 to either the United States or DWR; and

47 [2.5] WHEREAS, the Contractor has the right to use the Cross Valley Canal for
48 conveyance of the Project Water furnished hereunder; and

49 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
50 pursuant to California law for operation of the Project; and

51 [4th] WHEREAS, the Contractor and the United States entered into Contract
52 No. 14-06-200-8601A, as amended, which established terms for the delivery to the Contractor of
53 Project Water via the Cross Valley Canal from November 30, 1976, through February 29, 1996;
54 and

55 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
56 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
57 interim renewal contract(s) identified as Contract No(s). 14-06-200-8601A-IR1, -IR2, -IR3,
58 -IR4, -IR5, -IR6, -IR7, and -IR8, the current of which is hereinafter referred to as the Existing
59 Contract, which provided for the continued water service to the Contractor from March 1, 2004,
60 through February 28, 2005; and

61 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
62 Existing Contract following completion of appropriate environmental documentation, including a
63 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
64 Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the
65 CVPIA and the potential renewal of all existing contracts for Project Water; and

66 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
67 environmental review necessary to provide for long-term renewal of the Existing Contract; and

68 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
69 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
70 of the State of California, for water service from the Project; and

71 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
72 of its obligations under the Existing Contract; and

73 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
74 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
75 reasonable and beneficial use and/or has demonstrated projected future demand for water use
76 such that the Contractor has the capability and expects to utilize fully for reasonable and
77 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
78 and

79 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
80 agricultural areas within California for more than 50 years, and is considered by the Contractor
81 as an essential portion of its water supply; and

82 [12th] WHEREAS, the economies of regions within the Project, including the
83 Contractor's, depend upon the continued availability of water, including water service from the
84 Project; and

85 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
86 partnerships to pursue measures to improve water supply, water quality, and reliability of the
87 Project for all Project purposes; and

88 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
89 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
90 repayment of the Project as required by law; to guard reasonably against Project Water

91 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
92 and to comply with all applicable environmental statutes, all consistent with the legal obligations
93 of the United States relative to the Project; and

94 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
95 relationship in order to achieve their mutual goals; and

96 [15.2] WHEREAS, the Contractor desires to contract with DWR for conveyance of
97 Project Water through the facilities of the State Water Project (SWP) as aforesaid under an
98 arrangement wherein the United States will furnish the necessary power for pumping such water
99 through DWR's Delta Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-
100 existing CVP Project use power policy; and

101 [15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject
102 to needs and obligations of the SWP and the availability of transportation capacity and payment
103 of costs as herein provided; and

104 [16th] WHEREAS, the United States, DWR, and the Contractor are willing to enter into
105 this Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

108 DEFINITIONS

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

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

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

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

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

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

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

128 (f2) "Cross Valley Canal" shall mean the water conveyance and related works
129 constructed by the Contractor and others to deliver water from the State Facilities, which canal
130 currently is operated by KCWA;

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

133 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
134 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982,
135 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

136 (i) "Excess Lands" shall mean all lands in excess of the limitations contained
137 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
138 Reclamation law;

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

149 (k) "Ineligible Lands" shall mean all lands to which Irrigation Water may not
150 be delivered in accordance with Section 204 of the RRA;

151 (l) "Irrigation Full Cost Water Rate" shall mean the Full Cost Rate applicable
152 to the delivery of Irrigation Water;

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

156 (m2) "KCWA" shall mean the Kern County Water Agency;

157 (n) "Landholder" shall mean a party that directly or indirectly owns or leases
158 nonexempt land, as provided in 43 CFR 426.2;

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

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

168 (q) “Operation and Maintenance” or “O&M” shall mean normal and
169 reasonable care, control, operation, repair, replacement (other than capital replacement), and
170 maintenance of Project facilities;

171 (r) “Operating Non-Federal Entity” shall mean either the San Luis &
172 Delta-Mendota Water Authority or the Friant Water Authority, their successors or assigns, non-
173 Federal entities which have the obligation to operate and maintain all or a portion of the Project
174 facilities pursuant to agreements with the United States, and which may have funding obligations
175 with respect thereto;

176 (r2) “Operations Manual” shall mean the manual setting forth detailed
177 operations and management procedures prepared by DWR, the Contracting Officer and the
178 Contractor;

179 (s) “Project” shall mean the Central Valley Project owned by the
180 United States and managed by the Department of the Interior, Bureau of Reclamation;

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

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

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

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

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

196 (x2) "State Facilities" shall mean that portion of the SWP (including DWR's
197 portion of joint facilities), necessary to convey Project Water from the Sacramento-San Joaquin
198 Delta (Delta) to Reach 16A of the California Aqueduct;

199 (x3) "SWP" shall mean the California State Water Project;

200 (x4) "SWP Contractor" shall mean those entities with a long-term water supply
201 contract for water deliveries of SWP water on the date this Contract is executed;

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

204 (y2) "Transportation Minimum OMP&R Costs" and "Transportation Variable
205 OMP&R Costs" shall mean those costs as defined in the long-term SWP contracts and as
206 annually described in DWR Bulletin 132;

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

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

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

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

218 TERM OF CONTRACT

219 2. (a) This Contract shall be effective March 1, 2005, through February 28,
220 2030. In the event the Contractor wishes to renew this Contract beyond February 28, 2030, the
221 Contractor shall submit a request for renewal in writing to the Contracting Officer no later than
222 two years prior to the date this Contract expires. The renewal of this Contract insofar as it
223 pertains to the furnishing of Irrigation Water to the Contractor shall be governed by subdivision
224 (b) of this Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I
225 Water to the Contractor shall be governed by subdivision (c) of this Article. The term of this

226 Contract and its renewal insofar as it pertains to conveyance of water in SWP Facilities shall be
227 governed by subdivision (e) of this Article.

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

233 (2) The conditions which must be met for this Contract to be renewed
234 are: (i) the Contractor has prepared a water conservation plan that has been determined by the
235 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and
236 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is
237 implementing an effective water conservation and efficiency program based on the Contractor's
238 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is
239 maintaining all water measuring devices and implementing all water measurement methods as
240 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor
241 has reasonably and beneficially used the Project Water supplies made available to it and, based
242 on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and
243 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal;
244 (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the
245 Contractor has the physical and legal ability to deliver Project Water.

246 (3) The terms and conditions of the renewal contract described in
247 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
248 consistent with the parties' respective legal rights and obligations, and in consideration of all

249 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
250 without limitation, the Contractor's need for continued delivery of Project Water; environmental
251 conditions affected by implementation of the Contract to be renewed, and specifically changes in
252 those conditions that occurred during the life of the Contract to be renewed; the Secretary's
253 progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in
254 implementing the specific provisions of the CVPIA; and current and anticipated economic
255 circumstances of the region served by the Contractor.

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

264 (d) The Contracting Officer shall make a determination ten years after the
265 date of execution of this Contract, and every five years thereafter during the term of this
266 Contract, of whether a conversion of the relevant portion of this Contract to a contract under
267 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the
268 Act of July 2, 1956, (70 Stat. 483). The Contracting Officer shall also make a determination ten
269 years after the date of execution of this Contract and every five years thereafter during the term
270 of the Contract of whether a conversion of the relevant portion of this Contract to a contract
271 under subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.

272 Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights
273 and benefits under the Act of July 2, 1956 (70 Stat 483). The Contracting Officer anticipates that
274 during the term of this Contract, all authorized Project construction expected to occur will have
275 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all
276 costs that are properly assignable to the Contractor, and agrees further that, at any time after such
277 allocation is made, and subject to satisfaction of the conditions set out in this subdivision, this
278 Contract shall, at the request of the Contractor, be converted to a contract under subsection 9(d)
279 or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to applicable
280 Federal law and under stated terms and conditions mutually agreeable to the Contractor and the
281 Contracting Officer. A condition for such conversion to occur shall be a determination by the
282 Contracting Officer that, account being taken of the amount credited to return by the Contractor
283 as provided for under Federal Reclamation law, the remaining amount of construction costs
284 assignable for ultimate return by the Contractor can probably be repaid to the United States
285 within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the
286 remaining amount of costs that are properly assignable to the Contractor cannot be determined
287 during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide
288 the reason(s) why such a determination could not be made. Further, the Contracting Officer shall
289 make such a determination as soon thereafter as possible so as to permit, upon request of the
290 Contractor and satisfaction of the conditions set out above, conversion to a contract under
291 subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of costs has
292 not been made at a time which allows conversion of this Contract during the term of this
293 Contract or the Contractor has not requested conversion of this Contract within such term, the
294 parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of

295 this Article a provision that carries forth in substantially identical terms the provisions of this
296 subdivision.

