

AG and M&I
T.O. Final Draft 09/14-2004
T.O. Draft 08/02-2004
R.O. Final Delta Division Form 07/23-2004
R.O. Draft 07/22-2004
CVP-Wide Form 05/23-2004
Delta Division
Contract No.
14-06-200-7823-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
ORO LOMA WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM THE DELTA DIVISION

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8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE DELTA DIVISION

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

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

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

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

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

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

33 [4th] WHEREAS, the Contractor and the United States entered into Contract
34 No. 14-06-200-7823, which established terms for the delivery to the Contractor of Project Water
35 from the Delta Division Facilities from April 7, 1959, through February 28, 1995; and

36 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
37 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into
38 interim renewal contract(s) identified as Contract No(s). 14-06-200-7823-IR1, 14-06-200-7823-IR2,
39 14-06-200-7823-IR3, 14-06-200-7823-IR4, 14-06-200-7823-IR5, 14-06-200-7823-IR6, 14-06-200-
40 7823-IR7, and 14-06-200-7823-IR8, the current of which is hereinafter referred to as the Existing
41 Contract, which provided for the continued water service to the Contractor from March 1, 1995,
42 through February 28, 2006; and

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

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

48 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
49 environmental review necessary to provide for long-term renewal of the Existing Contract; and

50 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
51 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of
52 the State of California, for water service from the Project; and

53 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of
54 its obligations under the Existing Contract; and

55 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
56 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
57 beneficial use and/or has demonstrated projected future demand for water use such that the
58 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
59 quantity of Project Water to be made available to it pursuant to this Contract; and

60 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
61 agricultural areas within California for more than 50 years, and is considered by the Contractor as
62 an essential portion of its water supply; and

63 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
64 depend upon the continued availability of water, including water service from the Project; and

65 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
66 partnerships to pursue measures to improve water supply, water quality, and reliability of the
67 Project for all Project purposes; and

68 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
69 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment
70 of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
71 reasonable balance among competing demands for use of Project Water; and to comply with all
72 applicable environmental statutes, all consistent with the legal obligations of the United States
73 relative to the Project; and

74 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
75 relationship in order to achieve their mutual goals; and

76 [15.1] WHEREAS, the Contractor has utilized or may utilize transfers, contract
77 assignments, rescheduling and conveyance of Project Water and non-Project water under this
78 Contract as tools to minimize the impacts of Conditions of Shortage and to maximize the beneficial
79 use of water; and

80 [15.2] WHEREAS, the parties desire and intend that this Contract not provide a
81 disincentive to the Contractor in continuing to carry out the beneficial activities set out in the
82 Explanatory Recital immediately above; and

83 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
84 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

87 DEFINITIONS

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

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

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

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

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

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

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

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

109 (g.1) “Delta Division Facilities” shall mean those existing and future Project
110 facilities in and south of the Sacramento-San Joaquin Rivers Delta, including, but not limited to, the
111 Tracy Pumping Plant, the O’Neill Pumping/Generating Plant, and the San Luis Reservoir, used to

112 divert, store and convey water to those Project Contractors entitled to receive water conveyed
113 through the Delta-Mendota Canal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

177 TERM OF CONTRACT

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

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

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

191 (i) the Contractor has prepared a water conservation plan that has been determined by the
192 Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and
193 efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is
194 implementing an effective water conservation and efficiency program based on the Contractor's

195 water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is operating
196 and maintaining all water measuring devices and implementing all water measurement methods as
197 approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has
198 reasonably and beneficially used the Project Water supplies made available to it and, based on
199 projected demands, is reasonably anticipated and expects to fully utilize for reasonable and
200 beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v)
201 the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor
202 has the physical and legal ability to deliver Project Water.

203 (3) The terms and conditions of the renewal contract described in
204 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed
205 consistent with the parties' respective legal rights and obligations, and in consideration of all
206 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
207 without limitation, the Contractor's need for continued delivery of Project Water; environmental
208 conditions affected by implementation of the Contract to be renewed, and specifically changes in
209 those conditions that occurred during the life of the Contract to be renewed; the Secretary's progress
210 toward achieving the purposes of the CVPIA as set out in Section 3402 and in implementing the
211 specific provisions of the CVPIA; and current and anticipated economic circumstances of the region
212 served by the Contractor.

