

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

LONG TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
PLACER COUNTY WATER AGENCY
PROVIDING FOR PROJECT WATER SERVICE
FROM THE AMERICAN RIVER DIVISION

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1 UNITED STATES
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3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND
7 PLACER COUNTY WATER AGENCY
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM AMERICAN RIVER DIVISION

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

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

23 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
24 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
25 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection

26 and restoration, generation and distribution of electric energy, salinity control, navigation and
27 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
28 and the San Joaquin River and their tributaries; and

29 [2nd] WHEREAS, the United States constructed Folsom Dam and Reservoir,
30 hereinafter collectively referred to as the American River facilities, which will be used in part for
31 the furnishing of water to the Contractor pursuant to the terms of this Contract; and

32 [2.1] WHEREAS, the Auburn Dam and Reservoir proposed to be constructed by the
33 United States as a Unit of the Central Valley Project has to date, not been constructed; and

34 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
35 pursuant to California law for operation of the Project; and

36 [4th] WHEREAS, the Contractor and the United States entered into Contract
37 No. 14-06-200-5082A, dated September 18, 1970, as amended July 8, 1992, which established
38 terms for the delivery to the Contractor of Project Water from the Auburn Reservoir or other
39 mutually agreeable locations and also recognized the Contractor's right to certain flows of the
40 American River authorized by permits issued by the California State Water Right Control Board
41 which is now called the State Water Resources Control Board (SWRCB); and

42 [4.1] WHEREAS, Contract No. 14-06-200-5082A, as amended, was superseded by
43 Amendatory Contract No. 14-06-200-5082A on February 26, 2002, to, among other things,
44 redesignate points of diversion and eliminate the minimum payment provisions currently
45 included in the contract and reduce the annual amount of Project Water to be made available
46 from 117,000 acre-feet to 35,000 acre-feet; and

47 [4.2] WHEREAS, Amendatory Contract No. 14-06-200-5082A was further amended
48 on August 27, 2002, to provide for a potential point of diversion on the Sacramento River, and to
49 provide for a potential increase in the annual quantity provided under this contract to an amount
50 in excess of 35,000 acre-feet; and

51 [4.3] WHEREAS, Amendatory Contract No. 14-06-200-5082A, dated February 26,
52 2002, as amended on August 27, 2002, is hereinafter referred to as the Existing Contract; and

53 [5th] Omitted; and

54 [6th] WHEREAS, Section 3404(c) of the Central Valley Project Improvement Act
55 (CVPIA) provides for long-term renewal of Existing Contracts following completion of
56 appropriate environmental documentation, including a programmatic environmental impact
57 statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) analyzing the
58 direct and indirect impacts and benefits of implementing the CVPIA and the potential renewal of
59 all existing contracts for Project Water; and

60 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
61 environmental review necessary to provide for long-term renewal of the Existing Contract; and

62 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
63 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
64 of the State of California, for water service from the Project; and

65 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
66 of its obligations under the Existing Contract; and

67 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
68 Contracting Officer that the Contractor has projected future demand for water use such that the
69 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
70 quantity of Project Water to be made available to it pursuant to this Contract; and

71 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
72 agricultural areas within California for more than 50 years, and is considered by the Contractor
73 as an essential portion of its water supply; and

74 [12th] WHEREAS, the economies of regions within the Project, including the
75 Contractor's, depend upon the continued availability of water, including water service from the
76 Project; and

77 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
78 partnerships to pursue measures to improve water supply, water quality, and reliability of the
79 Project for all Project purposes; and

80 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
81 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
82 repayment of the Project as required by law; to guard reasonably against Project Water
83 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
84 and to comply with all applicable environmental statutes, all consistent with the legal obligations
85 of the United States relative to the Project; and

86 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
87 relationship in order to achieve their mutual goals; and

88 [15.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated
89 April 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply for
90 the Sacramento region's economic health and planned development through the year 2030, and
91 (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American River;
92 and

93 [15.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the
94 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate
95 actions that they could take to implement the objectives of the Water Forum Agreement, which,
96 if agreed to, would be the subject of a separate agreement between them; and