297 (e) DWR's agreement to convey water under this Contract shall be effective
298 until February 28, 2030. Thereafter, DWR and the Contractor may renew the agreement to
299 convey for additional periods on terms mutually agreeable to the parties. The parties
300 acknowledge that operation of the SWP, including the State Facilities, is not, and shall not be,
301 subject to Federal Reclamation law.

302 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

303 3. (a) During each Year, consistent with all applicable State water rights,
304 permits, and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of
305 this Contract, the Contracting Officer shall make available in the Delta for delivery to the
306 Contractor 40,000 acre-feet of Project Water for irrigation and M&I purposes. Cross Valley
307 Contractors shall have a primary priority to pumping capacity made available by the SWP for
308 CVP purposes up to the allocation made for CVP irrigation contractors south of the Delta.
309 Allocations of water supply to Cross Valley Contractors and any additional pumping capacity
310 made available by SWP for Cross Valley Contractors' purposes shall be addressed in the
311 Operations Manual. Water Delivered to the Contractor in accordance with this subdivision shall
312 be scheduled, and paid for pursuant to the provisions of Articles 4 and 7 of this Contract,
313 attached exhibits, and the Operations Manual (including any subsequent modifications thereto).

314 (b) Because the capacity of the Project to deliver Project Water has been
315 constrained in recent years and may be constrained in the future due to many factors including
316 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
317 Contractor actually receiving the full amount of Project Water set out in subdivision (a) of this

318 Article in any given Year is uncertain. The Contracting Officer's most recent modeling
319 referenced in the PEIS projected that the Contract Total set forth in this Contract will not be
320 available to the Contractor in many years. During the most recent five years, the Recent Historic
321 Average of water made available to the Contractor was 26,320 acre-feet. Nothing in subdivision
322 (b) of this Article shall affect the rights and obligations of the parties under any provision of this
323 Contract.

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

326 (d) The Contractor shall make reasonable and beneficial use of all water
327 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect or in lieu),
328 groundwater banking programs, surface water storage programs, and other similar programs
329 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
330 Contractor's Service Area which are consistent with applicable State law and result in use
331 consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
332 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
333 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
334 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
335 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
336 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater
337 banking programs, surface water storage programs, and other similar programs utilizing Project
338 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
339 Service Area may be permitted upon written approval of the Contracting Officer, which approval
340 will be based upon environmental documentation, Project Water rights, and Project operational

341 concerns. The Contracting Officer will address such concerns in regulations, policies, or
342 guidelines.

343 (e) The Contractor shall comply with requirements applicable to the
344 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
345 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
346 as amended, that are within the Contractor's legal authority to implement. The Existing
347 Contract, which evidences in excess of 28 years of diversions for irrigation and/or M&I purposes
348 of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be
349 considered in developing an appropriate baseline for the biological assessment(s) prepared
350 pursuant to the ESA, and any other needed environmental review. Nothing herein shall be
351 construed to prevent the Contractor from challenging or seeking judicial relief in a court of
352 competent jurisdiction with respect to any biological opinion or other environmental
353 documentation referred to in this Article.

354 (f) Following the declaration of Water Made Available under Article 4 of this
355 Contract, the Contracting Officer will make a determination whether Project Water, or other
356 water available to the Project, can be made available to the Contractor in addition to the Contract
357 Total under Article 3 of this Contract during the Year without adversely impacting other Project
358 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
359 Contractor prior to making such a determination. If the Contracting Officer determines that
360 Project Water, or other water available to the Project, can be made available to the Contractor,
361 the Contracting Officer will announce the availability of such water and shall so notify the
362 Contractor as soon as practicable. The Contracting Officer will thereafter meet with the
363 Contractor and other Project Contractors capable of taking such water to determine the most

364 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
365 quantity of such water, the Contracting Officer shall make such water available to the Contractor
366 in accordance with applicable statutes, regulations, guidelines, and policies. If the Contracting
367 Officer determines that there is an unusually large water supply not otherwise storable for Project
368 purposes or infrequent and otherwise unmanaged flood flows of short duration from the Friant
369 Division, then Friant Division Project Water may be made available to the Contractor as Section
370 215 Water if the Contractor enters into a temporary contract, not to exceed one year, with the
371 United States for the delivery of such water or, as otherwise provided for in Federal Reclamation
372 law and associated regulations: Provided, That such water shall be first made available to the
373 original 28 long-term Friant Division contractors. Water in addition to the quantities provided
374 for in this Contract made available to the Contractor by the Contracting Officer shall be
375 scheduled, conveyed and/or stored by DWR only to the extent that DWR has provided separate
376 approval to do so.

377 (g) The Contractor may request permission to reschedule for use during the
378 subsequent Year some or all of the Water Made Available to the Contractor during the current
379 Year referred to as “carryover.” The Contractor may request permission to use during the
380 current Year a quantity of Project Water which may be made available by the United States to
381 the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s
382 written approval may permit such uses in accordance with applicable statutes, regulations,
383 guidelines, and policies.

384 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
385 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
386 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this

387 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
388 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
389 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or
390 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
391 contracts.

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

396 (j) The Contracting Officer shall make reasonable efforts to protect the water
397 rights necessary for the Project and to provide the water available under this Contract. The
398 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
399 extent permitted by law, in administrative proceedings related to the Project Water rights;
400 Provided, That the Contracting Officer retains the right to object to the substance of the
401 Contractor's position in such a proceeding; Provided further, That in such proceedings the
402 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
403 Contract to use Project Water.

404 (k) Conveyance and/or storage of Project Water by DWR shall be subject to
405 capacity available in State Facilities in excess of capacity determined by DWR in its sole
406 discretion to be needed for all SWP operations. For purposes of determining the available
407 capacity under this Contract, the deliveries of Project Water to the Contractor shall not be
408 considered a "service to long-term SWP Contractors," notwithstanding any arrangement the
409 Contractor may have with a SWP Contractor. Conveyance and/or storage for the Contractor may

410 be curtailed prior or subsequent to approval of the Contractor's schedule under Article 4 of this
411 Contract, in the event DWR determines it will interfere with the delivery of water to SWP
412 Contractors or other SWP operations necessary to meet long-term obligations of
413 the SWP, including delivery of water to SWP storage or reregulation of stored water for delivery
414 to SWP Contractors.

415 (l) If in any Year after DWR and the Contracting Officer have approved a
416 schedule or any revision thereof submitted in accordance within subdivision (a) and (b) of
417 Article 4 of this Contract, and if the Contracting Officer and/or DWR are unable to make water
418 of suitable quality available in the quantities and at the times requested in the schedule and the
419 Contractor does not elect to receive and does not receive such water at other times during such
420 Year, then the Contractor shall be entitled to an adjustments for overpayment as provided in
421 subdivision (c) of Article 7, subdivision (d) of Article 8, and Article 10 of this Contract.
422 Notwithstanding any other provision of law, this shall be the Contractor's sole remedy against
423 the State of California, DWR, its officers, agents and employees for failure to deliver a quantity
424 of water of suitable quality under this Contract for any reason.

425 TIME FOR DELIVERY OF WATER

426 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer
427 shall announce the Contracting Officer's expected declaration of the Water Made Available.
428 Such declaration will be expressed in terms of both Water Made Available and the Recent
429 Historic Average and will be updated monthly, and more frequently if necessary, based on
430 then-current operational and hydrologic conditions and a new declaration with changes, if any, to
431 the Water Made Available will be made. The Contracting Officer shall provide forecasts of
432 Project operations and the basis of the estimate, with relevant supporting information, upon the

433 written request of the Contractor. Concurrently with the declaration of the Water Made
434 Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic
435 Average. The declaration of Project operations will be expressed in terms of both Water Made
436 Available and the Recent Historic Average.

437 (b) On or before each March 1 and at such other times as necessary, the
438 Contractor, after approval of the receiving agency on behalf of the Contractor, shall submit to
439 DWR and the Contracting Officer a written schedule, satisfactory to the Contracting Officer and
440 consistent with the criteria specified in the Operations Manual. The written schedule shall show
441 the monthly quantities of Project Water to be delivered by the United States to the Contractor
442 pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer
443 shall use all reasonable means to deliver Project Water according to the approved schedule for
444 the Year commencing on such March 1.

