

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

INTERIM 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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6 AND
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8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE 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 June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050),
15 as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
16 hereinafter referred to as Federal Reclamation law, between THE UNITED STATES OF
17 AMERICA, hereinafter referred to as the United States, and PLACER COUNTY WATER
18 AGENCY, hereinafter referred to as the Contractor, a public agency of the State of California,
19 duly organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

22 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
23 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for
24 flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection
25 and restoration, generation and distribution of electric energy, salinity control, navigation and
26 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,

27 and the San Joaquin River and their tributaries; and

28 [2nd] WHEREAS, the United States constructed Folsom Dam and Reservoir,
29 hereinafter collectively referred to as the American River Division , which will be used in part
30 for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

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

33 [4th] WHEREAS, the Contractor and the United States entered into Contract
34 No. 14-06-200-5082A, dated September 18, 1970, as amended July 8, 1992, which established
35 terms for the delivery to the Contractor of Project Water from the Auburn Reservoir or other
36 mutually agreeable locations and also recognized the Contractor's right to certain flows of the
37 American River authorized by permits issued by the California State Water Right Control Board
38 which is now called the State Water Resources Control Board (SWRCB); and

39 [4.1] WHEREAS, Contract No. 14-06-200-5082A, as amended, was superseded by
40 Amendatory Contract No. 14-06-200-5082A on February 26, 2002, to, among other things, re-
41 designate points of diversion and eliminate the minimum payment provisions currently included
42 in the contract and reduce the annual amount of Project Water to be made available from
43 117,000 acre-feet to 35,000 acre-feet; and

44 [4.2] WHEREAS, Amendatory Contract No. 14-06-200-5082A was further amended
45 on August 27, 2002, to provide for a potential point of diversion on the Sacramento River, and to
46 provide for a potential increase in the annual quantity provided under this contract to an amount
47 in excess of 35,000 acre-feet, if and when a point of diversion for Project Water is established on
48 the Sacramento River and if the proposed Auburn Dam is fully Completed, and the United States
49 obtains the necessary water rights for the Auburn Project, and

50 [4.3] WHEREAS, Amendatory Contract No. 14-06-200-5082A, dated February 26,
51 2002, as amended on August 27, 2002, is hereinafter referred to as the Existing Contract; and

52 [4.4] WHEREAS, the SWRCB by Order WR 2008-0045 revoked Reclamation's right

53 to appropriate water in connection with the Auburn-Folsom South Unit (Auburn Dam and
54 Reservoir) of the Project; and

55 [5th] Omitted; and

56 [6th] WHEREAS, Section 3404(c) of the Central Valley Project Improvement Act
57 (CVPIA) provides for long-term renewal of Existing Contracts following completion of
58 appropriate environmental documentation, including the Programmatic Environmental Impact
59 Statement (PEIS), which was required by Section 3409 of the CVPIA, pursuant to the National
60 Environmental Policy Act (NEPA) analyzing the direct and indirect impacts and benefits of
61 implementing the CVPIA and the potential renewal of all existing contracts for Project Water;
62 and

63 [6.1] WHEREAS, the United States has completed the PEIS, but since all the
64 environmental documentation necessary to execute a long-term renewal contract has not been
65 completed, the Contractor has requested an interim renewal contract pursuant to Section 3404(c)
66 (1) of the CVPIA, and

67 [7th] WHEREAS, the United States has determined that the Contractor has fulfilled all
68 of its obligations under the Existing Contract; and

69 [8th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
70 Contracting Officer that the Contractor has projected future demand for water use such that the
71 Contractor has the capability and expects to utilize fully for reasonable and beneficial use the
72 quantity of Project Water to be made available to it pursuant to this Contract; and

73 [9th] WHEREAS, water obtained from the Project has been relied upon by urban and
74 agricultural areas within California for more than 50 years, and is considered by the Contractor
75 as an essential portion of its water supply; and

76 [10th] WHEREAS, the economies of regions within the Project, including the
77 Contractor's, depend upon the continued availability of water, including water service from the
78 Project; and

