

M&I Only
R. O. CVP-Wide Draft 4/19-2004
Whitney Construction 3/01-2004
Whitney Construction 7/22-2003
Whitney Construction 7/1-2003
Sac. Valley Division Draft 5/28-2003
CVP-Wide Draft 5/23-2003
Contract No.
14-06-200-5749A-LTR1

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

LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
AND
WHITNEY CONSTRUCTION, INC.,
PROVIDING FOR PROJECT WATER SERVICE
FROM THE BLACK BUTTE PROJECT

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8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE BLACK BUTTE PROJECT
10

11 THIS CONTRACT, made this ____ day of _____, 20__, in
12 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
13 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as
14 amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2,
15 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986
16 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all
17 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES
18 OF AMERICA, hereinafter referred to as the United States, and WHITNEY CONSTRUCTION,
19 INC., hereinafter referred to as the Contractor, a corporation acting pursuant to Sections 12003 and
20 12004 of the California Water Code;

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 [1.1] WHEREAS, the United States has constructed the Orland Project which is being
30 operated by the Orland Water Users' Association pursuant to Contract No. 14-06-200-3502
31 dated August 26, 1954, as amended by the contract dated August 24, 1960; and

32 [2nd] WHEREAS, the United States constructed the Black Butte Dam and Reservoir
33 which were integrated into the Project and which will be used in part for the furnishing of water
34 to the Contractor pursuant to the terms of this Contract; and

35 [2.1] WHEREAS, the water rights of all lands and the use thereof within the watershed
36 of Stony Creek and its tributaries were adjudicated by the U.S. District Court for the Northern
37 District of California, Second Division, in United States of America, Plaintiff, v. H. C. Angle, et
38 al., Defendants, Equity No. 30, hereinafter referred to as the Angle Decree; and

39 [2.2] WHEREAS, the United States is willing to make water stored in the Black Butte
40 Reservoir available to the Contractor from the Stony Gorge Reservoir of the Orland Project
41 pursuant to the exchange Contract No. 14-06-200-1020A, dated June 26, 1964, between the
42 United States and the Orland Water Users' Association; and

43 [3rd] WHEREAS, the rights to Project Water were acquired by the United States
44 pursuant to California law for operation of the Project; and

45 [4th] WHEREAS, Commander Industries, Inc., and the United States entered into
46 Contract No. 14-06-200-5749A, which provided for a supplemental water supply and established
47 terms for the delivery to the Contractor of Project Water, for industrial use in its lumber
48 production, from the Black Butte Project from February 1, 1972, through December 31, 2010,
49 hereinafter referred to as the "Existing Contract"; and

50 [4.1] WHEREAS, Commander Industries, Inc., assigned the Existing Contract to
51 Louisiana Pacific Corporation which contract Louisiana Pacific Corporation accepted on
52 June 20, 1983; and

53 [4.2] WHEREAS, Louisiana Pacific Corporation assigned the Existing Contract to
54 Whitney Construction, Inc., which contract Whitney Construction, Inc., accepted on
55 September 22, 1999; and

56 [5th] WHEREAS, the United States and Louisiana Pacific Corporation , pursuant to
57 subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), entered into a
58 binding agreement identified as Binding Agreement No. 14-06-200-5749A-BA, hereinafter
59 referred to as the Binding Agreement, which sets out the terms pursuant to which Louisiana
60 Pacific Corporation agreed to renew the Existing Contract before its expiration date after
61 completion of a programmatic environmental impact statement and other appropriate
62 environmental documentation and negotiation of a renewal contract, and which also sets out the
63 consequences of a subsequent decision not to renew; and

64 [5.1] WHEREAS, Louisiana Pacific Corporation assigned the Binding Agreement to
65 Whitney Construction, Inc., which agreement Whitney Construction, Inc., accepted on
66 September 22, 1999; and

67 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
68 Existing Contract following completion of appropriate environmental documentation, including a
69 programmatic environmental impact statement (PEIS) pursuant to the National Environmental
70 Policy Act (NEPA), analyzing the direct and indirect impacts and benefits of implementing the
71 CVPIA and the potential renewal of all existing contracts for Project Water; and