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

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

454 (e) Scheduling and delivery of Project Water to the Contractor shall be in
455 accordance with detailed procedures set forth in the Operations Manual as it may be amended
456 from time to time.

457 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

458 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
459 Contract shall be delivered to the Contractor at a point or points of delivery either on Project
460 and/or State facilities or another location or locations mutually agreed to in writing by the
461 Contracting Officer, DWR, and the Contractor. The parties acknowledge that Project Water to
462 be furnished to the Contractor pursuant to this Contract shall be conveyed by DWR and
463 delivered to the Contractor by direct delivery via the Cross Valley Canal and/or by exchange
464 arrangements involving Arvin-Edison Water Storage District or others. The parties further
465 acknowledge that such exchange arrangements are not transfers subject to Section 3405(a) of
466 CVPIA. Notwithstanding Article 9 of this Contract, such exchange arrangements, other than the
467 previously approved exchange arrangements with Arvin-Edison Water Storage District, shall be
468 submitted to the Contracting Officer for approval in accordance with principles historically
469 applied by the Contracting Officer in approving Cross Valley exchange arrangements. DWR
470 shall have no obligation to make such exchange arrangements or be responsible for water
471 transported in facilities that are not a part of the SWP.

472 (b) Omitted.

473 (b2) When Project Water is made available by the Contracting Officer at
474 Clifton Court Forebay, or at other points mutually agreed to by the parties in accordance with
475 Article 5, DWR shall provide to the Contractor, subject to the availability of capacity as
476 determined by DWR, conveyance from the Delta and storage in DWR's share of storage at San

477 Luis Reservoir, if necessary, of such Project Water consistent with subdivision (k) of Article 3,
478 the following provisions, and the Operations Manual;

479 (1) The Contracting Officer shall deliver or cause to be delivered into
480 the DWR's Clifton Court Forebay, Project Water in such quantities and of such quality as shall
481 be sufficient to perform the Contracting Officer's and DWR's obligation to furnish water to the
482 Contractor as set forth in this contract. Such deliveries into Clifton Court Forebay shall be made
483 at such times and rates of flow as the Contracting Officer and DWR shall agree.

484 (2) DWR, in accordance with an approved Project Water delivery
485 schedule, shall convey the amount of water delivered into DWR's Clifton Court Forebay by the
486 Contracting Officer directly: (i) to turnouts from the California Aqueduct from Reaches 3
487 through 16A or to other points of diversion mutually agreed to in writing by DWR and the
488 Contractor, or (ii) to DWR or Federal share of storage in San Luis Reservoir for later release and
489 delivery to the Contractor or (iii) to replace water delivered to the Contractor from DWR's share
490 of San Luis Reservoir prior to DWR receiving Project Water from the Contracting Officer, to the
491 extent DWR determines under subdivision (k) of Article 3 that capacity (and water in the event
492 of an exchange) is available for such conveyance, storage, or exchange (if any). Such deliveries
493 of Project Water shall be required to be made pursuant to subdivision (k) of Article 3 and in a
494 manner which will not increase the cost of or adversely affect SWP operations and the quantity
495 or quality of water deliveries to SWP Contractors.

496 (3) If DWR delivers water to the Contractor from DWR's share of
497 storage in San Luis Reservoir prior to the Contracting Officer providing Project Water at DWR's
498 Clifton Court Forebay, the United States shall return a like amount of water to DWR pursuant to
499 the procedures set forth in the Operations Manual.

500 (4) The total amount of Project Water delivered at Clifton Court
501 Forebay to DWR by the Contracting Officer shall include water to compensate DWR for water
502 conveyance and storage losses incurred in the delivery of Project Water to the Contractor. The
503 amount of such conveyance and storage losses will be determined pursuant to procedures set
504 forth in the Operations Manual.

505 (5) Project Water received by DWR at Clifton Court Forebay for
506 conveyance and/or storage for delivery to the Contractor will be commingled with waters of
507 DWR which are pumped through facilities of the California Aqueduct and with other waters of
508 both the United States and DWR in the joint use facilities of the San Luis Unit.

509 (6) Priorities for use of DWR's share of storage at San Luis Reservoir
510 for storage of Project Water shall be subject to subdivision (k) of Article 3 and all DWR
511 obligations to the SWP operations and SWP Contractors and to the criteria specified in the
512 Operations Manual.

513 (7) Subject to the necessary arrangements, the Contracting Officer
514 shall transmit or cause to be transmitted, by exchange or otherwise, such quantities of power as
515 shall be required by DWR to pump through its Delta Pumping Plant and its share of Dos Amigos
516 Pumping Plant, the quantities of Project Water transported into Clifton Court Forebay pursuant
517 to (1) of this subdivision.

518 (8) DWR shall furnish the Contracting Officer with such information
519 as the Contracting Officer and DWR agree is needed regarding the timing and quantities of
520 power required by DWR to pump Project Water. Such information shall be exchanged between
521 the Contracting Officer and DWR in accordance with provisions set forth in the Operations
522 Manual.

523 (9) The Contracting Officer and DWR may, under terms and
524 conditions satisfactory to both, and in accordance with applicable law, exchange water and/or
525 power necessary for delivery of Project Water to the Contractor under terms of this Contract.
526 Such exchange shall be in accordance with the provisions set forth in the Operations Manual.

527 (b3) To the extent that Friant Division Project Water exceeds Friant Division
528 Contract demand and other Project purposes, as determined by the Contracting Officer, and if the
529 Contractor so requests, the Contracting Officer, subject to subdivision (d) of Article 3 of this
530 Contract, shall make Project Water provided for in subdivision (a) of Article 3 of this Contract
531 available from such Friant Division supplies.

532 (b4) Project Water may be provided by the Contracting Officer to the
533 Contractor, at the Contractor's request and subject to the terms and conditions of this Contract,
534 through Federal Delta diversion and conveyance facilities and/or stored in the Federal share of
535 storage at San Luis Reservoir for reregulation for later delivery to the Contractor to the extent
536 such diversion, conveyance and/or storage does not diminish the ability of the Project to deliver
537 Project Water to users in the Delta Division, San Luis Unit and San Felipe Division service areas
538 pursuant to existing contracts and assignments or any renewals thereof, to meet current
539 Reclamation commitments to Pajaro Valley Water Management Agency, or to meet other legal
540 obligations of the Project including, but not limited to agreements related to the joint operation of
541 the State and Federal projects.

542 (c) The Contractor shall deliver Irrigation Water in accordance with any
543 applicable land classification provisions of Federal Reclamation law and the associated
544 regulations. The Contractor shall not deliver Project Water to land outside the Contractor's
545 Service Area unless approved in advance by the Contracting Officer.

546 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
547 measured and recorded with equipment furnished, installed, operated, and maintained by the
548 United States, DWR or the Operating Non-Federal Entity/Entities at the point or points of
549 delivery established pursuant to subdivision (a) of this Article. Upon the request of either party
550 to this Contract, the Contracting Officer or DWR shall investigate, or cause to be investigated by
551 the appropriate Operating Non-Federal Entity, the accuracy of such measurements and shall take
552 any necessary steps to adjust any errors appearing therein. For any period of time when accurate
553 measurements have not been made, the Contracting Officer shall consult with the Contractor and
554 the appropriate Operating Non-Federal Entity prior to making a final determination of the
555 quantity delivered for that period of time.

556 (e) Neither the Contracting Officer, nor DWR, nor any Operating
557 Non-Federal Entity/Entities shall be responsible for the control, carriage, handling, use, disposal,
558 or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the delivery
559 points specified in subdivision (a) of this Article. The Contractor shall indemnify the
560 United States, DWR, and their officers, employees, agents, and assigns on account of damage or
561 claim of damage of any nature whatsoever for which there is legal responsibility, including
562 property damage, personal injury, or death arising out of or connected with the control, carriage,
563 handling, use, disposal, or distribution of such Water Delivered beyond such delivery points,
564 except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer,
565 DWR, or any of their officers, employees, agents, or assigns, including the Operating Non-
566 Federal Entity/Entities, with the intent of creating the situation resulting in any damage or claim;
567 (ii) willful misconduct of the Contracting Officer, DWR, or any of their officers, employees,
568 agents, or assigns, including the Operating Non-Federal Entity/Entities; (iii) negligence of the

569 Contracting Officer or any of his officers, employees, agents, or assigns including the Operating
570 Non-Federal Entity/Entities; or (iv) damage or claims resulting from a malfunction of facilities
571 owned and/or operated by the United States, DWR, or the Operating Non-Federal Entity/Entities;
572 Provided, That the Contractor is not the Operating Non-Federal Entity that owned or operated
573 the malfunctioning facility(ies) from which the damage claim arose. In the event any such claim
574 or liability, referenced in this Article or otherwise arising from this Contract, is made against
575 DWR, its officers or its employees, the Contractor agrees to defend, indemnify and hold each of
576 them harmless from such claim to the extent such claim does not arise from an error or omission
577 of DWR related to the carriage and control of Project Water made available to the Contractor by
578 the Contracting Officer.