79 [10.1] WHEREAS, in the California Bay-Delta Authority (CALFED) Programmatic
80 Record of Decision, dated August 28, 2000, the United States and the State of California adopted
81 a general target of continuously improving Delta water quality for all uses. The CALFED
82 Agencies' target for providing safe, reliable, and affordable drinking water in a cost-effective
83 way, is to achieve either: "(a) average concentrations at Clifton Court Forebay and other
84 southern and central Delta drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic
85 carbon, or (b) an equivalent level of public health protection using a cost-effective combination
86 of alternative source waters, source control and treatment technologies;" and

87 [11th] WHEREAS, the Secretary intends through coordination, cooperation, and
88 partnerships to pursue measures to improve water supply, water quality, and reliability of the
89 Project for all Project purposes; and

90 [11.1] WHEREAS, the Contractor and the water users in its Service Area have improved
91 and will continue to improve water use efficiency through water conservation, water reclamation,
92 and other Best Management Practices; however, implementing these measures have reduced and
93 continue to reduce the ability of the Contractor and the water users in its Service Area to
94 withstand a Condition of Shortage; and

95 [12th] WHEREAS, the mutual goals of the United States and the Contractor include: to
96 provide for reliable Project Water supplies; to control costs of those supplies; to achieve
97 repayment of the Project as required by law; to guard reasonably against Project Water
98 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
99 and to comply with all applicable environmental statutes, all consistent with the legal obligations
100 of the United States relative to the Project; and

101 [13th] WHEREAS, the parties intend by this Contract to develop a more cooperative
102 relationship in order to achieve their mutual goals; and

103 [13.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated
104 April 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply for

105 the Sacramento region's economic health and planned development through the year 2030, and
106 (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American River;
107 and

108 [13.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the
109 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate
110 actions that they could take to implement the objectives of the Water Forum Agreement, which,
111 if agreed to, would be the subject of a separate agreement between them; and

112 [13.3] WHEREAS, in order to continue water service provided under Project water
113 service contracts that expire prior to the completion of all appropriate environmental
114 documentation, the United States intends to execute interim renewal contracts for M&I water for
115 a period not to exceed three (3) Years in length, and for successive interim periods of not more
116 than two (2) Years in length, until such appropriate environmental documentation, is finally
117 completed, at which time the Secretary shall, pursuant to Federal Reclamation law, upon request
118 of the Contractor, enter into a long-term renewal contract for a period of forty (40) Years; and
119 may thereafter renew such long-term renewal contracts for successive periods not to exceed forty
120 (40) Years each; and

121 [14th] WHEREAS, the contract between the United States and the Contractor dated
122 February 20, 1963, relating to the operation of the Contractor's Middle Fork American River
123 Project Reservoirs is still in full force and effect and is not affected by the terms and conditions
124 of this Contract; and

125 [15th] WHEREAS, the United States and the Contractor are willing to enter into this
126 Interim Renewal (hereinafter "Contract") consistent with the provisions of Section 3404(c) of
127 the CVPIA and pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

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DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:
- (a) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;
 - (b) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates as determined annually by the Contracting Officer pursuant to this Contract;
 - (c) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;
 - (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;
 - (e) “Contract Total” shall mean the maximum amount of water to which the Contractor is entitled under subdivision (a) of Article 3 of this Contract;
 - (f) “Contractor's Service Area” shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto, which may be modified from time to time in accordance with Article 35 of this Contract without amendment of this Contract;
 - (g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);
 - (g.1) “Diversion Water” shall mean water to which the Contractor has acquired rights under Permit Nos. 13855, 13856, 13857, and 13858 issued by the California State Water Rights Board, now referred to as the State Water Resources Control Board;

157 (h-i) Omitted;
158 (j) “Full Cost Rate” shall mean an annual rate, as determined by the
159 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
160 Project Irrigation or M&I functions, as appropriate, of facilities in service including all O&M
161 deficits funded, less payments, over such periods as may be required under Federal Reclamation
162 law; or applicable contract provisions. Interest will accrue on both the construction expenditures
163 and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the
164 date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated
165 in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of
166 October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA. The Full-Cost
167 Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2
168 of the Rules and Regulations for the RRA;

169 (k-l) Omitted;

170 (m) “Irrigation Water” shall mean water made available from the Project that
171 is used primarily in the production of agricultural crops or livestock, including domestic use
172 incidental thereto, and watering of livestock;

173 (n) Omitted;

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

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

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

186 (r) Omitted;

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

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

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

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

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

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

204 (y) Omitted

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

208 (aa) "Water Made Available" shall mean the estimated amount of Project

209 Water that can be delivered to the Contractor for the upcoming Year as declared by the
210 Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

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

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

216 TERM OF CONTRACT

217 2. (a) This Contract shall be effective from January 1, 2012 and shall remain in
218 effect through February 28, 2014, and thereafter will be renewed as described in this Article.