72 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
73 environmental review necessary to provide for long-term renewal of the Existing Contract; and

74 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
75 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
76 of the State of California, for water service from the Project; and

77 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
78 of its obligations under the Existing Contract; and

79 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
80 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
81 reasonable and beneficial use and/or has demonstrated projected future demand for water use
82 such that the Contractor has the capability and expects to utilize fully for reasonable and
83 beneficial use the quantity of Project Water to be made available to it pursuant to this Contract;
84 and

85 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
86 agricultural areas within California for more than 50 years, and is considered by the Contractor
87 as an essential portion of its water supply; and

88 [12th] WHEREAS, the economies of regions within the Project, including the
89 Contractor's, depend upon the continued availability of water, including water service from the
90 Project; and

91 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
92 partnerships to pursue measures to improve water supply, water quality, and reliability of the
93 Project for all Project purposes; and

94 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
95 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
96 repayment of the Project as required by law; to guard reasonably against Project Water
97 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
98 and to comply with all applicable environmental statutes, all consistent with the legal obligations
99 of the United States relative to the Project; and

100 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
101 relationship in order to achieve their mutual goals; and

102 [16th] WHEREAS, the United States and the Contractor are willing to enter into this
103 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

106 DEFINITIONS

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

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

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

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

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

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

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

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

128 (h) Omitted;

129 (i) Omitted;

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

141 (k) Omitted;

142 (l) Omitted;

143 (m) Omitted;

144 (n) Omitted;

145 (o) "Municipal and Industrial (M&I) Water" shall mean Project Water made
146 available to the Contractor for purposes other than the commercial production of agricultural
147 crops or livestock;

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

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

153 (r) Omitted;

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

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

159 (u) "Project Water" shall mean all water diverted in excess of the Base Supply
160 or scheduled to be diverted each Year by the Contract, that is developed, diverted, stored, or
161 delivered by the Secretary in accordance with the statutes authorizing the Project and in
162 accordance with the terms and conditions of water rights acquired pursuant to California law;

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

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

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

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

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

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

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

183 (cc) "Year" shall mean the period from and including March 1 of each
184 Calendar Year through the last day of February of the following Calendar Year; and

185 (dd) "Base Supply" shall mean the first 164 acre-feet of water diverted which
186 the United States agrees may be diverted by the Contractor each Year without payment to the
187 United States.

188 TERM OF CONTRACT

189 2. (a) This Contract shall be effective March 1, 20___, through February 28,
190 20___, and supercedes the Existing Contract. In the event the Contractor wishes to renew this
191 Contract beyond February 28, 20___, the Contractor shall submit a request for renewal in writing
192 to the Contracting Officer no later than two years prior to the date this Contract expires.

193 (b) Omitted.

194 (c) This Contract shall be renewed for successive periods of up to 40 years
195 each, which periods shall be consistent with then-existing Reclamation-wide policy, under terms
196 and conditions mutually agreeable to the parties and consistent with Federal and State law. The
197 Contractor shall be afforded the opportunity to comment to the Contracting Officer on the
198 proposed adoption and application of any revised policy applicable to the delivery of M&I Water

199 that would limit the term of any subsequent renewal contract with the Contractor for the
200 furnishing of M&I Water to less than 40 years.

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

222 costs has not been made at a time which allows conversion of this Contract during the term of
223 this Contract or the Contractor has not requested conversion of this Contract within such term,
224 the parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of
225 this Article a provision that carries forth in substantially identical terms the provisions of this
226 subdivision.

227 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

228 3. (a) During each Year, consistent with all applicable State water rights,
229 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
230 this Contract, the Contracting Officer shall make available for delivery to the Contractor 25 acre-
231 feet of Project Water for M&I purposes. Provided, That the United States shall not be
232 responsible for the maintenance of water levels in Stony Gorge Reservoir required to permit the
233 Contractor to withdraw water from said Reservoir. Water Delivered to the Contractor in
234 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
235 Articles 4 and 7 of this Contract.