579 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

580 6. (a) The Contractor has established a measuring program satisfactory to the
581 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
582 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
583 water delivered for M&I purposes is measured at each M&I service connection. The water
584 measuring devices or water measuring methods of comparable effectiveness must be acceptable
585 to the Contracting Officer. The Contractor shall be responsible for installing, operating, and
586 maintaining and repairing all such measuring devices and implementing all such water
587 measuring methods at no cost to the United States. The Contractor shall use the information
588 obtained from such water measuring devices or water measuring methods to ensure its proper
589 management of the water, to bill water users for water delivered by the Contractor; and, if
590 applicable, to record water delivered for M&I purposes by customer class as defined in the
591 Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing herein

592 contained, however, shall preclude the Contractor from establishing and collecting any charges,
593 assessments, or other revenues authorized by California law. The Contractor shall include a
594 summary of all its annual surface water deliveries in the annual report described in subdivision
595 (c) of Article 26.

596 (b) To the extent the information has not otherwise been provided, upon
597 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
598 report describing the measurement devices or water measuring methods being used or to be used
599 to implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
600 service connections or alternative measurement programs approved by the Contracting Officer,
601 at which such measurement devices or water measuring methods are being used, and, if
602 applicable, identifying the locations at which such devices and/or methods are not yet being used
603 including a time schedule for implementation at such locations. The Contracting Officer shall
604 advise the Contractor in writing within 60 days as to the adequacy of, and necessary
605 modifications, if any, of the measuring devices or water measuring methods identified in the
606 Contractor's report and if the Contracting Officer does not respond in such time, they shall be
607 deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices
608 or methods are inadequate, the parties shall within 60 days following the Contracting Officer's
609 response, negotiate in good faith the earliest practicable date by which the Contractor shall
610 modify said measuring devices and/or measuring methods as required by the Contracting Officer
611 to ensure compliance with subdivision (a) of this Article.

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

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

618 (e) The Contractor shall inform the Contracting Officer, DWR, and the
619 Operating Non-Federal Entity/Entities on or before the 20th calendar day of each month of the
620 quantity of Irrigation and M&I Water taken during the preceding month.

621 RATES AND METHOD OF PAYMENT FOR WATER

622 7. (a) The Contractor shall pay the United States as provided in this Article for
623 all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in
624 accordance with: (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and
625 the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be
626 amended, modified, or superseded only through a public notice and comment procedure;
627 (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and
628 (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction,
629 electronic funds transfer, or any other mechanism as may be agreed to in writing by the
630 Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component
631 applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may
632 be revised annually.

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

635 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
636 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
637 period October 1, of the current Calendar Year, through September 30, of the following Calendar

638 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
639 to review and comment on such estimates. On or before September 15 of each Calendar Year,
640 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
641 the period October 1 of the current Calendar Year, through September 30, of the following
642 Calendar Year, and such notification shall revise Exhibit "B."

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

650 (c) Except as otherwise provided in the Operations Manual, at the time the
651 Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant
652 to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to
653 the United States equal to the total amount payable pursuant to the applicable Rate(s) set under
654 subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this
655 Contract during the first two calendar months of the Year. Before the end of the first month and
656 before the end of each calendar month thereafter, the Contractor shall make an advance payment
657 to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water
658 Scheduled to be delivered pursuant to this Contract during the second month immediately
659 following. Adjustments between advance payments for Water Scheduled and payments at Rates
660 due for Water Delivered shall be made before the end of the following month; Provided, That

661 any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which
662 increases the amount of Water Delivered pursuant to this Contract during any month shall be
663 accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project
664 Water is not delivered to the Contractor in advance of such payment. In any month in which the
665 quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of
666 Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered
667 to the Contractor unless and until an advance payment at the Rates then in effect for such
668 additional Project Water is made. Final adjustment between the advance payments for the Water
669 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this
670 Contract shall be made as soon as practicable but no later than April 30th of the following Year,
671 or 60 days after the delivery of Project Water carried over under subdivision (g) of Article 3 of
672 this Contract if such water is not delivered by the last day of February.

673 (d) The Contractor shall also make a payment in addition to the Rate(s) in
674 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
675 appropriate Tiered Pricing Component then in effect, before the end of the month following the
676 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
677 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
678 consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the
679 water delivery report for the subject month prepared by the Operating Non-Federal
680 Entity/Entities or, if there is no Operating Non-Federal Entity, by the Contracting Officer. The
681 water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered
682 Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of
683 Charges shall be made through the adjustment of payments due to the United States for Charges

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

686 (e) The Contractor shall pay for any Water Delivered under subdivision (a),
687 (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to
688 applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting
689 policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this
690 Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water
691 under subdivision (a) of this Article.

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

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

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

701 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
702 Contractor a detailed accounting of all Project and Contractor expense allocations, the
703 disposition of all Project and Contractor revenues, and a summary of all water delivery
704 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
705 to resolve any discrepancies or disputes relating to accountings, reports, or information.

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

713 (j) (1) Beginning at such time as deliveries of Project Water in a Year
714 exceed 80 percent of the Contract Total, then before the end of the month following the month of
715 delivery the Contractor shall make an additional payment to the United States equal to the
716 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
717 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
718 Contract Total, shall equal one-half of the difference between the Rate established under
719 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
720 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
721 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between
722 (i) the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost
723 Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered
724 pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the
725 Contract Total, this increment shall be deemed to be divided between Irrigation Water and M&I
726 Water in the same proportion as actual deliveries of each bear to the cumulative total Water
727 Delivered.

728 (2) Subject to the Contracting Officer’s written approval, the
729 Contractor may request and receive an exemption from such Tiered Pricing Components for
730 Project Water delivered to produce a crop which the Contracting Officer determines will provide
731 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
732 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
733 Irrigation Water shall apply only if such habitat values can be assured consistent with the
734 purposes of the CVPIA through binding agreements executed with or approved by the
735 Contracting Officer prior to use of such water.

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

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

749 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
750 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor’s Rates

751 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
752 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
753 accordance with the then-applicable Project ratesetting policy. If the Contractor is receiving
754 lower Rates and Charges because of inability to pay and is transferring Project Water to another
755 entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges
756 for transferred Project Water shall be the Contractor's Rates and Charges and will not be
757 adjusted to reflect the Contractor's inability to pay.

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

760 (n) With respect to the Rates for M&I Water the Contractor asserts that it is
761 not legally obligated to pay any Project deficits claimed by the United States to have accrued as
762 of the date of this Contract or deficit-related interest charges thereon. By entering into this
763 Contract, the Contractor does not waive any legal rights or remedies that it may have with
764 respect to such disputed issues. Notwithstanding the execution of this Contract and payments
765 made hereunder, the Contractor may challenge in the appropriate administrative or judicial
766 forums: (1) the existence, computation, or imposition of any deficit charges accruing during the
767 term of the Existing Contract and any preceding interim renewal contracts, if applicable;
768 (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest
769 in the Rates; (4) the application by the United States of payments made by the Contractor under
770 its Existing Contract and any preceding interim renewal contracts, if appropriate; and (5) the
771 application of such payments in the Rates. The Contracting Officer agrees that the Contractor
772 shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project

773 M&I contractor on any of these issues, and credits for payments heretofore made; Provided, That
774 the basis for such ruling is applicable to the Contractor.

775 (o) The Contractor and the Contracting Officer concur that, as of the effective
776 date of this Contract, the Contractor has no non-interest-bearing O&M deficits and shall have no
777 further liability therefor.