97 [16th] WHEREAS, the contract between the United States and the Contractor dated
98 February 20, 1963, relating to the operation of the Contractor's Middle Fork American River
99 Project Reservoirs is still in full force and effect and is not affected by the terms and conditions
100 of this Contract; and

101 [17th] WHEREAS, the United States and the Contractor are willing to enter into this
102 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

105 DEFINITIONS

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

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

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

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

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

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

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

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

127 (g.1) "Diversion Water" shall mean water to which the Contractor has acquired
128 rights under Permit Nos. 13855, 13856, 13857, and 13858 issued by the California State Water
129 Rights Board, now referred to as the State Water Resources Control Board;

130 (h-i) Omitted;

131 (j) "Full Cost Rate" shall mean an annual rate, as determined by the
132 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
133 Project Irrigation or M&I functions, as appropriate, of facilities in service including all O&M
134 deficits funded, less payments, over such periods as may be required under Federal Reclamation
135 law; or applicable contract provisions. Interest will accrue on both the construction expenditures
136 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
137 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
138 in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of
139 October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA. The Full-Cost
140 Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2
141 of the Rules and Regulations for the RRA;

142 (k-l) Omitted;

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

146 (n) Omitted;

147 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water, other
148 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
149 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
150 which are kept for personal enjoyment or water delivered to land holdings operated in units of
151 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer

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

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

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

159 (r) Omitted;

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

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

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

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

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

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

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

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

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

185 (bb) "Water Scheduled" shall mean Water Made Available to the Contractor
186 for which times and quantities for delivery have been established by the Contractor and
187 Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

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

190 TERM OF CONTRACT

191 2. (a) This Contract shall be effective March 1, 2005, through February 28,
192 2045, and supersedes the Existing Contract. In the event the Contractor wishes to renew this
193 Contract beyond February 28, 2045, the Contractor shall submit a request for renewal in writing
194 to the Contracting Officer no later than two years prior to the date this Contract expires.

Deleted: 4

195 (b) Omitted.

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

203 (d) The Contracting Officer shall make a determination ten years after the
204 date of execution of this Contract, and every five years thereafter during the term of this
205 Contract, of whether a conversion of this Contract to a contract under subsection 9(c)(1) of the
206 Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that
207 during the term of this Contract, all authorized Project construction expected to occur will have
208 occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all
209 costs that are properly assignable to the Contractor, and agrees further that, at any time after such
210 allocation is made, and subject to satisfaction of the conditions set out in this subdivision, this
211 Contract shall, at the request of the Contractor, be converted to a contract under subsection
212 9(c)(1) of Section 9, of the Reclamation Project Act of 1939, subject to applicable Federal law
213 and under stated terms and conditions mutually agreeable to the Contractor and the Contracting
214 Officer. A condition for such conversion to occur shall be a determination by the Contracting
215 Officer that, account being taken of the amount credited to return by the Contractor as provided
216 for under Federal Reclamation law, the remaining amount of construction costs assignable for
217 ultimate return by the Contractor can probably be repaid to the United States within the term of a
218 contract under subsection 9(c)(1). If the remaining amount of costs that are properly assignable
219 to the Contractor cannot be determined during the term of this Contract, the Contracting Officer
220 shall notify the Contractor, and provide the reason(s) why such a determination could not be
221 made. Further, the Contracting Officer shall make such a determination as soon thereafter as
222 possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out
223 above, conversion to a contract under said subsection 9(c)(1). In the event such determination of
224 costs has not been made at a time which allows conversion of this Contract during the term of
225 this Contract or the Contractor has not requested conversion of this Contract within such term,
226 the parties shall incorporate in any subsequent renewal contract as described in subdivision (c) of
227 this Article a provision that carries forth in substantially identical terms the provisions of this
228 subdivision (d).