213 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
214 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall be
215 consistent with the then-existing Reclamation-wide policy, under terms and conditions mutually
216 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded
217 the opportunity to comment to the Contracting Officer on the proposed adoption and application of

218 any revised policy applicable to the delivery of M&I Water that would limit the term of any
219 subsequent renewal contract with the Contractor for the furnishing of M&I Water to less than 40
220 years.

221 (d) The Contracting Officer shall make a determination ten years after the date of
222 execution of this Contract, and every five years thereafter during the term of this Contract, of
223 whether a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of
224 the Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70
225 Stat 483). The Contracting Officer shall also make a determination ten years after the date of
226 execution of this Contract and every five years thereafter during the term of this Contract of whether
227 a conversion of the relevant portion of this Contract to a contract under subsection 9(c)(1) of the
228 Reclamation Project Act of 1939 can be accomplished. Notwithstanding any provision of this
229 Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956
230 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all
231 authorized Project construction expected to occur will have occurred, and on that basis the
232 Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to
233 the Contractor, and agrees further that, at any time after such allocation is made, and subject to
234 satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the
235 Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable of
236 the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and
237 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such
238 conversion to occur shall be a determination by the Contracting Officer that, account being taken of
239 the amount credited to return by the Contractor as provided for under Federal Reclamation law, the
240 remaining amount of construction costs assignable for ultimate return by the Contractor can

241 probably be repaid to the United States within the term of a contract under subsection 9(d) or
242 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to
243 the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall
244 notify the Contractor, and provide the reason(s) why such a determination could not be made.
245 Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as
246 to permit, upon request of the Contractor and satisfaction of the conditions set out above,
247 conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such
248 determination of costs has not been made at a time which allows conversion of this Contract during
249 the term of this Contract or the Contractor has not requested conversion of this Contract within such
250 term, the parties shall incorporate in any subsequent renewal contract as described in subdivision (b)
251 of this Article a provision that carries forth in substantially identical terms the provisions of this
252 subdivision.

253 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

254 3. (a) During each Year, consistent with all applicable State water rights, permits,
255 and licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this
256 Contract, the Contracting Officer shall make available for delivery to the Contractor 4,600 acre-feet
257 of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance
258 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7
259 of this Contract.

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

264 any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected
265 that the Contract Total set forth in this Contract will not be available to the Contractor in many
266 years. During the most recent five years, the Recent Historic Average of Water Made Available to
267 the Contractor was 3,027 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights
268 and obligations of the parties under any provision of this Contract.

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

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

280 (d) The Contractor shall make reasonable and beneficial use of all water
281 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
282 groundwater banking programs, surface water storage programs, and other similar programs
283 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
284 Contractor's Service Area which are consistent with applicable State law and result in use consistent
285 with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is
286 (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this

287 Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses
288 exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered
289 Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation
290 law. Groundwater recharge programs, groundwater banking programs, surface water storage
291 programs, and other similar programs utilizing Project Water or other water furnished pursuant to
292 this Contract conducted outside the Contractor's Service Area may be permitted upon written
293 approval of the Contracting Officer, which approval will be based upon environmental
294 documentation, Project Water rights, and Project operational concerns. The Contracting Officer
295 will address such concerns in regulations, policies, or guidelines.

296 (e) The Contractor shall comply with requirements applicable to the Contractor
297 in biological opinion(s) prepared as a result of a consultation regarding the execution of this
298 Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as
299 amended, that are within the Contractor's legal authority to implement. The Existing Contract,
300 which evidences in excess of 45 years of diversions for irrigation and/or M&I purposes of the
301 quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
302 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA, and
303 any other needed environmental review. Nothing herein shall be construed to prevent the
304 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
305 respect to any biological opinion or other environmental documentation referred to in this Article.