778 RATES AND METHOD OF PAYMENT FOR CONVEYANCE
779 AND OTHER SERVICES BY DWR

780 8. (a) To the extent Project Water is conveyed through State Facilities, payment
781 for conveyance of water through the State Facilities shall be made by the Contractor directly to
782 DWR. Exhibit "C" sets forth the charges and interest rates applicable at the time this long-term
783 renewal contract is executed. DWR shall invoice the Contractor monthly for all conveyance
784 charges owing for the previous month. Payment by the Contractor to DWR shall be due 30 days
785 after the date of the invoice. Any payment not received within 30 days after the date of the
786 invoice shall be considered delinquent. Delinquent charges shall be calculated in accordance
787 with Exhibit "C" of this Contract; Provided, That no interest shall be charged to or be paid by the
788 Contractor unless such delinquency continues for more than 30 days in total.

789 (b) Omitted.

790 (c) Conveyance charges for the Contractor shall be determined by DWR on
791 the same basis it uses to determine conveyance charges for use of SWP facilities by entities that
792 are not SWP contractors. The method for determining this charge is described in DWR's annual
793 Bulletin 132. The charge for conveyance of water under this Contract shall be set forth in
794 Exhibit "C" of this Contract and revised annually.

795 (1) In accordance with subdivision (c) of this Article, when DWR
796 provides conveyance directly from the Delta or from the Federal share of storage at San Luis

797 Reservoir, the unit conveyance charge shall equal at a minimum the sum of the following, as
798 determined by DWR: (i) The equivalent unit transportation capital and Minimum OMP&R
799 Costs for those reaches of the California Aqueduct utilized for the delivery; (ii) The portion of
800 the Delta Water Rate for Reaches 1, 2A, 2B, and 3 of the California Aqueduct; (iii) The
801 replacement component of the Transportation Variable OM&R Costs for the Harvey O. Banks
802 Delta Pumping Plant and DWR's share of the Dos Amigos Pumping Plant; (iv) A charge to offset
803 direct fish losses associated with pumping at the Banks Pumping Plant, pursuant to the
804 December 30, 1986, agreement between the California Department of Fish and Game and DWR;
805 and (v) The incremental costs, if any, caused by the conveyance and delivery of Project Water to
806 the Contractor which, unless included in the increased charges to the Contractor, would result in
807 increased charges to the SWP Contractors or increased costs to DWR.

808 (2) When DWR provides conveyance from the State's share of storage
809 in San Luis Reservoir, the unit charge shall equal the sum of the following as determined by
810 DWR: (i) The San Luis Facilities portion of the Delta Water Rate; (ii) The net unit energy cost
811 to replace water in San Luis Reservoir; and (iii) The sum of all unit charges provided under
812 subdivision (c)(1) of this Article.

813 (d) Should DWR deliver Project Water to San Luis Reservoir on behalf of the
814 Contractor and it is later determined by DWR that capacity to store such Project Water in DWR's
815 share of San Luis Reservoir is no longer available because of need for such storage to meet SWP
816 operations and obligations to SWP Contractors and the Contractor cannot take delivery of such
817 Project Water, DWR shall relieve the Contractor of its obligations to pay DWR for all such
818 Project Water so transported, stored, and no longer available to the Contractor. DWR shall
819 reimburse the Contractor for payments which have previously been made to DWR for any such

820 conveyed and stored supply, less the administrative charge described in subdivision (f) of this
821 Article.

822 (e) If the Contractor is unable, fails or refuses to accept delivery of Project
823 Water made available by DWR in accordance with this Contract, such inability, failure or refusal
824 shall not relieve the Contractor of its obligation to pay DWR all associated costs.

825 (f) The Contractor shall pay DWR a monthly administrative charge specified
826 in Exhibit "C" of this Contract for each month in which DWR conveys Project Water to the
827 Contractor and for each month in which DWR invoices the Contractor for delinquent charges.

828 SALES, TRANSFERS, OR EXCHANGES OF WATER

829 9. (a) The right to receive Project Water provided for in this Contract may be
830 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
831 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
832 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
833 Water under this Contract may take place without the prior written approval of the Contracting
834 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
835 exchanges shall be approved absent all appropriate environmental documentation including but
836 not limited to documents prepared pursuant to NEPA and ESA. Such environmental
837 documentation should include, as appropriate, an analysis of groundwater impacts and economic
838 and social effects, including environmental justice, of the proposed water transfers on both the
839 transferor and transferee. No sale, transfer or exchange of the right to Project Water under this
840 Contract may take place without the prior written approval of the Contracting Officer and of
841 DWR, if State Facilities are used to convey such water.

842 (b) In order to facilitate efficient water management by means of water
843 transfers of the type historically carried out among Project Contractors located within the same
844 geographical area and to allow the Contractor to participate in an accelerated water transfer
845 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
846 all necessary environmental documentation including, but not limited to, documents prepared
847 pursuant to NEPA and ESA analyzing annual transfers within such geographical areas and the
848 Contracting Officer shall determine whether such transfers comply with applicable law.
849 Following the completion of the environmental documentation, such transfers addressed in such
850 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
851 require prior written approval by the Contracting Officer. Such environmental documentation
852 and the Contracting Officer's compliance determination shall be reviewed every five years and
853 updated, as necessary, prior to the expiration of the then-existing five-year period. All
854 subsequent environmental documentation shall include an alternative to evaluate not less than the
855 quantity of Project Water historically transferred within the same geographical area.

856 (c) For a water transfer to qualify under subdivision (b) of this Article, such
857 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
858 years, for M&I use, groundwater recharge, groundwater banking, similar groundwater activities,
859 surface water storage, or fish and wildlife resources; not lead to land conversion; and be
860 delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur
861 within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water
862 through existing facilities with no new construction or modifications to facilities and be between
863 existing Project Contractors and/or the Contractor and the United States, Department of the
864 Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and

865 requirements imposed for protection of the environment and Indian Trust Assets, as defined
866 under Federal law.

867 APPLICATION OF PAYMENTS AND ADJUSTMENTS

868 10. (a) The amount of any overpayment by the Contractor of the Contractor's
869 O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current
870 liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of
871 more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount
872 of such overpayment at the option of the Contractor may be credited against amounts to become
873 due to the United States or DWR by the Contractor. With respect to overpayment, such refund
874 or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to
875 have the right to the use of any of the Project Water supply provided for herein. All credits and
876 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
877 direction as to how to credit or refund such overpayment in response to the notice to the
878 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

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

884 (c) In the event that the Contractor contests the accuracy of any statement
885 submitted to it by DWR pursuant to this Contract it shall give DWR notice thereof at least ten
886 days prior to the day upon which payment of the stated amount is due. To the extent that DWR
887 finds that the Contractor's contentions regarding the statement are correct, it shall revise the

888 statement accordingly, and the Contractor shall make payment of the revised amounts on or
889 before the due date. To the extent that DWR does not find the Contractor's contentions to be
890 correct, or where time is not available for review of such contentions for correctness prior to due
891 date, the Contractor shall make payment of the stated amounts on or before the due date, but may
892 make the contested part of such payment under protest and seek an adjustment as described in
893 subdivision (d) of this Article.

894 (d) If in any year, by reason of errors in computation or other causes, there is
895 an overpayment or underpayment to DWR by the Contractor of its charges provided for herein,
896 the amount of such overpayment or underpayment shall be credited or debited, as the case may
897 be, to the Contractor's account for the next succeeding Year and DWR shall notify the Contractor
898 thereof in writing.

899 TEMPORARY REDUCTIONS-RETURN FLOWS

900 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and
901 State Facilities and the requirements of Federal law; (ii) the authorized purposes and priorities of
902 the State Facilities and State laws and policies governing the SWP; (iii) the obligations of the
903 United States and DWR under existing contracts, or renewals thereof, providing for water
904 deliveries from the Project and State Facilities; and (iv) the terms and conditions of this Contract;
905 the Contracting Officer and DWR shall make all reasonable efforts to optimize Project Water
906 deliveries to the Contractor as provided in this Contract.

907 (b) The Contracting Officer, DWR, or Operating Non-Federal Entity/Entities
908 may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as
909 herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement
910 of any of the Project or State Facilities or any part thereof necessary for the delivery of Project

911 Water to the Contractor, but so far as feasible the Contracting Officer, DWR, or Operating Non-
912 Federal Entity/Entities will give the Contractor due notice in advance of such temporary
913 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
914 Provided, That the United States and DWR shall use its best efforts to avoid any discontinuance
915 or reduction in such service. Upon resumption of service after such reduction or discontinuance,
916 and if requested by the Contractor, the United States and DWR will, if possible, deliver the
917 quantity of Project Water which would have been delivered hereunder in the absence of such
918 discontinuance or reduction.