236 (b) Because the capacity of the Project to deliver Project Water has been
237 constrained in recent years and may be constrained in the future due to many factors including
238 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
239 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
240 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
241 PEIS projected that the Contract Total set forth in this Contract will not be available to the
242 Contractor in many years. During the most recent five years, the Recent Historic Average of
243 water made available to the Contractor was 23 acre-feet. Nothing in subdivision (b) of this
244 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

247 (d) The Contractor shall make reasonable and beneficial use of all water
248 furnished pursuant to this Contract. Ground-water recharge programs (direct, indirect, or in
249 lieu), ground-water banking programs, surface water storage programs, and other similar
250 programs utilizing Project Water or other water furnished pursuant to this Contract conducted
251 within the Contractor's Service Area which are consistent with applicable State law and result in
252 use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
253 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
254 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
255 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
256 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
257 compliance with Federal Reclamation law. Ground-water recharge programs, ground-water
258 banking programs, surface water storage programs, and other similar programs utilizing Project
259 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
260 Service Area may be permitted upon written approval of the Contracting Officer, which approval
261 will be based upon environmental documentation, Project Water rights, and Project operational
262 concerns. The Contracting Officer will address such concerns in regulations, policies, or
263 guidelines.

264 (e) The Contractor shall comply with requirements applicable to the
265 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
266 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
267 as amended, that are within the Contractor's legal authority to implement. The Existing
268 Contract, which evidences in excess of 31 years of diversions for M&I purposes of the quantities
269 of water provided in subdivision (a) of Article 3 of this Contract, will be considered in
270 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA,
271 and any other needed environmental review. Nothing herein shall be construed to prevent the
272 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with

273 respect to any biological opinion or other environmental documentation referred to in this
274 Article.

275 (f) As soon as possible following each declaration of Water Made Available
276 under Article 4 of this Contract, the Contracting Officer will make a determination whether
277 Project Water, or other water available to the Project, can be made available to the Contractor in
278 addition to the Contract Total under Article 3 of this Contract during the Year without adversely
279 impacting other Project Contractors. At the request of the Contractor, the Contracting Officer
280 will consult with the Contractor prior to making such a determination. If the Contracting Officer
281 determines that Project Water, or other water available to the Project, can be made available to
282 the Contractor, the Contracting Officer will announce the availability of such water and shall so
283 notify the Contractor as soon as practical. The Contracting Officer will thereafter meet with the
284 Contractor and other Project Contractors capable of taking such water to determine the most
285 equitable and efficient allocation of such water. If the Contractor requests the delivery of any
286 quantity of such water, the Contracting Officer shall make such water available to the Contractor
287 in accordance with applicable statutes, regulations, guidelines, and policies.

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

295 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable
296 State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract
297 during the term thereof and any subsequent renewal contracts, as described in Article 2 of this
298 Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all

299 of its obligations under this Contract and any renewals thereof. Nothing in the preceding
300 sentence shall affect the Contracting Officer's ability to impose shortages under Article 11 or
301 subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal
302 contracts.

303 (i) Project Water furnished to the Contractor pursuant to this Contract may be
304 delivered for other than M&I purposes upon written approval by the Contracting Officer in
305 accordance with the terms and conditions of such approval.

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

314 TIME FOR DELIVERY OF WATER

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

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

330 (c) The Contractor shall not schedule Project Water in excess of the quantity
331 of Project Water the Contractor intends to put to reasonable and beneficial use within the
332 Contractor's Service Area.

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

338 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

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

343 (b) Omitted.

344 (c) Omitted.

345 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
346 measured and recorded with equipment furnished, installed, operated, and maintained by the
347 Contractor at the point or points of delivery established pursuant to subdivision (a) of this
348 Article. Upon the request of either party to this Contract, the Contracting Officer shall
349 investigate the accuracy of such measurements and shall take any necessary steps to adjust any

350 errors appearing therein. For any period of time when accurate measurements have not been
351 made, the Contracting Officer shall consult with the Contractor prior to making a final
352 determination of the quantity delivered for that period of time.