306 (f) Following the declaration of Water Made Available under Article 4 of this
307 Contract, the Contracting Officer will make a determination whether Project Water, or other water
308 available to the Project, can be made available to the Contractor in addition to the Contract Total
309 under this Article during the Year without adversely impacting other Project Contractors. At the

310 request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
311 such a determination. If the Contracting Officer determines that Project Water, or other water
312 available to the Project, can be made available to the Contractor, the Contracting Officer will
313 announce the availability of such water and shall so notify the Contractor as soon as practical. The
314 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable
315 of taking such water to determine the most equitable and efficient allocation of such water. If the
316 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make
317 such water available to the Contractor in accordance with applicable statutes, regulations,
318 guidelines, and policies. Subject to existing long-term contractual commitments, water rights and
319 operational constraints, long-term Project Contractors shall have a first right to acquire such water,
320 including Project Water made available pursuant to Section 215 of the RRA.

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

328 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
329 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during
330 the term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract,
331 during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its
332 obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall

333 affect the Contracting Officer's ability to impose shortages under Article 11 or subdivision (b) of
334 Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

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

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

346 TIME FOR DELIVERY OF WATER

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

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

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

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

370 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

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

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

383 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
384 measured and recorded with equipment furnished, installed, operated, and maintained by the
385 Contracting Officer either directly or indirectly through its written agreement(s) with the Operating
386 Non-Federal Entity(ies), unless undertaken by the Contractor with the consent of the Contracting
387 Officer, at the point or points of delivery established pursuant to subdivision (a) of this Article.
388 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause
389 to be investigated by the appropriate Operating Non-Federal Entity(ies), the accuracy of such
390 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
391 period of time when accurate measurements have not been made, the Contracting Officer shall
392 consult with the Contractor and the appropriate Operating Non-Federal Entity(ies), if any, prior to
393 making a final determination of the quantity delivered for that period of time.

394 (e) Absent a separate contrary written agreement with the Contractor, neither the
395 Contracting Officer nor any Operating Non-Federal Entity(ies) shall be responsible for the control,
396 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to
397 this Contract beyond the point or points of delivery established pursuant to subdivision (a) of this
398 Article. The Contractor shall indemnify the United States, its officers, employees, agents, and
399 assigns on account of damage or claim of damage of any nature whatsoever for which there is legal
400 responsibility, including property damage, personal injury, or death arising out of or connected with
401 the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such

402 point or points of delivery, except for any damage or claim arising out of: (i) acts or omissions of
403 the Contracting Officer or any of its officers, employees, agents, and assigns, including the
404 Operating Non-Federal Entity(ies), with the intent of creating the situation resulting in any damage
405 or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents,
406 and assigns, including the Operating Non-Federal Entity(ies); (iii) negligence of the Contracting
407 Officer or any of its officers, employees, agents, and assigns including the Operating Non-Federal
408 Entity(ies); or (iv) a malfunction of facilities owned and/or operated by the United States or the
409 Operating Non-Federal Entity(ies).

410 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

411 6. (a) The Contractor has established a measuring program satisfactory to the
412 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
413 purposes within the Contractor's Service Area is measured at each agricultural turnout and such
414 water delivered for M&I purposes is measured at each M&I service connection. The water
415 measuring devices or water measuring methods of comparable effectiveness must be acceptable to
416 the Contracting Officer. The Contractor shall be responsible for installing, operating, and
417 maintaining and repairing all such measuring devices and implementing all such water measuring
418 methods at no cost to the United States. The Contractor shall use the information obtained from
419 such water measuring devices or water measuring methods to ensure its proper management of the
420 water, to bill water users for water delivered by the Contractor; and, if applicable, to record water
421 delivered for M&I purposes by customer class as defined in the Contractor's water conservation
422 plan provided for in Article 26 of this Contract. Nothing herein contained, however, shall preclude
423 the Contractor from establishing and collecting any charges, assessments, or other revenues

424 authorized by California law. The Contractor shall include a summary of all its annual surface
425 water deliveries in the annual report described in subdivision (c) of Article 26.

426 (b) To the extent the information has not otherwise been provided, upon
427 execution of this Contract, the Contractor shall provide to the Contracting Officer a written report
428 describing the measurement devices or water measuring methods being used or to be used to
429 implement subdivision (a) of this Article and identifying the agricultural turnouts and the M&I
430 service connections or alternative measurement programs approved by the Contracting Officer, at
431 which such measurement devices or water measuring methods are being used, and, if applicable,
432 identifying the locations at which such devices and/or methods are not yet being used including a
433 time schedule for implementation at such locations. The Contracting Officer shall advise the
434 Contractor in writing within 60 days as to the adequacy, and necessary modifications, if any, of the
435 measuring devices or water measuring methods identified in the Contractor's report and if the
436 Contracting Officer does not respond in such time, they shall be deemed adequate. If the
437 Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate,
438 the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith
439 the earliest practicable date by which the Contractor shall modify said measuring devices and/or
440 measuring methods as required by the Contracting Officer to ensure compliance with subdivision
441 (a) of this Article.