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

925 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

931 (b) If there is a Condition of Shortage because of errors in physical operations
932 of the Project, drought, other physical causes beyond the control of the Contracting Officer or
933 actions taken by the Contracting Officer to meet legal obligations then, except as provided in

934 subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or
935 any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

936 (c) In any Year in which there may occur a shortage for any of the reasons
937 specified in subdivision (b) of this Article, the Contracting Officer shall apportion the available
938 Project Water supply among the Contractors and others entitled, under existing contracts and
939 future contracts (to the extent such future contracts are permitted under subsections (a) and (b) of
940 Section 3404 of the CVPIA) and renewals thereof, to receive Project Water consistent with the
941 contractual obligations of the United States.

942 (d) DWR shall make all reasonable efforts consistent with sound fiscal
943 policies, and proper operating procedures to maintain the necessary facilities and to deliver
944 Project Water to the Contractor in accordance with the provisions of this Contract in such a
945 manner and at such times as such Project Water is scheduled by the Contractor; Provided, That
946 such Project Water has been furnished to DWR by the Contracting Officer; and, Provided,
947 further, That in no event shall any liability accrue against DWR or any of its officers, agents or
948 employees for damage, direct or indirect for failure to deliver Project Water to the Contractor on
949 account of errors in operation, drought, or any other cause beyond the control of DWR.
950 Inasmuch as DWR is providing only conveyance and storage services under this Contract, it
951 bears no responsibility for the availability of Project Water for such conveyance.

952 (e) If any of the parties to this Contract are precluded in whole or in part from
953 delivering, conveying or receiving Project Water as a result of uncontrollable forces, all parties
954 shall be relieved from the obligation to the extent they are reasonably unable to complete the
955 obligation due to the uncontrollable force. Uncontrollable force shall include, but is not limited
956 to, earthquakes, fires, tornados, floods and other natural disasters. Each party shall be

957 responsible for payment of any costs incurred on its behalf by the other party(ies) before the
958 occurrence of the uncontrollable force.

959 UNAVOIDABLE GROUNDWATER PERCOLATION

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

964 RULES AND REGULATIONS

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

970 WATER AND AIR POLLUTION CONTROL

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

975 QUALITY OF WATER

976 16. (a) Project and State Facilities used to deliver Project Water to the Contractor
977 pursuant to this Contract shall be operated and maintained to enable the United States and DWR
978 to deliver Project Water to the Contractor in accordance with the water quality standards
979 specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 850), as added by Section
980 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The
981 United States and DWR are under no obligation to construct or furnish water treatment facilities
982 to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this

983 Contract. The United States and DWR do not warrant the quality of Water Delivered to the
984 Contractor pursuant to this Contract.

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

992 WATER ACQUIRED BY THE CONTRACTOR
993 OTHER THAN FROM THE UNITED STATES

994 17. (a) Water or water rights now owned or hereafter acquired by the Contractor
995 other than from the United States and Irrigation Water furnished pursuant to the terms of this
996 Contract may be simultaneously transported through the same distribution facilities of the
997 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
998 and non-project water were constructed without funds made available pursuant to Federal
999 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
1000 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive
1001 Irrigation Water must be established through the certification requirements as specified in the
1002 Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of
1003 Eligible Lands within the Contractor's Service Area can be established and the quantity of
1004 Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such
1005 Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and
1006 non-Project water are/were constructed with funds made available pursuant to Federal

1007 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of
1008 Federal Reclamation law, unless the Contractor pays to the United States the incremental fee
1009 described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will
1010 calculate annually the cost to the Federal Government, including interest of storing or delivering
1011 non-Project water, which for purposes of this Contract shall be determined as follows: The
1012 quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within
1013 the Contractor's Service Area. The incremental fee per acre is the mathematical result of such
1014 quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982,
1015 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land
1016 within the Contractor's Service Area that receives non-Project water through Federally financed
1017 or constructed facilities. The incremental fee calculation methodology will continue during the
1018 term of this Contract absent promulgation of a contrary Reclamation-wide rule, regulation, or
1019 policy adopted after the Contractor has been afforded the opportunity to review and comment on
1020 the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall
1021 supersede this provision. The Contractor and the Contracting Officer concur that, as of the
1022 effective date of this Contract, the Contractor has a distribution system that was constructed
1023 without the use of Federally financed funds. The use of this distribution system is not subject to
1024 the provisions of this subdivision of this Article. The Contractor and the Contracting Officer
1025 concur that, as of the effective date of this Contract, the Contractor has a distribution system that
1026 was constructed without the use of Federally financed funds. The use of this distribution system
1027 is not subject to the provision of this subdivision of this Article. A separate written agreement
1028 with DWR must be obtained by the Contractor prior to conveyance of such water in State
1029 Facilities.

1030 (b) Omitted

1031 OPINIONS AND DETERMINATIONS

1032 18. (a) Where the terms of this Contract provide for actions to be based upon the
1033 opinion or determination of any party to this Contract, said terms shall not be construed as
1034 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
1035 determinations. The parties, notwithstanding any other provisions of this Contract, expressly
1036 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
1037 or unreasonable opinion or determination. Each opinion or determination by any party shall be
1038 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is
1039 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
1040 any opinion or determination implementing a specific provision of Federal law embodied in
1041 statute or regulation.

1042 (b) The Contracting Officer and DWR shall have the right to make
1043 determinations necessary to administer this Contract that are consistent with the provisions of
1044 this Contract, the laws of the United States and of the State of California, and the rules and
1045 regulations promulgated by the Secretary of the Interior and DWR. Such determinations shall be
1046 made in consultation with the Contractor to the extent reasonably practicable.

1047 COORDINATION AND COOPERATION

1048 19. (a) In order to further their mutual goals and objectives, the Contracting
1049 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
1050 with other affected Project Contractors, in order to improve the operation and management of the
1051 Project. The communication, coordination, and cooperation regarding operations and
1052 management shall include, but not be limited to, any action which will or may materially affect

1053 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
1054 Project financial matters including, but not limited to, budget issues. The communication,
1055 coordination, and cooperation provided for hereunder shall extend to all provisions of this
1056 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,
1057 and determinations to be made by the respective party.

1058 (b) Within 120 days following the effective date of this Contract, the
1059 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
1060 with interested Project Contractors to develop a mutually agreeable, written Project-wide
1061 process, which may be amended as necessary separate and apart from this Contract. The goal of
1062 this process shall be to provide, to the extent practicable, the means of mutual communication
1063 and interaction regarding significant decisions concerning Project operation and management on
1064 a real-time basis.

1065 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
1066 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
1067 intent:

1068 (1) The Contracting Officer will, at the request of the Contractor,
1069 assist in the development of integrated resource management plans for the Contractor. Further,
1070 the Contracting Officer will, as appropriate, seek authorizations for implementation of
1071 partnerships to improve water supply, water quality, and reliability.

1072 (2) The Secretary will, as appropriate, pursue program and project
1073 implementation and authorization in coordination with Project Contractors to improve the water
1074 supply, water quality, and reliability of the Project for all Project purposes.

1075 (3) The Secretary will coordinate with Project Contractors and the
1076 State of California to seek improved water resource management.

1077 (4) The Secretary will coordinate actions of agencies within the
1078 Department of the Interior that may impact the availability of water for Project purposes.

1079 (5) The Contracting Officer shall periodically, but not less than
1080 annually, hold division level meetings to discuss Project operations, division level water
1081 management activities, and other issues as appropriate.

1082 (d) Without limiting the contractual obligations of the Contracting Officer
1083 under the other Articles of this Contract, nothing in this Article shall be construed to limit or
1084 constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the
1085 Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to
1086 protect health, safety, or the physical integrity of structures or facilities.

1087 CHARGES FOR DELINQUENT PAYMENTS

1088 20. (a) The Contractor shall be subject to interest, administrative and penalty
1089 charges on delinquent installments or payments. When a payment is not received by the due
1090 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
1091 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
1092 administrative charge to cover additional costs of billing and processing the delinquent payment.
1093 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
1094 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
1095 due date. Further, the Contractor shall pay any fees incurred for debt collection services
1096 associated with a delinquent payment.