353 (e) (1) All works, including a regulatory reservoir, pipelines and pumps
354 necessary to enable the Contractor to take and distribute water from Stony Gorge Reservoir
355 pursuant to this Contract, shall be constructed, operated, and maintained, or caused to be
356 constructed, operated, and maintained by the Contractor without cost or expense to the United
357 States. Such works may be installed, operated, and maintained on and across property of the
358 United States or in the vicinity of the Stony Gorge Reservoir subject to such restrictions and
359 regulations as to location, method of installation, operation, and maintenance as may be
360 prescribed by the Contracting Officer and subject further to the provisions of a license with the
361 Federal Government identified as Contract No. 14-06-200-5500A and dated February 1, 1972.
362 The Contractor agrees to provide access across the area described in Exhibit "A" to the United
363 States and representatives of the Orland Unit Water Users' Association as necessary to inspect,
364 operate, and maintain the Stony Gorge Reservoir. It is specifically recognized and agreed that
365 this Contract does not grant to the Contractor any right of access to the waters of Stony Gorge
366 Reservoir or to the adjacent lands of the United States for any purpose except as provided herein
367 for installation, operation, and maintenance of facilities.

368 (e) (2) Works installed pursuant to the license referred to in subdivision
369 (e)(1) of this Article shall be installed in accordance with plans and specifications approved by
370 the Contracting Officer. The Contracting Officer or his representative shall have the right of
371 ingress and egress at all reasonable times over and across the land of the Contractor for the
372 purpose of maintaining, inspecting, operating, and reading the water meter or meters which may
373 be installed and the Contractor hereby grants a right-of-way to the United States during the term
374 of this Contract for such purpose.

375 (e) (3) The Contracting Officer shall not be responsible for the control,
376 carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to
377 this Contract beyond the delivery points specified in subdivision (a) of this Article. The
378 Contractor shall indemnify the United States, its officers, employees, agents, and assigns on
379 account of damage or claim of damage of any nature whatsoever for which there is legal
380 responsibility, including property damage, personal injury, or death arising out of or connected
381 with the control, carriage, handling, use, disposal, or distribution of such Water Delivered
382 beyond such delivery points, except for any damage or claim arising out of (i) acts or omissions
383 of the Contracting Officer or any of its officers, employees, agents, or assigns with the intent of
384 creating the situation resulting in any damage or claim, (ii) willful misconduct of the Contracting
385 Officer or any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting
386 Officer or any of its officers, employees, agents, or assigns, or (iv) damage or claims resulting
387 from a malfunction of facilities owned and/or operated by the United States.

388 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

389 6. The Contractor has established a measuring program satisfactory to the
390 Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I
391 purposes is measured at each M&I service connection. The water measuring devices or water
392 measuring methods of comparable effectiveness must be acceptable to the Contracting Officer.
393 The Contractor shall be responsible for installing, operating, and maintaining and repairing all
394 such measuring devices and implementing all such water measuring methods at no cost to the
395 United States. The Contractor shall use the information obtained from such water measuring
396 devices or water measuring methods to ensure its proper management of the water, to bill water
397 users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I
398 purposes by customer class as defined in the Contractor's water conservation plan provided for
399 in Article 26 of this Contract. Nothing herein contained, however, shall preclude the Contractor
400 from establishing and collecting any charges, assessments, or other revenues authorized by

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

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

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

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

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

427 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

448 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
449 shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component
450 for Project Water for the following Year and the computations and cost allocations upon which
451 those Rates are based. The Contractor shall be allowed not less than two months to review and
452 comment on such computations and cost allocations. By December 31 of each Calendar Year,

453 the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing
454 Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

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

478 (d) The Contractor shall also make a payment in addition to the Rate(s) in
479 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
480 appropriate Tiered Pricing Component then in effect, before the end of the month following the
481 month of delivery; Provided, That the Contractor may be granted an exception from the Tiered
482 Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be
483 consistent with the quantities of M&I Water Delivered as shown in the water delivery report for
484 the subject month prepared by the Contracting Officer. The water delivery report shall be
485 deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for
486 Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made
487 through the adjustment of payments due to the United States for Charges for the next month.
488 Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall
489 be computed pursuant to Article 20 of this Contract.

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

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

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

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

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

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

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

527 (2) Omitted.