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

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

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

451 RATES AND METHOD OF PAYMENT FOR WATER

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

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

464 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
465 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
466 period October 1, of the current Calendar Year, through September 30, of the following Calendar
467 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to

468 review and comment on such estimates. On or before September 15 of each Calendar Year, the
469 Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the
470 period October 1 of the current Calendar Year, through September 30, of the following Calendar
471 Year, and such notification shall revise Exhibit "B."

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

479 (c) At the time the Contractor submits the initial schedule for the delivery of
480 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor
481 shall make an advance payment to the United States equal to the total amount payable pursuant to
482 the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be
483 delivered pursuant to this Contract during the first two calendar months of the Year. Before the end
484 of the first month and before the end of each calendar month thereafter, the Contractor shall make
485 an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for
486 the Water Scheduled to be delivered pursuant to this Contract during the second month immediately
487 following. Adjustments between advance payments for Water Scheduled and payments at Rates
488 due for Water Delivered shall be made before the end of the following month; Provided, That any
489 revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases
490 the amount of Water Delivered pursuant to this Contract during any month shall be accompanied

491 with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not
492 delivered to the Contractor in advance of such payment. In any month in which the quantity of
493 Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled
494 and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor
495 unless and until an advance payment at the Rates then in effect for such additional Project Water is
496 made. Final adjustment between the advance payments for the Water Scheduled and payments for
497 the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon
498 as practicable but no later than April 30th of the following Year, or 60 days after the delivery of
499 Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not
500 delivered by the last day of February.

501 (d) The Contractor shall also make a payment in addition to the Rate(s) in
502 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
503 appropriate Tiered Pricing Component then in effect, before the end of the month following the
504 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
505 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent
506 with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery
507 report for the subject month prepared by the Operating Non-Federal Entity(ies) or, if there is no
508 Operating Non-Federal Entity, by the Contracting Officer. The water delivery report shall be
509 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water
510 Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the
511 adjustment of payments due to the United States for Charges for the next month. Any amount to be
512 paid for past due payment of Charges and the Tiered Pricing Component shall be computed
513 pursuant to Article 20 of this Contract.

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

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

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

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

534 (i) The parties acknowledge and agree that the efficient administration of this
535 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
536 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component,

537 and/or for making and allocating payments, other than those set forth in this Article may be in the
538 mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to
539 modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in
540 effect without amending this Contract.

541 (j) (1) Beginning at such time as deliveries of Project Water in a Year
542 exceed 80 percent of the Contract Total, then before the end of the month following the month of
543 delivery the Contractor shall make an additional payment to the United States equal to the
544 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
545 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
546 Contract Total, shall equal one-half of the difference between the Rate established under
547 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate,
548 whichever is applicable. The Tiered Pricing Component for the amount of Water Delivered which
549 exceeds 90 percent of the Contract Total shall equal the difference between (i) the Rate established
550 under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water Rate or M&I Full Cost
551 Water Rate, whichever is applicable. For all Water Delivered pursuant to subdivision (a) of Article
552 3 of this Contract which is in excess of 80 percent of the Contract Total, this increment shall be
553 deemed to be divided between Irrigation Water and M&I Water in the same proportion as actual
554 deliveries of each bear to the cumulative total Water Delivered

555 (2) Subject to the Contracting Officer's written approval, the Contractor
556 may request and receive an exemption from such Tiered Pricing Component for Project Water
557 delivered to produce a crop which the Contracting Officer determines will provide significant and
558 quantifiable habitat values for waterfowl in fields where the water is used and the crops are
559 produced; Provided, That the exemption from the Tiered Pricing Component for Irrigation Water

560 shall apply only if such habitat values can be assured consistent with the purposes of the CVPIA
561 through binding agreements executed with or approved by the Contracting Officer prior to use of
562 such water.