229 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

230 3. (a) During each Year, consistent with all applicable State water rights,
231 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
232 this Contract, the Contracting Officer shall make available for delivery to the Contractor 35,000
233 acre-feet of Project Water for M&I purposes. If agreed to by the Contracting Officer and the
234 Contractor, the 35,000 acre-feet may be increased in any renewal or amendment of this Contract
235 (i) if and when a point of diversion for Project Water is established on the Sacramento River as
236 described in Article 5(a); and, (ii) if and when the proposed Auburn Dam is fully completed, the
237 United States obtains the necessary water rights for the Auburn Project, and such action
238 continues to be consistent with Federal and State law. The Contracting Officer agrees to
239 recognize the relevant historic relationship with the Contractor relative to water supplies
240 contemplated from Auburn Reservoir in determining such increased amount. Water Delivered to
241 the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the
242 provisions of Articles 4 and 7 of this Contract.

243 (1) The Contracting Officer recognizes that the Contractor has a right
244 to Diversion Water from the American River in the amount of 120,000 acre-feet in any Year said
245 water is available. Said Diversion Water is in addition to the Project Water made available
246 pursuant to this Contract. The quantities of Diversion Water to which the Contractor is entitled
247 and which are not taken or otherwise disposed of by the Contractor during that Year shall
248 become the property of the United States.

249 (2) The quantity of Diversion Water specified in Article 3(a)(1) above,
250 is contingent upon the right of the Contractor to continue to take said quantity of water annually
251 pursuant to California law. In the event that under such law the Contractor's right to take
252 Diversion Water is less than the amount specified in Article 3(a)(1) above, the amount of
253 Diversion Water which the Contracting Officer will recognize under this Contract shall be
254 reduced accordingly.

255 (b) Because the capacity of the Project to deliver Project Water has been
256 constrained in recent years and may be constrained in the future due to many factors including
257 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
258 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
259 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
260 PEIS projected that the Contract Total set forth in this Contract will not be available to the
261 Contractor in many years. During the most recent five years, the Recent Historic Average of
262 water made available to the Contractor was 32,000 acre-feet. Nothing in subdivision (b) of this
263 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

266 (d) The Contractor shall make reasonable and beneficial use of all Project
267 water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in
268 lieu), groundwater banking programs, surface water storage programs, and other similar
269 programs utilizing Project Water or other water furnished pursuant to this Contract conducted
270 within the Contractor's Service Area which are consistent with applicable State law and result in
271 use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
272 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
273 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
274 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
275 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
276 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater
277 banking programs, surface water storage programs, and other similar programs utilizing Project
278 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
279 Service Area may be permitted upon written approval of the Contracting Officer, which approval
280 will be based upon environmental documentation, Project Water rights, and Project operational

281 concerns. The Contracting Officer will address such concerns in regulations, policies, or
282 guidelines.

283 (e) The Contractor shall comply with requirements applicable to the
284 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
285 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
286 as amended, that are within the Contractor's legal authority to implement. Nothing herein shall
287 be construed to prevent the Contractor from challenging or seeking judicial relief in a court of
288 competent jurisdiction with respect to any biological opinion or other environmental
289 documentation referred to in this Article.

290 (f) Following the declaration of Water Made Available under Article 4 of this
291 Contract, the Contracting Officer will make a determination whether Project Water, or other
292 water available to the Project, can be made available to the Contractor in addition to the Contract
293 Total under Article 3 of this Contract during the Year without adversely impacting other Project
294 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
295 Contractor prior to making such a determination. If the Contracting Officer determines that
296 Project Water, or other water available to the Project, can be made available to the Contractor,
297 the Contracting Officer will announce the availability of such water and shall so notify the
298 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
299 and other Project Contractors capable of taking such water to determine the most equitable and
300 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
301 water, the Contracting Officer shall make such water available to the Contractor in accordance
302 with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term
303 contractual commitments, water rights and operational constraints, long-term Project Contractors
304 shall have a first right to acquire such water, including Project Water made available pursuant to
305 Section 215 of the RRA

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

313 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
314 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
315 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
316 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all
317 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
318 sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or
319 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
320 contracts.

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

325 (j) The Contracting Officer shall make reasonable efforts to protect the water
326 rights necessary for the Project and to provide the water available under this Contract. The
327 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
328 extent permitted by law, in administrative proceedings related to the Project Water rights;
329 Provided, That the Contracting Officer retains the right to object to the substance of the
330 Contractor’s position in such a proceeding; Provided further, That in such proceedings the

331 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
332 Contract to use Project Water.