528 (3) For purposes of determining the applicability of the Tiered Pricing
529 Component pursuant to this Article, Water Delivered shall not include the additional water
530 provided to the Contractor under the provisions of subdivision (f) of Article 3 of this Contract.

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

539 (l) Omitted.

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

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

554 shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project
555 M&I contractor on any of these issues, and credits for payments heretofore made, Provided, That
556 the basis for such ruling is applicable to the Contractor.

557 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

558 8. The Contractor and the Contracting Officer concur that, as of the effective date of
559 this Contract, the Contractor has no non-interest bearing O&M deficits and shall have no further
560 liability therefor.

561 SALES, TRANSFERS, OR EXCHANGES OF WATER

562 9. Omitted.

563 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

580 TEMPORARY REDUCTIONS--RETURN FLOWS

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

586 (b) The Contracting Officer may temporarily discontinue or reduce the
587 quantity of Water Delivered to the Contractor as herein provided for the purposes of
588 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
589 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
590 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
591 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
592 Provided, That the United States shall use its best efforts to avoid any discontinuance or
593 reduction in such service. Upon resumption of service after such reduction or discontinuance,
594 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
595 Project Water which would have been delivered hereunder in the absence of such discontinuance
596 or reduction.

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

603 CONSTRAINTS ON THE AVAILABILITY OF WATER

604 12. (a) In its operation of the Project, the Contracting Officer will use all
605 reasonable means to guard against a Condition of Shortage in the quantity of water to be made

606 available to the Contractor pursuant to this Contract. In the event the Contracting Officer
607 determines that a Condition of Shortage appears probable, the Contracting Officer will notify the
608 Contractor of said determination as soon as practicable.

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

614 (c) Omitted.

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

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

625 UNAVOIDABLE GROUNDWATER PERCOLATION

626 13. Omitted.

627 RULES AND REGULATIONS

628 14. The parties agree that the delivery of Project Water or use of Federal facilities
629 pursuant to this Contract is subject to Federal Reclamation law, as amended and supplemented,
630 and the rules and regulations promulgated by the Secretary of the Interior under Federal
631 Reclamation law.

632

WATER AND AIR POLLUTION CONTROL

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

637

QUALITY OF WATER

638 16. (a) Project facilities used to deliver Project Water to the Contractor pursuant
639 to this Contract shall be operated and maintained to enable the United States to deliver Project
640 Water to the Contractor in accordance with the water quality standards specified in subsection
641 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of
642 October 27, 1986 (100 Stat. 3050), or other existing Federal laws. The United States is under no
643 obligation to construct or furnish water treatment facilities to maintain or to improve the quality
644 of Water Delivered to the Contractor pursuant to this Contract. The United States does not
645 warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

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

653

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

654

655 17. (a) Omitted.

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

661 (1) The Contractor may introduce non-Project water into Project
662 facilities and deliver said water to lands within the Contractor's Service Area subject to payment
663 to the United States of an appropriate rate as determined by the applicable Project ratesetting
664 policy, the RRA, and the Project use power policy, if such Project use power policy is applicable,
665 each as amended, modified, or superceded from time to time.

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

672 (3) The United States shall not be responsible for control, care, or
673 distribution of the non-Project water before it is introduced into or after it is delivered from the
674 Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United
675 States, and its respective officers, agents, and employees, from any claim for damage to persons
676 or property, direct or indirect, resulting from the acts of the Contractor, its officers', employees',
677 agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii)
678 diverting such non-Project water into Project facilities.

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

682 (5) After Project purposes are met, as determined by the Contracting
683 Officer, the United States and the Contractor shall share priority to utilize the remaining capacity
684 of the facilities declared to be available by the Contracting Officer for conveyance and
685 transportation of non-Project water prior to any such remaining capacity being made available to
686 non-Project contractors.

687 OPINIONS AND DETERMINATIONS

688 18. (a) Where the terms of this Contract provide for actions to be based upon the
689 opinion or determination of either party to this Contract, said terms shall not be construed as
690 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
691 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
692 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
693 or unreasonable opinion or determination. Each opinion or determination by either party shall be
694 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is
695 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
696 any opinion or determination implementing a specific provision of Federal law embodied in
697 statute or regulation.