219 Except as provided in subdivision (b) of this Article, until completion of all appropriate
220 environmental review, and provided that the Contractor has complied with all the terms and
221 conditions of the interim renewal contract in effect for the period immediately preceding the
222 requested successive interim renewal contract, this Contract will be renewed, upon request of the
223 Contractor, for successive interim periods each of which shall be no more than two (2) Years in
224 length. Also, except as provided in subdivision (b) of this Article, in order to promote orderly
225 and cost effective contract administration, the terms and conditions in subsequent interim
226 renewal contracts shall be identical to the terms and conditions in the interim renewal contract
227 immediately preceding the subsequent interim renewal contract: Provided, however, That each
228 party preserves the right to propose modification(s) in any interim renewal contract other than
229 those described in subdivision (b) of this Article, in which case the parties shall negotiate in good
230 faith appropriate modification(s) to be included in any successive interim renewal contracts.

231 Said modification(s) of each successive interim renewal contract shall be agreed upon within a
232 reasonable time prior to the expiration of the then existing interim renewal contract. Nothing in
233 this Article shall in any way alter the obligation that, upon final completion of any necessary
234 supplemental environmental documentation, the Secretary shall, pursuant to Federal Reclamation

235 law, upon request of the Contractor, enter into a long-term renewal contract for a period of forty
236 (40) Years and may thereafter renew such long-term renewal contracts for successive periods not
237 to exceed forty (40) Years each.

238 (b) The parties have engaged and if necessary will continue to engage in good
239 faith negotiations intended to permit the execution of a forty (40) Year long-term renewal
240 contract contemplated by Section 3404 (c) of the CVPIA, hereinafter referred to as a “long-term
241 renewal contract”. The parties recognize the possibility that this schedule may not be met
242 without further negotiations. Accordingly: In the event (i) the Contractor and Contracting Officer
243 have reached agreement on the terms of the Contractor’s long-term renewal contract or (ii) the
244 Contractor and Contracting Officer have not completed the negotiations on the Contractor’s
245 long-term renewal contract, believe that further negotiations on that contract would be beneficial,
246 and mutually commit to continue to negotiate to seek to reach agreement, but (iii) all
247 environmental documentation required to allow execution of the Contractor’s long-term renewal
248 contract by both parties has not been completed in time to allow execution of the Contractor’s
249 long-term renewal contract by February 28, 2014, then (iv), the parties will expeditiously
250 complete the environmental documentation required of each of them in order to execute the
251 Contractor’s long-term renewal contract at the earliest practicable date. In addition, the
252 Contractor’s then-current interim renewal contract will be renewed without change upon the
253 request of either party through the agreed-upon effective date of the Contractor’s long-term
254 renewal contract or, in the absence of agreement on the terms of the Contractor’s long-term
255 renewal contract, through the succeeding February 28.

256 (c) The omission of language in this Contract providing for conversion of this
257 interim renewal contract or any subsequent renewals thereof to a repayment contract pursuant to
258 subsection (c)(1) of Section 9 of the Reclamation Projects Act of 1939 (53 Stat. 1187), shall not
259 prejudice the Contractor's right to assert a right to have such language included in subsequent
260 renewals of this Contract or to exercise such conversion, all as provided by law, or to negotiate

261 the language regarding such conversion to be included in subsequent renewal contracts.

262 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

263 3. (a) During each Year, consistent with all applicable State water rights,
264 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
265 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to
266 35,000 acre-feet of Project Water for M&I purposes. Provided, however, during the two (2)
267 month period of January and February of 2012, the Contracting Officer shall make available for
268 delivery to the Contractor that portion of the 2011 allocation of Project Water unused by the
269 Contractor under the Existing Contract. Water Delivered to the Contractor in accordance with
270 this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of
271 this Contract.