333 TIME FOR DELIVERY OF WATER

334 (4) (a) On or about February 20 of each Calendar Year, the Contracting Officer
335 shall announce the Contracting Officer's expected declaration of the Water Made Available.
336 Such declaration will be expressed in terms of both Water Made Available and the Recent
337 Historic Average and will be updated monthly, and more frequently if necessary, based on
338 then-current operational and hydrologic conditions and a new declaration with changes, if any, to
339 the Water Made Available will be made. The Contracting Officer shall provide forecasts of
340 Project operations and the basis of the estimate, with relevant supporting information, upon the
341 written request of the Contractor. Concurrently with the declaration of the Water Made
342 Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic
343 Average.

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

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

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

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

359 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

360 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
361 Contract shall be delivered to the Contractor at Folsom Dam and any additional point or points of
362 delivery either on Project facilities or another location or locations mutually agreed to in writing
363 by the Contracting Officer and the Contractor, including a potential point of delivery on the
364 Sacramento River north of the American River. The parties acknowledge that the potential
365 Sacramento River point of delivery may be at a point that, as of the date of this Contract, is not
366 included as an authorized point of delivery under the water right permits of the Project. Project
367 Water will not be delivered to this point of delivery unless and until such point is added to the
368 water right permits of the Project. Upon request of the Contractor, the Contracting Officer shall
369 petition the California State Water Resources Control Board to include the necessary point of
370 delivery to the water rights for the Project, and the Contractor shall cooperate with and assist the
371 Contracting Officer in prosecuting such petition in a timely manner. The Contracting Officer
372 shall bear neither responsibility nor liability for existing and/or future-constructed non-Federal
373 diversion or delivery facilities or the use thereof.

374 (1) The parties hereby acknowledge execution of the Stipulated
375 Agreement dated September 8, 1998, recognizing the agreement by the United States, Bureau of
376 Reclamation, subject to certain conditions, to dismiss protests to the Contractor's petition to
377 expand the place of use under the Contractor's water right permits.

378 (b) Omitted.

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

381 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
382 measured and recorded with equipment furnished, installed, operated, and maintained by the

383 United States or other appropriate entity as designated by the Contracting Officer at the point or
384 points of delivery established pursuant to subdivision (a) of this Article. Upon the request of
385 either party to this Contract, the Contracting Officer shall investigate the accuracy of such
386 measurements and shall take any necessary steps to adjust any errors appearing therein. For any
387 period of time when accurate measurements have not been made, the Contracting Officer shall
388 consult with the Contractor prior to making a final determination of the quantity delivered for
389 that period of time.

390 (e) The Contracting Officer shall not be responsible for the control, carriage,
391 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
392 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor
393 shall indemnify the United States, its officers, employees, agents, and assigns on account of
394 damage or claim of damage of any nature whatsoever for which there is legal responsibility,
395 including property damage, personal injury, or death arising out of or connected with the control,
396 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery
397 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting
398 Officer or any of its officers, employees, agents, or assigns with the intent of creating the
399 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
400 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or
401 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a
402 malfunction of facilities owned and/or operated by the United States.

403 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

404 6. (a) The Contractor shall ensure that, unless the Contractor has established a
405 measuring program satisfactory to the Contracting Officer, the Contractor shall ensure that all
406 surface water delivered for M&I purposes is measured at each M&I service connection. The
407 water measuring devices or water measuring methods of comparable effectiveness must be
408 acceptable to the Contracting Officer. The Contractor shall be responsible for installing,

409 operating, and maintaining and repairing all such measuring devices and implementing all such
410 water measuring methods at no cost to the United States. The Contractor shall use the
411 information obtained from such water measuring devices or water measuring methods to ensure
412 its proper management of the water, to bill water users for water delivered by the Contractor;
413 and, if applicable, to record water delivered for M&I purposes by customer class as defined in
414 the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing
415 herein contained, however, shall preclude the Contractor from establishing and collecting any
416 charges, assessments, or other revenues authorized by California law. The Contractor shall
417 include a summary of all its annual surface water deliveries in the annual report described in
418 subdivision (c) of Article 26.