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

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

576 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA,
577 the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates, in
578 accordance with the applicable Project ratesetting policy, adjusted upward or downward to reflect
579 the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred
580 Project Water to the transferee's point of delivery. If the Contractor is receiving lower Rates and
581 Charges because of inability to pay and is transferring Project Water to another entity whose Rates

582 and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project
583 Water shall not be adjusted to reflect the Contractor's inability to pay.

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

586 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is not
587 legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
588 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
589 Contractor does not waive any legal rights or remedies that it may have with respect to such
590 disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the
591 Contractor may challenge in the appropriate administrative or judicial forums; (1) the existence,
592 computation, or imposition of any deficit charges accruing during the term of the Existing Contract
593 and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such
594 deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by
595 the United States of payments made by the Contractor under its Existing Contract and any
596 preceding interim renewal contracts if applicable; and (5) the application of such payments in the
597 Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any
598 administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and
599 credits for payments heretofore made, provided that the basis for such ruling is applicable to the
600 Contractor.

601 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

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

605 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

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

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

641 APPLICATION OF PAYMENTS AND ADJUSTMENTS

642 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
643 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of
644 the Contractor arising out of this Contract then due and payable. Overpayments of more than
645 \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such
646 overpayment at the option of the Contractor may be credited against amounts to become due to the
647 United States by the Contractor. With respect to overpayment, such refund or adjustment shall
648 constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the
649 use of any of the Project Water supply provided for herein. All credits and refunds of overpayments
650 shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or

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

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

658 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

673 will, if possible, deliver the quantity of Project Water which would have been delivered hereunder
674 in the absence of such discontinuance or reduction.

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

681 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

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

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

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

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

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

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

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

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

733 UNAVOIDABLE GROUNDWATER PERCOLATION

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

738 RULES AND REGULATIONS

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

743

WATER AND AIR POLLUTION CONTROL

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

747

QUALITY OF WATER

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

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

762 (c) Omitted.

763

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

764

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

768 Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water
769 and non-Project water were constructed without funds made available pursuant to Federal
770 Reclamation law, the provisions of Federal Reclamation law will be applicable only to the
771 Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive Irrigation
772 Water must be established through the certification requirements as specified in the Acreage
773 Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands
774 within the Contractor's Service Area can be established and the quantity of Irrigation Water to be
775 utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the
776 facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with
777 funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to
778 the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the
779 United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee,
780 the Contracting Officer will calculate annually the cost to the Federal Government, including
781 interest of storing or delivering non-Project water, which for purposes of this Contract shall be
782 determined as follows: The quotient shall be the unpaid distribution system costs divided by the
783 total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the
784 mathematical result of such quotient times the interest rate determined using Section 202 (3) of the
785 Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of
786 excess or full cost land within the Contractor's Service Area that receives non-Project water through
787 Federally financed or constructed facilities. The incremental fee calculation methodology will
788 continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide
789 rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review

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

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

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

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

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

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

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

819 (5) After Project purposes are met, as determined by the Contracting
820 Officer, the United States and Project Contractors entitled to Project Water from Delta Division
821 Facilities shall share priority to utilize the remaining capacity of the facilities declared to be
822 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
823 any such remaining capacity being made available to non-Project contractors. Other Project
824 Contractors shall have a second priority to any remaining capacity of facilities declared to be
825 available by the Contracting Officer for conveyance and transportation of non-Project water prior to
826 any such remaining capacity being made available to non-Project contractors.

827 OPINIONS AND DETERMINATIONS

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

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

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

842 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

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

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

881 CHARGES FOR DELINQUENT PAYMENTS

882 20. (a) The Contractor shall be subject to interest, administrative and penalty charges
883 on delinquent installments or payments. When a payment is not received by the due date, the
884 Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date.
885 When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative
886 charge to cover additional costs of billing and processing the delinquent payment. When a payment
887 is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six
888 (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the
889 Contractor shall pay any fees incurred for debt collection services associated with a delinquent
890 payment.

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

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

899 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

943 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

956 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

957 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
958 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
959 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws,
960 as well as with their respective implementing regulations and guidelines imposed by the U.S.
961 Department of the Interior and/or Bureau of Reclamation.