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

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

284 (b) Because the capacity of the Project to deliver Project Water has been
285 constrained in recent years and may be constrained in the future due to many factors including
286 hydrologic conditions and implementation of Federal and State laws, the likelihood of the

287 Contractor actually receiving the amount of Project Water set out in subdivision (a) of this
288 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
289 PEIS projected that the Contract Total set forth in this Contract will not be available to the
290 Contractor in many years. During the most recent five years, the Recent Historic Average of
291 water made available to the Contractor was 32,000 acre feet. Nothing in subdivision (b) of this
292 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

295 (d) The Contractor shall make reasonable and beneficial use of all Project
296 water furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in
297 lieu), groundwater banking programs, surface water storage programs, and other similar
298 programs utilizing Project Water or other water furnished pursuant to this Contract conducted
299 within the Contractor's Service Area which are consistent with applicable State law and result in
300 use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge
301 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
302 Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates
303 sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average,
304 the quantity of Delivered Water is demonstrated to be reasonable for such uses and in
305 compliance with Federal Reclamation law. Groundwater recharge programs, groundwater
306 banking programs, surface water storage programs, and other similar programs utilizing Project
307 Water or other water furnished pursuant to this Contract conducted outside the Contractor's
308 Service Area may be permitted upon written approval of the Contracting Officer, which approval
309 will be based upon environmental documentation, Project Water rights, and Project operational
310 concerns. The Contracting Officer will address such concerns in regulations, policies, or
311 guidelines.

312 (e) The Contractor shall comply with requirements applicable to the

313 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
314 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
315 as amended, that are within the Contractor's legal authority to implement. Nothing herein shall
316 be construed to prevent the Contractor from challenging or seeking judicial relief in a court of
317 competent jurisdiction with respect to any biological opinion or other environmental
318 documentation referred to in this Article.

319 (f) Following the declaration of Water Made Available under Article 4 of this
320 Contract, the Contracting Officer will make a determination whether Project Water, or other
321 water available to the Project, can be made available to the Contractor in addition to the Contract
322 Total under Article 3 of this Contract during the Year without adversely impacting other Project
323 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
324 Contractor prior to making such a determination. If the Contracting Officer determines that
325 Project Water, or other water available to the Project, can be made available to the Contractor,
326 the Contracting Officer will announce the availability of such water and shall so notify the
327 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
328 and other Project Contractors capable of taking such water to determine the most equitable and
329 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
330 water, the Contracting Officer shall make such water available to the Contractor in accordance
331 with applicable statutes, regulations, guidelines, and policies. Subject to existing long-term
332 contractual commitments, water rights and operational constraints, long-term Project Contractors
333 shall have a first right to acquire such water, including Project Water made available pursuant to
334 Section 215 of the RRA.

335 (g) The Contractor may request permission to reschedule for use during the
336 subsequent Year some or all of the Water Made Available to the Contractor during the current
337 Year referred to as "carryover." The Contractor may request permission to use during the
338 current Year a quantity of Project Water which may be made available by the United States to

339 the Contractor during the subsequent Year referred to as “preuse.” The Contracting Officer’s
340 written approval may permit such uses in accordance with applicable statutes, regulations,
341 guidelines, and policies.

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

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

354 (j) The Contracting Officer shall make reasonable efforts to protect the water
355 rights necessary for the Project and to provide the water available under this Contract. The
356 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
357 extent permitted by law, in administrative proceedings related to the Project Water rights;
358 Provided, That the Contracting Officer retains the right to object to the substance of the
359 Contractor’s position in such a proceeding; Provided further, That in such proceedings the
360 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
361 Contract to use Project Water.

362 TIME FOR DELIVERY OF WATER

363 4 (a) On or about February 20 of each Calendar Year, the Contracting Officer
364 shall announce the Contracting Officer’s expected declaration of the Water Made Available.