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

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

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

441 (e) The Contractor shall inform the Contracting Officer on or before the 20th
442 calendar day of each month of the quantity of M&I Water taken during the preceding month.

443 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

461 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
462 the period October 1 of the current Calendar Year, through September 30, of the following
463 Calendar Year, and such notification shall revise Exhibit "B."

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

471 (c) At the time the Contractor submits the initial schedule for the delivery of
472 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
473 Contractor shall make an advance payment to the United States equal to the total amount payable
474 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
475 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
476 Year. Before the end of the first month and before the end of each calendar month thereafter, the
477 Contractor shall make an advance payment to the United States, at the Rate(s) set under
478 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
479 during the second month immediately following. Adjustments between advance payments for
480 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
481 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
482 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
483 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
484 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
485 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
486 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no

487 additional Project Water shall be delivered to the Contractor unless and until an advance
488 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
489 between the advance payments for the Water Scheduled and payments for the quantities of Water
490 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
491 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
492 over under subdivision (f) of Article 3 of this Contract if such water is not delivered by the last
493 day of February.

494 (d) The Contractor shall also make a payment in addition to the Rate(s) in
495 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
496 appropriate Tiered Pricing Component then in effect, before the end of the month following the
497 month of delivery. The payments shall be consistent with the quantities of M&I Water Delivered
498 as shown in the water delivery report for the subject month prepared by the Contracting Officer.
499 The water delivery report shall be deemed a bill for the payment of Charges and the applicable
500 Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment
501 of Charges shall be made through the adjustment of payments due to the United States for
502 Charges for the next month. Any amount to be paid for past due payment of Charges and the
503 Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

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

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

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

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

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

531 (j) (1) Beginning at such time as deliveries of Project Water in a Year
532 exceed 80 percent of the Contract Total, then before the end of the month following the month of
533 delivery the Contractor shall make an additional payment to the United States equal to the
534 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
535 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
536 Contract Total, shall equal one-half of the difference between the Rate established under
537 subdivision (a) of this Article and the M&I Full Cost Water Rate. The Tiered Pricing

538 Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
539 shall equal the difference between (i) the Rate established under subdivision (a) of this Article
540 and (ii) the M&I Full Cost Water Rate.

541 (2) Omitted.

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

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

555 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the
556 CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates,
557 adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting
558 Officer in the delivery of the transferred Project Water to the transferee's point of delivery in
559 accordance with the then-applicable Project ratesetting policy.

560 (m) Omitted.

561 (n) With respect to the Rates for M&I Water, the Contractor asserts that it is
562 not legally obligated to pay any Central Valley Project deficits claimed by the United States to
563 have accrued as of the date of this Contract or deficit-related interest charges thereon. By

564 entering into this Contract, the Contractor does not waive any legal rights or remedies that it may
565 have with respect to such disputed issues. Notwithstanding the execution of this Contract, and
566 payments made hereunder, the Contractor may challenge in the appropriate administrative or
567 judicial forums: (1) the existence, computation, or imposition of any deficit charges accruing
568 during the term of the Existing Contract and any preceding interim renewal contracts, if
569 applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges
570 or interest in the Rates; (4) the application by the United States of payments made by the
571 Contractor under its Existing Contract and any preceding interim renewal contract, if applicable;
572 and (5) the application of such payments in the Rates. The Contracting Officer agrees that the
573 Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any
574 other Project M&I contractor on any of these issues, and credits for payments heretofore made,
575 Provided, That the basis for such ruling is applicable to the Contractor.

576 8. Omitted.

577 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

589 (b) In order to facilitate efficient water management by means of water
590 transfers of the type historically carried out among Project Contractors located within the same
591 geographical area and to allow the Contractor to participate in an accelerated water transfer
592 program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
593 all necessary environmental documentation including, but not limited to, documents prepared
594 pursuant to the NEPA and ESA analyzing annual transfers within such geographical areas, and
595 the Contracting Officer shall determine whether such transfers comply with applicable law.
596 Following the completion of the environmental documentation, such transfers addressed in such
597 documentation shall be conducted with advance notice to the Contracting Officer, but shall not
598 require prior written approval by the Contracting Officer. Such environmental documentation
599 and the Contracting Officer's compliance determination shall be reviewed every five years and
600 updated, as necessary, prior to the expiration of the then-existing five-year period. All
601 subsequent environmental documentation shall include an alternative to evaluate not less than the
602 quantity of Project Water historically transferred within the same geographical area.