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

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

975 PRIVACY ACT COMPLIANCE

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

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

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

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

994 (e) The Contractor shall forward promptly to the System Manager each proposed
995 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
996 2.71; notify the requester accordingly of such referral; and provide the System Manager with
997 information and records necessary to prepare an appropriate response to the requester. These
998 requirements do not apply to individuals seeking access to their own certification and reporting
999 forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the
1000 Privacy Act as a basis for the request.

1001 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1002 25. In addition to all other payments to be made by the Contractor pursuant to this
1003 Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and
1004 detailed statement submitted by the Contracting Officer to the Contractor for such specific items of
1005 direct cost incurred by the United States for work requested by the Contractor associated with this
1006 Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and
1007 procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in
1008 writing in advance by the Contractor. This Article shall not apply to costs for routine contract
1009 administration.

1010 WATER CONSERVATION

1011 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1012 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1013 implementing an effective water conservation and efficiency program based on the Contractor's
1014 water conservation plan that has been determined by the Contracting Officer to meet the
1015 conservation and efficiency criteria for evaluating water conservation plans established under
1016 Federal law. The water conservation and efficiency program shall contain definite water
1017 conservation objectives, appropriate economically feasible water conservation measures, and time

1018 schedules for meeting those objectives. Continued Project Water delivery pursuant to this Contract
1019 shall be contingent upon the Contractor's continued implementation of such water conservation
1020 program. In the event the Contractor's water conservation plan or any revised water conservation
1021 plan completed pursuant to subdivision (d) of Article 26 of this Contract have not yet been
1022 determined by the Contracting Officer to meet such criteria, due to circumstances which the
1023 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1024 made under this Contract so long as the Contractor diligently works with the Contracting Officer to
1025 obtain such determination at the earliest practicable date, and thereafter the Contractor immediately
1026 begins implementing its water conservation and efficiency program in accordance with the time
1027 schedules therein.

1028 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1029 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement
1030 the Best Management Practices identified by the time frames issued by the California Urban Water
1031 Conservation Council for such M&I Water unless any such practice is determined by the
1032 Contracting Officer to be inappropriate for the Contractor.

1033 (c) The Contractor shall submit to the Contracting Officer a report on the status
1034 of its implementation of the water conservation plan on the reporting dates specified in the then
1035 existing conservation and efficiency criteria established under Federal law.

1036 (d) At five-year intervals, the Contractor shall revise its water conservation plan
1037 to reflect the then current conservation and efficiency criteria for evaluating water conservation
1038 plans established under Federal law and submit such revised water management plan to the
1039 Contracting Officer for review and evaluation. The Contracting Officer will then determine if the

1040 water conservation plan meets Reclamation's then current conservation and efficiency criteria for
1041 evaluating water conservation plans established under Federal law.

1042 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1043 shall be described in the Contractor's water conservation plan.

1044 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1045 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1046 Contract shall not be applicable to or affect non-Project water or water rights now owned or
1047 hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area.
1048 Any such water shall not be considered Project Water under this Contract. In addition, this Contract
1049 shall not be construed as limiting or curtailing any rights which the Contractor or any water user
1050 within the Contractor's Service Area acquires or has available under any other contract pursuant to
1051 Federal Reclamation law.

1052 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1053 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1054 and responsibility for funding a portion of the costs of such O&M, have been transferred to the San
1055 Luis & Delta-Mendota Water Authority, an Operating Non-Federal Entity by separate agreement
1056 (8-07-20-X0354) between the United States and the Operating Non-Federal Entity San Luis &
1057 Delta-Mendota Water Authority. That separate agreement shall not interfere with or affect the
1058 rights or obligations of the Contractor or the United States hereunder.

1059 (b) The Contracting Officer has previously notified the Contractor in writing that
1060 the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the
1061 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority, and therefore, the
1062 Contractor shall pay directly to the Operating Non-Federal Entity San Luis & Delta-Mendota Water

1063 Authority, or to any successor approved by the Contracting Officer under the terms and conditions
1064 of the separate agreement between the United States and the Operating Non-Federal Entity San Luis
1065 & Delta-Mendota Water Authority described in subdivision (a) of this Article, all rates, charges, or
1066 assessments of any kind, including any assessment for reserve funds, which the Operating Non-
1067 Federal Entity San Luis & Delta-Mendota Water Authority or such successor determines, sets, or
1068 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1069 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or such successor. Such
1070 direct payments to the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority or
1071 such successor shall not relieve the Contractor of its obligation to pay directly to the United States
1072 the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component except to the
1073 extent the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority collects
1074 payments on behalf of the United States in accordance with the separate agreement identified in
1075 subdivision (a) of this Article.