365 Such declaration will be expressed in terms of Water Made Available and the Recent Historic
366 Average and will be updated monthly, and more frequently if necessary, based on then-current
367 operational and hydrologic conditions and a new declaration with changes, if any, to the Water
368 Made Available will be made. The Contracting Officer shall provide forecasts of Project
369 operations and the basis of the estimate, with relevant supporting information, upon the written
370 request of the Contractor. Concurrently with the declaration of the Water Made Available, the
371 Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

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

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

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

387 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

388 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
389 Contract shall be delivered to the Contractor at Folsom Dam and any additional point or points of
390 delivery either on Project facilities or another location or locations mutually agreed to in writing

391 by the Contracting Officer and the Contractor, including a potential point of delivery on the
392 Sacramento River north of the American River. The parties acknowledge that the potential
393 Sacramento River point of delivery may be at a point that, as of the date of this Contract, is not
394 included as an authorized point of delivery under the water right permits of the Project. Project
395 Water will not be delivered to this point of delivery unless and until such point is added to the
396 water right permits of the Project. Upon request of the Contractor, the Contracting Officer shall
397 petition the California State Water Resources Control Board to include the necessary point of
398 delivery to the water rights for the Project, and the Contractor shall cooperate with and assist the
399 Contracting Officer in prosecuting such petition in a timely manner. The Contracting Officer
400 shall bear neither responsibility nor liability for existing and/or future-constructed non-Federal
401 diversion or delivery facilities or the use thereof.

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

406 (b) Omitted.

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

409 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
410 measured and recorded with equipment furnished, installed, operated, and maintained by the
411 United States or other appropriate entity as designated by the Contracting Officer at the point or
412 points of delivery established pursuant to subdivision (a) of this Article. Upon the request of
413 either party to this Contract, the Contracting Officer shall investigate the accuracy, or cause to be
414 investigated, of such measurements and shall take any necessary steps to adjust any errors
415 appearing therein. For any period of time when accurate measurements have not been made, the
416 Contracting Officer shall consult with the Contractor prior to making a final determination of the

417 quantity delivered for that period of time.

418 (e) The Contracting Officer shall not be responsible for the control, carriage,
419 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
420 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor
421 shall indemnify the United States, its officers, employees, agents, and assigns on account of
422 damage or claim of damage of any nature whatsoever for which there is legal responsibility,
423 including property damage, personal injury, or death arising out of or connected with the control,
424 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery
425 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting
426 Officer or any of its officers, employees, agents, or assigns with the intent of creating the
427 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
428 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or
429 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a
430 malfunction of facilities owned and/or operated by the United States.

431 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

432 6. (a) The Contractor shall ensure that, unless the Contractor has established a
433 measuring program satisfactory to the Contracting Officer, the Contractor shall ensure that all
434 surface water delivered for M&I purposes is measured at each M&I service connection. The
435 water measuring devices or water measuring methods of comparable effectiveness must be
436 acceptable to the Contracting Officer. The Contractor shall be responsible for installing,
437 operating, and maintaining and repairing all such measuring devices and implementing all such
438 water measuring methods at no cost to the United States. The Contractor shall use the
439 information obtained from such water measuring devices or water measuring methods to ensure
440 its proper management of the water, to bill water users for water delivered by the Contractor;
441 and, if applicable, to record water delivered for M&I purposes by customer class as defined in
442 the Contractor's water conservation plan provided for in Article 26 of this Contract. Nothing

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

447 (b) To the extent the information has not otherwise been provided, upon
448 execution of this Contract, the Contractor shall provide to the Contracting Officer a written
449 report describing the measurement devices or water measuring methods being used or to be used
450 to implement subdivision (a) of this Article and identifying the M&I service connections or
451 alternative measurement programs approved by the Contracting Officer, at which such
452 measurement devices or water measuring methods are being used, and, if applicable, identifying
453 the locations at which such devices and/or methods are not yet being used including a time
454 schedule for implementation at such locations. The Contracting Officer shall advise the
455 Contractor in writing within 60 days as to the adequacy of, and necessary modifications, if any,
456 of the measuring devices or water measuring methods identified in the Contractor's report and if
457 the Contracting Officer does not respond in such time, they shall be deemed adequate. If the
458 Contracting Officer notifies the Contractor that the measuring devices or methods are
459 inadequate, the parties shall within 60 days following the Contracting Officer's response,
460 negotiate in good faith the earliest practicable date by which the Contractor shall modify said
461 measuring devices and/or measuring methods as required by the Contracting Officer to ensure
462 compliance with subdivision (a) of this Article.