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

613 (d) Solely for the purpose of determining whether Section 3405(a)(1)(M) of
614 the CVPIA applies to the Contractor as a transferor or transferee of Project Water, the

615 Contracting Officer acknowledges that the Contractor is within a county, watershed or other area
616 of origin, as those terms are utilized under California law, of water that constitutes the natural
617 flow of the American River and its tributaries above the confluence of the American and
618 Sacramento Rivers.

619 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

637 TEMPORARY REDUCTIONS--RETURN FLOWS

638 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
639 requirements of Federal law; and (ii) the obligations of the United States under existing
640 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting

641 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as
642 provided in this Contract.

643 (b) The Contracting Officer may temporarily discontinue or reduce the
644 quantity of Water Delivered to the Contractor as herein provided for the purposes of
645 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
646 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
647 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
648 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
649 Provided, That the United States shall use its best efforts to avoid any discontinuance or
650 reduction in such service. Upon resumption of service after such reduction or discontinuance,
651 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
652 Project Water which would have been delivered hereunder in the absence of such discontinuance
653 or reduction.

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

660 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

671 (c) Omitted.

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

675 (e) By entering into this Contract, the Contractor does not waive any legal
676 rights or remedies it may have to file or participate in any administrative or judicial proceeding
677 contesting (i) the sufficiency of the manner in which any Project M&I Water Shortage Policy
678 adopted after the effective date of this Contract was promulgated; (ii) the substance of such a
679 policy; or (iii) the applicability of such a policy. By agreeing to the foregoing, the Contracting
680 Officer does not waive any legal defenses or remedies that it may then have to assert in such a
681 proceeding.

682 13. Omitted.

683 RULES AND REGULATIONS

684 14. The parties agree that the delivery of M&I Water or use of Federal facilities
685 pursuant to this Contract is subject to Federal Reclamation law and the applicable rules and
686 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

687 WATER AND AIR POLLUTION CONTROL

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

692

QUALITY OF WATER

693 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
694 to this Contract shall be operated and maintained to enable the United States to deliver Project
695 Water to the Contractor in accordance with the water quality standards specified in subsection
696 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of
697 October 27, 1986 (100 Stat. 3050), or other existing Federal laws. The United States is under no
698 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
699 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
700 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

708
709

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

710 17. (a) Omitted.
711 (b) Water or water rights now owned or hereafter acquired by the Contractor,
712 other than from the United States, may be stored, conveyed, and/or diverted through Project
713 facilities, subject to the completion of appropriate environmental documentation, with the
714 approval of the Contracting Officer and the execution of any contract determined by the
715 Contracting Officer to be necessary, consistent with the following provisions:

716 (1) The Contractor may introduce non-Project water into Project
717 facilities and deliver said water to lands within the Contractor's Service Area, including
718 Ineligible Lands, subject to payment to the United States of an appropriate rate as determined by

719 the applicable Project ratesetting policy and the Project use power policy, if such Project use
720 power policy is applicable, each as amended, modified, or superseded from time to time. In
721 addition, if electrical power is required to pump non-Project water through the facilities, the
722 Contractor shall be responsible for obtaining the necessary power and paying the necessary
723 charges therefor.

724 (2) Delivery of such non-Project water in and through Project facilities
725 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
726 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water
727 available to other Project contractors; (iii) interfere with the delivery of contractual water
728 entitlements to any other Project water service contractors; or (iv) interfere with the physical
729 maintenance of the Project facilities; Provided, that nothing in this Article is intended to limit the
730 United States' obligation to pass the Contractor's Diversion Water through Project storage
731 facilities to the extent required under the applicable provisions of California law.

732 (3) The United States shall not be responsible for control, care, or
733 distribution of the non-Project water before it is introduced into or after it is delivered from the
734 Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United
735 States and their respective officers, agents, and employees, from any claim for damage to
736 persons or property, direct or indirect, resulting from the acts of the Contractor or its officers,
737 employees, agents or assigns, in (i) extracting or diverting non-Project water from any source, or
738 (ii) diverting such non-Project water into Project facilities.