1097 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
1098 in the Federal Register by the Department of the Treasury for application to overdue payments,
1099 or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the
1100 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
1101 determined as of the due date and remain fixed for the duration of the delinquent period.

1102 (c) When a partial payment on a delinquent account is received, the amount
1103 received shall be applied, first to the penalty, second to the administrative charges, third to the
1104 accrued interest, and finally to the overdue payment.

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EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the

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1143 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
1144 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
1145 action with respect to any subcontract or purchase order as may be directed by the Secretary of
1146 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
1147 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,
1148 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
1149 the United States to enter into such litigation to protect the interests of the United States.

1150 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1151 22. (a) The obligation of the Contractor to pay the United States and DWR as
1152 provided in this Contract is a general obligation of the Contractor notwithstanding the manner in
1153 which the obligation may be distributed among the Contractor's water users and notwithstanding
1154 the default of individual water users in their obligations to the Contractor.

1155 (b) The payment of charges becoming due hereunder is a condition precedent
1156 to receiving benefits under this Contract. The United States and DWR shall not make water or
1157 conveyance facilities available to the Contractor through Project or State Facilities during any
1158 period in which the Contractor may be in arrears in the advance payment of water rates due the
1159 United States. The Contractor shall not furnish water made available pursuant to this Contract
1160 for lands or parties which are in arrears in the advance payment of water rates levied or
1161 established by the Contractor.

1162 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1163 obligation to require advance payment for water rates which it levies. Subdivision (b) of this
1164 Article applies to periods when the Contractor is in arrears on payment of charges to DWR.

1165 (d) If in any year the Contractor fails or is unable to raise sufficient funds by
1166 other means, the governing body of the Contractor shall levy upon all property within the
1167 Contractor's boundary not exempt from taxation, a special assessment sufficient to provide for all
1168 payments due the United States and DWR under this Contract.

1169 (e) Assessments levied by the governing body of the Contractor pursuant to
1170 subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor
1171 charged with the duty of enforcing and collecting assessments levied by the Contractor.

1172 (f) All money collected by way of special assessments under this Article for
1173 payments due DWR shall be kept in a separate fund by the treasurer or other officer of the
1174 Contractor charged with the safekeeping and disbursement of funds of the Contractor, and, upon
1175 the written demand of DWR, the treasurer or other officer shall pay over to DWR all money in
1176 his possession or control then due DWR under this contract, which money shall be applied by
1177 DWR to the satisfaction of the amount due under this Contract.

1178 (g) In the event of failure, neglect, or refusal of any officer of the Contractor
1179 to levy any assessment necessary to provide payment by the Contractor under this Contract, to
1180 enforce or to collect the assessment, or to pay over to the United States or DWR any money then
1181 due collected on the assessment, either or both DWR and the United States may take such action
1182 in a court of competent jurisdiction as they deem necessary to compel the performance in their
1183 proper sequence of all such duties. Action taken pursuant hereto shall not deprive DWR or
1184 United States or limit any remedy provided by this Contract or by law for the recovery of money
1185 due or which may become due under this Contract.

1186 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1187 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1188 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
1189 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
1190 laws, as well as with their respective implementing regulations and guidelines imposed by the
1191 U.S. Department of the Interior and/or Bureau of Reclamation.

1192 (b) These statutes require that no person in the United States shall, on the
1193 grounds of race, color, national origin, handicap, or age, be excluded from participation in, be
1194 denied the benefits of, or be otherwise subjected to discrimination under any program or activity
1195 receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the

1196 Contractor agrees to immediately take any measures necessary to implement this obligation,
1197 including permitting officials of the United States to inspect premises, programs, and documents.

1198 (c) The Contractor makes this agreement in consideration of and for the
1199 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
1200 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
1201 Reclamation, including installment payments after such date on account of arrangements for
1202 Federal financial assistance which were approved before such date. The Contractor recognizes
1203 and agrees that such Federal assistance will be extended in reliance on the representations and
1204 agreements made in this Article, and that the United States reserves the right to seek judicial
1205 enforcement thereof.

1206 PRIVACY ACT COMPLIANCE

1207 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
1208 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
1209 seq.) in maintaining Landholder acreage certification and reporting records, required to be
1210 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
1211 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

1212 (b) With respect to the application and administration of the criminal penalty
1213 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees
1214 responsible for maintaining the certification and reporting records referenced in (a) above are
1215 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

1216 (c) The Contracting Officer or a designated representative shall provide the
1217 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
1218 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage
1219 Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and
1220 disclosure of information contained in the Landholder's certification and reporting records.

1221 (d) The Contracting Officer shall designate a full-time employee of the
1222 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
1223 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
1224 Contractor is authorized to grant requests by individuals for access to their own records.

1225 (e) The Contractor shall forward promptly to the System Manager each
1226 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
1227 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
1228 Manager with information and records necessary to prepare an appropriate response to the
1229 requester. These requirements do not apply to individuals seeking access to their own

1230 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
1231 requester elects to cite the Privacy Act as a basis for the request.

1232 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1233 25. In addition to all other payments to be made by the Contractor pursuant to this
1234 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1235 detailed statement submitted by the Contracting Officer to the Contractor for such specific items
1236 of direct cost incurred by the United States for work requested by the Contractor associated with
1237 this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies
1238 and procedures. All such amounts referred to in this Article shall not exceed the amount agreed
1239 to in writing in advance by the Contractor. This Article shall not apply to costs for routine
1240 contract administration.

1241 WATER CONSERVATION

1242 26. (a) Prior to the delivery of water provided from or conveyed through
1243 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1244 shall be implementing an effective water conservation and efficiency program based on the
1245 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1246 the conservation and efficiency criteria for evaluating water conservation plans established under
1247 Federal law. The water conservation and efficiency program shall contain definite water
1248 conservation objectives, appropriate economically feasible water conservation measures, and
1249 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1250 Contract shall be contingent upon the Contractor's continued implementation of such water
1251 conservation program. In the event the Contractor's water conservation plan or any revised water
1252 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
1253 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1254 the Contracting Officer determines are beyond the control of the Contractor, water deliveries

1255 shall be made under this Contract so long as the Contractor diligently works with the Contracting
1256 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
1257 immediately begins implementing its water conservation and efficiency program in accordance
1258 with the time schedules therein.

1259 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1260 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall
1261 implement the Best Management Practices identified by the time frames issued by the California
1262 Urban Water Conservation Council for such M&I Water unless any such practice is determined
1263 by the Contracting Officer to be inappropriate for the Contractor.

1264 (c) The Contractor shall submit to the Contracting Officer a report on the
1265 status of its implementation of the water conservation plan on the reporting dates specified in the
1266 then existing conservation and efficiency criteria established under Federal law.

1267 (d) At five-year intervals, the Contractor shall revise its water conservation
1268 plan to reflect the then-current conservation and efficiency criteria for evaluating water
1269 conservation plans established under Federal law and submit such revised water management
1270 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
1271 determine if the water conservation plan meets Reclamation's then-current conservation and
1272 efficiency criteria for evaluating water conservation plans established under Federal law.

1273 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1274 shall be described in the Contractor's water conservation plan.

1275 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1276 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1277 this Contract shall not be applicable to or affect non-Project water or water rights now owned or

1278 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1279 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1280 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1281 any water user within the Contractor's Service Area acquires or has available under any other
1282 contract pursuant to Federal Reclamation law.

1283 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1284 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1285 and responsibility for funding a portion of the costs of such O&M, have been transferred to two
1286 Operating Non-Federal Entities by separate agreements between the United States and the
1287 Operating Non-Federal Entities. Those separate agreements shall not interfere with or affect the
1288 rights or obligations of the Contractor or the United States hereunder. Specifically, portions of
1289 the Delta-Mendota Canal, the San Luis Canal and other related facilities are operated by the
1290 San Luis & Delta-Mendota Water Authority and the Friant-Kern Canal and related facilities are
1291 operated by the Friant Water Authority.