1076 (c) For so long as the O&M of any portion of the Project facilities serving the
1077 Contractor is performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water
1078 Authority, or any successor thereto, the Contracting Officer shall adjust those components of the
1079 Rates for Water Delivered under this Contract representing the cost associated with the activity
1080 being performed by the Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority
1081 or its successor.

1082 (d) In the event the O&M of the Project facilities operated and maintained by the
1083 Operating Non-Federal Entity San Luis & Delta-Mendota Water Authority is re-assumed by the
1084 United States during the term of this Contract, the Contracting Officer shall so notify the
1085 Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the

1086 portion of the Rates to be paid by the Contractor for Project Water under this Contract representing
1087 the O&M costs of the portion of such Project facilities which have been re-assumed. The
1088 Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to
1089 the contrary, pay the Rates, Charges, and Tiered Pricing Component specified in the revised Exhibit
1090 “B” directly to the United States in compliance with Article 7 of this Contract.

1091 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1092 29. The expenditure or advance of any money or the performance of any obligation of
1093 the United States under this Contract shall be contingent upon appropriation or allotment of funds.
1094 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1095 under this Contract. No liability shall accrue to the United States in case funds are not appropriated
1096 or allotted.

1097 BOOKS, RECORDS, AND REPORTS

1098 30. (a) The Contractor shall establish and maintain accounts and other books and
1099 records pertaining to administration of the terms and conditions of this Contract, including: the
1100 Contractor's financial transactions, water supply data, and Project land and right-of-way
1101 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
1102 data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished
1103 to the Contracting Officer in such form and on such date or dates as the Contracting Officer may
1104 require. Subject to applicable Federal laws and regulations, each party to this Contract shall have
1105 the right during office hours to examine and make copies of the other party's books and records
1106 relating to matters covered by this Contract.

1107 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1108 records, or other information shall be requested from the Contractor by the Contracting Officer
1109 unless such books, records, or information are reasonably related to the administration or
1110 performance of this Contract. Any such request shall allow the Contractor a reasonable period of
1111 time within which to provide the requested books, records, or information.

1112 (c) At such time as the Contractor provides information to the Contracting
1113 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided to
1114 the Operating Non-Federal Entity.

1115 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1116 31. (a) The provisions of this Contract shall apply to and bind the successors and
1117 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1118 therein shall be valid until approved in writing by the Contracting Officer.

1119 (b) The assignment of any right or interest in this Contract by either party shall
1120 not interfere with the rights or obligations of the other party to this Contract absent the written
1121 concurrence of said other party.

1122 (c) The Contracting Officer shall not unreasonably condition or withhold
1123 approval of any proposed assignment.

1124 SEVERABILITY

1125 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1126 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1127 association or other form of organization whose primary function is to represent parties to Project
1128 contracts, brings an action in a court of competent jurisdiction challenging the legality or
1129 enforceability of a provision included in this Contract and said person, entity, association, or
1130 organization obtains a final court decision holding that such provision is legally invalid or
1131 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s), the
1132 parties to this Contract shall use their best efforts to (i) within 30 days of the date of such final court
1133 decision identify by mutual agreement the provisions in this Contract which must be revised and (ii)
1134 within three months thereafter promptly agree on the appropriate revision(s). The time periods
1135 specified above may be extended by mutual agreement of the parties. Pending the completion of
1136 the actions designated above, to the extent it can do so without violating any applicable provisions
1137 of law, the United States shall continue to make the quantities of Project Water specified in this

1138 Contract available to the Contractor pursuant to the provisions of this Contract which were not
1139 found to be legally invalid or unenforceable in the final court decision.