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

742 (5) After Project purposes are met, as determined by the Contracting
743 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
744 of the facilities declared to be available by the Contracting Officer for conveyance and

745 transportation of non-Project water prior to any such remaining capacity being made available to
746 non-Project contractors.

747 OPINIONS AND DETERMINATIONS

748 18. (a) Where the terms of this Contract provide for actions to be based upon the
749 opinion or determination of either party to this Contract, said terms shall not be construed as
750 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
751 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
752 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
753 or unreasonable opinion or determination. Each opinion or determination by either party shall be
754 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is
755 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
756 any opinion or determination implementing a specific provision of Federal law embodied in
757 statute or regulation.

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

763 COORDINATION AND COOPERATION

764 19. (a) In order to further their mutual goals and objectives, the Contracting
765 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
766 with other affected Project Contractors, in order to improve the operation and management of the
767 Project. The communication, coordination, and cooperation regarding operations and
768 management shall include, but not be limited to, any action which will or may materially affect
769 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
770 Project financial matters including, but not limited to, budget issues. The communication,

771 coordination, and cooperation provided for hereunder shall extend to all provisions of this
772 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,
773 and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

803 CHARGES FOR DELINQUENT PAYMENTS

804 20. (a) The Contractor shall be subject to interest, administrative and penalty
805 charges on delinquent installments or payments. When a payment is not received by the due
806 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
807 the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an
808 administrative charge to cover additional costs of billing and processing the delinquent payment.
809 When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional
810 penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the
811 due date. Further, the Contractor shall pay any fees incurred for debt collection services
812 associated with a delinquent payment.

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

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

821 EQUAL OPPORTUNITY

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

823 (a) The Contractor will not discriminate against any employee or applicant for
824 employment because of race, color, religion, sex, or national origin. The Contractor will take
825 affirmative action to ensure that applicants are employed, and that employees are treated during
826 employment, without regard to their race, color, religion, sex, or national origin. Such action

827 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
828 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other
829 forms of compensation; and selection for training, including apprenticeship. The Contractor
830 agrees to post in conspicuous places, available to employees and applicants for employment,
831 notices to be provided by the Contracting Officer setting forth the provisions of this
832 nondiscrimination clause.

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

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

843 (d) The Contractor will comply with all provisions of Executive Order
844 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders
845 of the Secretary of Labor.
846

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

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

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

868 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

881 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

882 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
883 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
884 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
885 laws, as well as with their respective implementing regulations and guidelines imposed by the
886 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

901 24. Omitted.

902 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

911 WATER CONSERVATION

912 26. (a) Prior to the delivery of water provided from or conveyed through
913 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
914 shall be implementing an effective water conservation and efficiency program based on the
915 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
916 the conservation and efficiency criteria for evaluating water conservation plans established under
917 Federal law. The water conservation and efficiency program shall contain definite water
918 conservation objectives, appropriate economically feasible water conservation measures, and
919 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
920 Contract shall be contingent upon the Contractor's continued implementation of such water
921 conservation program. In the event the Contractor's water conservation plan or any revised water
922 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
923 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
924 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
925 shall be made under this Contract so long as the Contractor diligently works with the Contracting
926 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor

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

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

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

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

943 (e) If the Contractor is engaged in direct ground-water recharge, such activity
944 shall be described in the Contractor's water conservation plan.

945 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

953 28. Omitted.

954 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

955 29. The expenditure or advance of any money or the performance of any obligation of
956 the United States under this Contract shall be contingent upon appropriation or allotment of
957 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
958 obligations under this Contract. No liability shall accrue to the United States in case funds are
959 not appropriated or allotted.

960 BOOKS, RECORDS, AND REPORTS

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

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

975 (c) Omitted.

976 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

983 (c) The Contracting Officer shall not unreasonably condition or withhold his
984 approval of any proposed assignment.