1292 (b) The Contractor shall pay directly to the applicable Operating Non-Federal
1293 Entity, or to any successor approved by the Contracting Officer under the terms and conditions
1294 of the separate agreements between the United States and the Operating Non-Federal Entities
1295 described in subdivision (a) of this Article, all rates, charges, or assessments of any kind,
1296 including any assessment for reserve funds, which the Operating Non-Federal Entity or such
1297 successor determines, sets, or establishes for the O&M of the portion of the Project facilities
1298 operated and maintained by the Operating Non-Federal Entity or such successor. Such direct
1299 payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor
1300 of its obligation to pay directly to the United States the Contractor's share of the Project Rates,

1301 Charges, and Tiered Pricing Component(s) except to the extent the Operating Non-Federal Entity
1302 collects payments on behalf of the United States in accordance with the separate agreement
1303 identified in subdivision (a) of this Article.

1304 (c) For so long as the O&M of any portion of the Project facilities serving the
1305 Contractor is performed by the Operating Non-Federal Entities, or any successors thereto, the
1306 Contracting Officer shall adjust those components of the Rates for Water Delivered under this
1307 Contract representing the cost associated with the activity being performed by the Operating
1308 Non-Federal Entities or their successors.

1309 (d) In the event the O&M of the Project facilities operated and maintained by
1310 the Operating Non-Federal Entity/Entities is re-assumed by the United States during the term of
1311 this Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1312 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1313 Contractor for Project Water under this Contract representing the O&M costs of the portion of
1314 such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the
1315 absence of written notification from the Contracting Officer to the contrary, pay the Rates,
1316 Charges, and Tiered Pricing Component specified in the revised Exhibit AB@ directly to the
1317 United States in compliance with Article 7 of this Contract.

1318 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1319 29. The expenditure or advance of any money or the performance of any obligation of
1320 the United States under this Contract shall be contingent upon appropriation or allotment of
1321 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1322 obligations under this Contract. No liability shall accrue to the United States in case funds are
1323 not appropriated or allotted.

1324

BOOKS, RECORDS, AND REPORTS

1325 30. (a) The Contractor shall establish and maintain accounts and other books and
1326 records pertaining to administration of the terms and conditions of this Contract, including: the
1327 Contractor's financial transactions, water supply data, and Project land and right-of-way
1328 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1329 data; and other matters that the Contracting Officer may require. Reports thereon shall be
1330 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
1331 Officer may require. Subject to applicable Federal laws and regulations, each party to this
1332 Contract shall have the right during office hours to examine and make copies of the other party's
1333 books and records relating to matters covered by this Contract.

1334 (b) Notwithstanding the provisions of subdivision (a) of this Article, no
1335 books, records, or other information shall be requested from the Contractor by the Contracting
1336 Officer unless such books, records, or information are reasonably related to the administration or
1337 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1338 time within which to provide the requested books, records, or information.

1339 (c) At such time as the Contractor provides information to the Contracting
1340 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1341 to the Operating Non-Federal Entity/Entities.

1342 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1343 31. (a) The provisions of this Contract shall apply to and bind the successors and
1344 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1345 therein shall be valid until approved in writing by the Contracting Officer.

1346 (b) The assignment of any right or interest in this Contract by a party shall not
1347 interfere with the rights or obligations of the other parties to this Contract absent the written
1348 concurrence of said other parties.

1349 (c) The Contracting Officer shall not unreasonably condition or withhold
1350 approval of any proposed assignment.

1351 (d) No assignment or transfer of any rights to use State Facilities authorized
1352 by this Contract shall be valid without advance written approval by DWR.

1353 SEVERABILITY

1354 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1355 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor
1356 (iii) an association or other form of organization whose primary function is to represent parties to
1357 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1358 enforceability of a provision included in this Contract and said person, entity, association, or
1359 organization obtains a final court decision holding that such provision is legally invalid or
1360 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1361 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1362 final court decision identify by mutual agreement the provisions in this Contract which must be
1363 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).

1364 The time periods specified above may be extended by mutual agreement of the parties. Pending
1365 the completion of the actions designated above, to the extent it can do so without violating any
1366 applicable provisions of law, the United States shall continue to make the quantities of Project
1367 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1368 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1369 RESOLUTION OF DISPUTES

1370 33. Should any dispute arise concerning any provisions of this Contract, or the
1371 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1372 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1373 Officer referring any matter to Department of Justice, the party shall provide to the other party

1374 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1375 required where a delay in commencing an action would prejudice the interests of the party that
1376 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1377 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1378 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1379 United States may have.

1380 OFFICIALS NOT TO BENEFIT

1381 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1382 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1383 manner as other water users or landowners.

1384 CHANGES IN CONTRACTOR'S SERVICE AREA

1385 35. (a) While this Contract is in effect, no change may be made in the
1386 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1387 or otherwise, except upon the Contracting Officer's written consent.

1388 (b) Within 30 days of receipt of a request for such a change, the Contracting
1389 Officer will notify the Contractor of any additional information required by the Contracting
1390 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1391 schedule for timely completion of the process. Such process will analyze whether the proposed
1392 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1393 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1394 to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1395 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,
1396 the Contracting Officer shall comply with NEPA and ESA. The Contractor will be responsible
1397 for all costs incurred by the Contracting Officer in this process, and such costs will be paid in

1398 accordance with Article 25 of this Contract. Upon approval by the Contracting Officer, the
1399 Contractor shall promptly give notice of any such change in Contractor's Service Area to DWR.

1400 FEDERAL LAWS

1401 36. By entering into this Contract, the Contractor does not waive its rights to contest
1402 the validity or application in connection with the performance of the terms and conditions of this
1403 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1404 the terms and conditions of this Contract unless and until relief from application of such Federal
1405 law or regulation to the implementing provision of the Contract is granted by a court of
1406 competent jurisdiction.

1407 NOTICES

1408 37. Any notice, demand, or request authorized or required by this Contract shall be
1409 deemed to have been given on behalf of the parties when mailed, postage prepaid; or delivered to
1410 the Area Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California
1411 93721-1813; to the Chief, State Water Project Analysis Office, Department of Water Resources,
1412 P.O. Box 942836, Sacramento, California 94236-0001; and to the Board of Directors of the
1413 Kern-Tulare Water District, 1820 - 21st Street, Bakersfield, California 93301. The designation
1414 of the addressee or the address may be changed by notice given in the same manner as provided
1415 in this Article for other notices.

1416 CONFIRMATION OF CONTRACT

1417 38. The Contractor, after the execution of this Contract, shall promptly seek to secure
1418 a decree of a court of competent jurisdiction of the State of California, confirming the execution
1419 of this Contract. The Contractor shall furnish both the United States and DWR with a certified
1420 copy of the final decree, the validation proceedings, and all pertinent supporting records of the
1421 court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid,
1422 and binding on the Contractor.

1423 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day
1424 and year first above written.

1425 THE UNITED STATES OF AMERICA

1426 By: _____
1427 Regional Director, Mid-Pacific Region
1428 Bureau of Reclamation

1429 Approved as to Legal Form and DEPARTMENT OF WATER RESOURCES
1430 Sufficiency: OF THE STATE OF CALIFORNIA

1431 By: _____ By: _____
1432 Chief Counsel, Director,
1433 Department of Water Resources Department of Water Resources

1434 (SEAL) KERN-TULARE WATER DISTRICT

1435 By: _____
1436 President of the Board of Directors

1437 Attest:

1438 By: _____
1439 Secretary of the Board of Directors

1440 (h:\PUB 440\ltrc\Final Draft LTRC's – Fresno, Tracy\10-20-04 Kern-Tulare Draft LTRC with
1441 exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B
KERN-TULARE WATER DISTRICT
Water Rates and Charges

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

	<u>2004 Rates Per Acre-Foot</u>	
	<u>Irrigation Water</u>	<u>M&I Water</u>
O&M AND COST-OF-SERVICE RATES:		
Capital Rates:		
Cross Valley Conveyance (if applicable)	\$5.48	**
O&M Rates:		
Water Marketing	\$7.59	
Storage	\$5.83	
Direct Pumping (Project Use Energy)	\$3.25	
Dos Amigos	4/	
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
TOTAL COST-OF-SERVICE RATES:	\$22.15	
FULL-COST RATES:		
Section 202(3) Rate is applicable to a Qualified recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$30.49	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on Or before October 1, 1981.	\$33.11	
SURCHARGES UNDER P.L 102-575 TO RESTORATION FUND*		
Restoration Payments [3407(d)(2)(A)]	\$7.82	

* 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 (10/1/01-9/30/02).

** M&I Rates will be calculated when needed.

4/ - Conveyance and Conveyance Pumping operation and maintenance costs were removed for ratesetting purposes and are to be direct billed.