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

703 COORDINATION AND COOPERATION

704 19. (a) In order to further their mutual goals and objectives, the Contracting
705 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
706 with other affected Project Contractors, in order to improve the operation and management of the
707 Project. The communication, coordination, and cooperation regarding operations and

708 management shall include, but not be limited to, any action which will or may materially affect
709 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
710 Project financial matters including, but not limited to, budget issues. The communication,
711 coordination, and cooperation provided for hereunder shall extend to all provisions of this
712 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,
713 and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

743 CHARGES FOR DELINQUENT PAYMENTS

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

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

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

761 EQUAL OPPORTUNITY

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

763 (a) The Contractor will not discriminate against any employee or applicant for
764 employment because of race, color, religion, sex, or national origin. The Contractor will take

765 affirmative action to ensure that applicants are employed, and that employees are treated during
766 employment, without regard to their race, color, religion, sex, or national origin. Such action
767 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
768 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other
769 forms of compensation; and selection for training, including apprenticeship. The Contractor
770 agrees to post in conspicuous places, available to employees and applicants for employment,
771 notices to be provided by the Contracting Officer setting forth the provisions of this
772 nondiscrimination clause.

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

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

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

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

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

798 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
799 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
800 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
801 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
802 action with respect to any subcontract or purchase order as may be directed by the Secretary of
803 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
804 Provided, however, That in the event the Contractor becomes involved in, or is threatened with,

805 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
806 the United States to enter into such litigation to protect the interests of the United States.

807 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

820 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

821 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
822 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
823 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
824 laws, as well as with their respective implementing regulations and guidelines imposed by the
825 U.S. Department of the Interior and/or Bureau of Reclamation.

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

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

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PRIVACY ACT COMPLIANCE

24. Omitted.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

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

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

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

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

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

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

885 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

893 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

894 28. Omitted.

895 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

896 29. The expenditure or advance of any money or the performance of any obligation of
897 the United States under this Contract shall be contingent upon appropriation or allotment of
898 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
899 obligations under this Contract. No liability shall accrue to the United States in case funds are
900 not appropriated or allotted.

901 BOOKS, RECORDS, AND REPORTS

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

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

916 (c) Omitted.

917 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

926 SEVERABILITY

927 32. In the event that a person or entity who is neither (i) a party to a Project contract,
928 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
929 an association or other form of organization whose primary function is to represent parties to
930 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
931 enforceability of a provision included in this Contract and said person, entity, association, or
932 organization obtains a final court decision holding that such provision is legally invalid or
933 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
934 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
935 final court decision identify by mutual agreement the provisions in this Contract which must be
936 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
937 The time periods specified above may be extended by mutual agreement of the parties. Pending
938 the completion of the actions designated above, to the extent it can do so without violating any
939 applicable provisions of law, the United States shall continue to make the quantities of Project
940 Water specified in this Contract available to the Contractor pursuant to the provisions of this
941 Contract which were not found to be legally invalid or unenforceable in the final court decision.

942 RESOLUTION OF DISPUTES

943 33. Should any dispute arise concerning any provisions of this Contract, or the
944 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
945 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
946 Officer referring any matter to Department of Justice, the party shall provide to the other party
947 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
948 required where a delay in commencing an action would prejudice the interests of the party that
949 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer

950 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
951 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
952 United States may have.

953 OFFICIALS NOT TO BENEFIT

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

957 CHANGES IN CONTRACTOR'S SERVICE AREA

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

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

972 FEDERAL LAWS

973 36. By entering into this Contract, the Contractor does not waive its rights to contest
974 the validity or application in connection with the performance of the terms and conditions of this
975 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
976 the terms and conditions of this Contract unless and until relief from application of such Federal

977 law or regulation to the implementing provision of the Contract is granted by a court of
978 competent jurisdiction.