1140 RESOLUTION OF DISPUTES

1141 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1142 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the
1143 dispute. Prior to the Contractor commencing any legal action, or the Contracting Officer referring
1144 any matter to the Department of Justice, the party shall provide to the other party 30 days' written
1145 notice of the intent to take such action; Provided, That such notice shall not be required where a
1146 delay in commencing an action would prejudice the interests of the party that intends to file suit.
1147 During the 30-day notice period, the Contractor and the Contracting Officer shall meet and confer in
1148 an attempt to resolve the dispute. Except as specifically provided, nothing herein is intended to
1149 waive or abridge any right or remedy that the Contractor or the United States may have.

1150 OFFICIALS NOT TO BENEFIT

1151 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1152 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1153 manner as other water users or landowners.

1154 CHANGES IN CONTRACTOR'S SERVICE AREA

1155 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1156 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1157 except upon the Contracting Officer's written consent.

1158 (b) Within 30 days of receipt of a request for such a change, the Contracting
1159 Officer will notify the Contractor of any additional information required by the Contracting Officer
1160 for processing said request, and both parties will meet to establish a mutually agreeable schedule for
1161 timely completion of the process. Such process will analyze whether the proposed change is likely
1162 to: (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability

1163 of the Contractor to pay for Project Water furnished under this Contract or to pay for any
1164 Federally-constructed facilities for which the Contractor is responsible; and (iii) have an impact on
1165 any Project Water rights applications, permits, or licenses. In addition, the Contracting Officer shall
1166 comply with the NEPA and the ESA. The Contractor will be responsible for all costs incurred by
1167 the Contracting Officer in this process, and such costs will be paid in accordance with Article 25 of
1168 this Contract.

1169 FEDERAL LAWS

1170 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1171 validity or application in connection with the performance of the terms and conditions of this
1172 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with the
1173 terms and conditions of this Contract unless and until relief from application of such Federal law or
1174 regulation to the implementing provision of the Contract is granted by a court of competent
1175 jurisdiction.

1176 NOTICES

1177 37. Any notice, demand, or request authorized or required by this Contract shall be
1178 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered
1179 to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California
1180 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Board
1181 of Directors of the Oro Loma Water District, P. O. Box 92, South Dos Palos, California 93622.
1182 The designation of the addressee or the address may be changed by notice given in the same manner
1183 as provided in this Article for other notices.

1184 CONFIRMATION OF CONTRACT

1185 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1186 decree of a court of competent jurisdiction of the State of California, confirming the execution of
1187 this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the
1188 validation proceedings, and all pertinent supporting records of the court approving and confirming
1189 this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

1190 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1191 year first above written.

1192 THE UNITED STATES OF AMERICA

1193 By: _____
1194 Regional Director, Mid-Pacific Region
1195 Bureau of Reclamation

1196 (SEAL)

1197 ORO LOMA WATER DISTRICT

1198 By: _____
1199 President of the Board of Directors

1200 Attest:

1201 By: _____
1202 Secretary of the Board of Directors

1203 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\09-14-04 Oro Lomo WD Final Draft
1204 LTRC with exhibits.doc)



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

Oro Loma W.D.

Contract No. 14-06-200-7823-LTR1
EXHIBIT A

II



-  Contractor's Service Area
-  District Boundary



EXHIBIT B
ORO LOMA 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 current Rates and Charges.

<u>COST-OF-SERVICE RATES:</u>	<u>2004 Rates per Acre-Foot</u>	
	<u>Irrigation</u>	<u>M&I</u>
	<u>Water</u>	<u>Water 1/</u>
Capital Rates	\$ 8.09	
O&M Rates:		
Water Marketing	7.59	
Storage	5.83	
Conveyance		
Conveyance Pumping		
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing		
CFO/PFR Adj. Rate 2/		
TOTAL COST-OF-SERVICE-RATES	<u>\$21.51</u>	<u>1/</u>
<u>FULL-COST RATES</u>		
<u>Section 202(3)</u> Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	<u>\$34.62</u>	
<u>Section 205(a)(3)</u> Rate is applicable to a Limited Recipient that did <u>not</u> receive irrigation water on or before October 1, 1981.	<u>\$41.27</u>	
<u>CHARGES UNDER P.L. 102-575 TO RESTORATION FUND 3/</u>		
Restoration Payments (3407(d)(2)(A))	<u>\$ 7.82</u>	<u>\$15.64</u>

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

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

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