985

SEVERABILITY

986

32. In the event that a person or entity who is neither (i) a party to a Project contract,

987 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)

988 an association or other form of organization whose primary function is to represent parties to

989 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or

990 enforceability of a provision included in this Contract and said person, entity, association, or

991 organization obtains a final court decision holding that such provision is legally invalid or

992 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),

993 the parties to this Contract shall use their best efforts to (i) within 30days of the date of such final

994 court decision identify by mutual agreement the provisions in this Contract which must be

995 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).

996 The time periods specified above may be extended by mutual agreement of the parties. Pending

997 the completion of the actions designated above, to the extent it can do so without violating any

998 applicable provisions of law, the United States shall continue to make the quantities of Project

999 Water specified in this Contract available to the Contractor pursuant to the provisions of this

1000 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1001

RESOLUTION OF DISPUTES

1002

33. Should any dispute arise concerning any provisions of this Contract, or the

1003 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to

1004 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting

1005 Officer referring any matter to Department of Justice, the party shall provide to the other party

1006 30 days' written notice of the intent to take such action; Provided, That such notice shall not be

1007 required where a delay in commencing an action would prejudice the interests of the party that

1008 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer

1009 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,

1010 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the

1011 United States may have.

1012 OFFICIALS NOT TO BENEFIT

1013 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1014 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1015 manner as other water users or landowners.

1016 CHANGES IN CONTRACTOR'S SERVICE AREA

1017 35. (a) While this Contract is in effect, no change may be made in the
1018 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1019 or otherwise, except upon the Contracting Officer's written consent.

1020 (b) Within 30 days of receipt of a request for such a change, the Contracting
1021 Officer will notify the Contractor of any additional information required by the Contracting
1022 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1023 schedule for timely completion of the process. Such process will analyze whether the proposed
1024 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1025 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1026 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1027 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1028 Contracting Officer shall comply with the NEPA and ESA. The Contractor will be responsible
1029 for all costs incurred by the Contracting Officer in this process, and such costs will be paid in
1030 accordance with Article 25 of this Contract.

1031 FEDERAL LAWS

1032 36. By entering into this Contract, the Contractor does not waive its rights to contest
1033 the validity or application in connection with the performance of the terms and conditions of this
1034 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1035 the terms and conditions of this Contract unless and until relief from application of such Federal
1036 law or regulation to the implementing provision of the Contract is granted by a court of
1037 competent jurisdiction.

1038

NOTICES

1039 37. Any notice, demand, or request authorized or required by this Contract shall be
1040 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1041 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom,
1042 California 95630-1777, and on behalf of the United States, when mailed, postage prepaid, or
1043 delivered to the Board of Directors of the Placer County Water Agency, P. O. Box 6570,
1044 Auburn, California 95604. The designation of the addressee or the address may be changed by
1045 notice given in the same manner as provided in this Article for other notices.

1046

CONFIRMATION OF CONTRACT

1047 38. The Contractor, after the execution of this Contract, shall furnish to the
1048 Contracting Officer evidence that pursuant to the laws of the State of California, the Contractor
1049 is a legally constituted entity and the Contract is lawful, valid, and binding on the Contractor.
1050 This Contract shall not be binding on the United States until such evidence has been provided to
1051 the Contracting Officer's satisfaction.

EXHIBIT A

Placer County Water Agency
[Map or Description of Service Area]

EXHIBIT B

PLACER COUNTY WATER AGENCY

2004 Rates Per Acre-Foot

M&I Water

Capital Rate:	\$17.33
O&M Rates:	
Water Marketing	\$ 5.01
Storage	\$ 6.38
Conveyance	\$ 0.00
CFO/PFR Adjustment Rate	\$ 0.00
Deficit Rate:	\$ 0.00
TOTAL COST-OF-SERVICE (COS) RATE	\$28.82
TIERED PRICING COMPONENT>80%<=90% OF CONTRACT TOTAL (Full Cost Rate – COS Rate)/2)	As needed
TIERED PRICING COMPONENT>90% OF CONTRACT TOTAL (Full Cost Rate – COS Rate)	As needed
SURCHARGES UNDER P. L.102-575 TO RESTORATION FUND **	
M&I Surcharge	\$32.58
Restoration Payments [Section 3407(d)(2)(A)]	\$15.64

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