979 NOTICES

980 37. Any notice, demand, or request authorized or required by this Contract shall be
981 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
982 delivered to the Area Manager, Bureau of Reclamation, Northern California Area Office, 16349
983 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States, when
984 mailed, postage prepaid, or delivered to the Board of Directors of Whitney Construction,
985 Incorporated, 3241 County Road 313, Orland, California 95963 . The designation of the
986 addressee or the address may be changed by notice given in the same manner as provided in this
987 Article for other notices.

988 CONFIRMATION OF CONTRACT

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

994 AGREEMENT ON WATER QUANTITIES

995 39. (a) During the term of this Contract, and any renewals thereof, it shall
996 constitute full agreement as between the United States and the Contractor as to the quantities of
997 water and the allocation thereof between Base Supply and Project Water which may be diverted
998 by the Contractor for beneficial use within the area shown on Exhibit "A", which said diversion,
999 use, and allocation shall not be disturbed so long as the Contractor shall fulfill all of its
1000 obligations hereunder, and the Contractor shall not claim any right against the United States in
1001 conflict with the provisions hereof.

1002 (b) Nothing herein contained is intended to or does limit rights of the
1003 Contractor against other than the United States or of the United States against any person other
1004 than the Contractor; Provided, however, That in the event the Contractor, the United States, or
1005 any other person shall become party to a general adjudication of rights to the use of water of the
1006 Stony Creek system, this Contract shall not jeopardize the rights or position of either party hereto
1007 or of any other person and the rights of all such persons in respect to the use of such water shall

1008 be determined in such proceedings the same as if this Contract had not been entered into, and if
1009 final judgment in any such general adjudication shall determine that the rights of the parties
1010 hereto are different from the rights as assumed herein, the United States shall submit to the
1011 Contractor an amendment to give effect to such judgment and the Contract shall be deemed to
1012 have been amended accordingly unless within 60 days after submission of such amendment to
1013 the Contractor, the Contractor elects to terminate the Contract or within the same period of time
1014 the parties agree upon mutually satisfactory amendments to give effect to such judgment.

1015 (c) In the event this Contract terminates, the rights of the parties to thereafter
1016 divert and use water shall exist as if this Contract had not been entered into. The fact that as a
1017 compromise settlement of a controversy as to the respective rights of the parties to divert and use
1018 water and the yield of such rights during the term hereof, this Contract places a limit on the total
1019 supply to be diverted annually by the Contractor during the contract term and segregates it into
1020 Base Supply and Project Water, shall not jeopardize the rights or position of either party with
1021 respect to its water rights or the yield thereof at all times after the contract terminates. It is
1022 further agreed that the Contractor at all times will first use water to the use of which it is entitled
1023 by virtue of its own water rights. Neither the provisions of this Contract, action taken hereunder,
1024 nor payments made hereunder to the United States by the Contractor shall be construed as an
1025 admission that any part of the water used by the Contractor during the term of this Contract was
1026 in fact water to which it would not have been entitled under water rights owned by it nor shall
1027 receipt of payments thereunder by the United States from the Contractor be construed as an
1028 admission that any part of the water used by the Contractor during the term of this Contract was
1029 in fact water to which it would have been entitled under water rights owned by it.

1030 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1031 the day and year first above written.

1032 THE UNITED STATES OF AMERICA

1033 By: _____
1034 Regional Director, Mid-Pacific Region
1035 Bureau of Reclamation

1036 WHITNEY CONSTRUCTION, INC.

1037 By: _____
1038 President of the Board of Directors

1039 Attest:

1040 By: _____
1041 Secretary of the Board of Directors

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EXHIBIT A

[Map or Description of Contractor's Service Area]

EXHIBIT B

2004 Water Rates and Charges
Whitney Construction, Inc. – Black Butte Project

M&I COST OF SERVICE RATES:

Capital Rate:	\$ 1.11
O&M Rates:	
Water Marketing	5.01
Storage	6.38
Deficit Rate:	2.65
CFO/PRF Adjustment Rate 1/	<u>6.20</u>
Total	<u>\$21.36</u>

M&I FULL COST RATE: \$21.99

CHARGES UNDER P.L. 102-575 TO THE
RESTORATION FUND 2/

Restoration Payments (3407(d)(2)(A)) \$15.64

1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

2/ 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).