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

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

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

471 RATES AND METHOD OF PAYMENT FOR WATER

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

481 (b) The Contracting Officer shall notify the Contractor of the Rates and
482 Charges as follows:

483 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
484 provide the Contractor an estimate of the Charges for Project Water that will be applied to the
485 period October 1, of the current Calendar Year, through September 30, of the following Calendar
486 Year, and the basis for such estimate. The Contractor shall be allowed not less than two months
487 to review and comment on such estimates. On or before September 15 of each Calendar Year,
488 the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during
489 the period October 1 of the current Calendar Year, through September 30, of the following
490 Calendar Year, and such notification shall revise Exhibit "B."

491 (2) Prior to October 1 of each Calendar Year, the Contracting Officer
492 shall make available to the Contractor an estimate of the Rates for Project Water for the
493 following Year and the computations and cost allocations upon which those Rates are based.
494 The Contractor shall be allowed not less than two months to review and comment on such

495 computations and cost allocations. By December 31 of each Calendar Year, the Contracting
496 Officer shall provide the Contractor with the final Rates to be in effect for the upcoming Year,
497 and such notification shall revise Exhibit "B."

498 (c) At the time the Contractor submits the initial schedule for the delivery of
499 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
500 Contractor shall make an advance payment to the United States equal to the total amount payable
501 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
502 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
503 Year. Before the end of the first month and before the end of each calendar month thereafter, the
504 Contractor shall make an advance payment to the United States, at the Rate(s) set under
505 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
506 during the second month immediately following. Adjustments between advance payments for
507 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
508 the following month; Provided, That any revised schedule submitted by the Contractor pursuant
509 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
510 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
511 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
512 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
513 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
514 additional Project Water shall be delivered to the Contractor unless and until an advance
515 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
516 between the advance payments for the Water Scheduled and payments for the quantities of Water
517 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
518 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
519 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
520 day of February.

521 (d) The Contractor shall also make a payment in addition to the Rate(s) in
522 subdivision (c) of this Article to the United States for Water Delivered, at the Charges then in
523 effect, before the end of the month following the month of delivery. The payments shall be
524 consistent with the quantities of M&I Water Delivered as shown in the water delivery report for
525 the subject month prepared by the Contracting Officer. The water delivery report shall be
526 deemed a bill for the payment of Charges for Water Delivered. Adjustment for overpayment or
527 underpayment of Charges shall be made through the adjustment of payments due to the United
528 States for Charges for the next month. Any amount to be paid for past due payment of Charges
529 shall be computed pursuant to Article 20 of this Contract.

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

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

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

542 (h) The Contracting Officer shall keep its accounts pertaining to the
543 administration of the financial terms and conditions of its long-term contracts, in accordance
544 with applicable Federal standards, so as to reflect the application of Project costs and revenues.
545 The Contracting Officer shall, each Year upon request of the Contractor, provide to the
546 Contractor a detailed accounting of all Project and Contractor expense allocations, the

547 disposition of all Project and Contractor revenues, and a summary of all water delivery
548 information. The Contracting Officer and the Contractor shall enter into good faith negotiations
549 to resolve any discrepancies or disputes relating to accountings, reports, or information.

550 (i) The parties acknowledge and agree that the efficient administration of this
551 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
552 policies, and procedures used for establishing Rates and Charges and/or for making and
553 allocating payments, other than those set forth in this Article may be in the mutual best interest
554 of the parties, it is expressly agreed that the parties may enter into agreements to modify the
555 mechanisms, policies, and procedures for any of those purposes while this Contract is in effect
556 without amending this Contract.

557 (j) (1-3) Omitted

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

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

571 (m) Omitted.

572 (n) Omitted

573 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

574 8. Omitted.

575 SALES, TRANSFERS, OR EXCHANGES OF WATER

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

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

599 subsequent environmental documentation shall include an alternative to evaluate not less than the
600 quantity of Project Water historically transferred within the same geographical area.

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

612 (d) Solely for the purpose of determining whether Section 3405(a)(1)(M) of
613 the CVPIA applies to the Contractor as a transferor or transferee of Project Water, the
614 Contracting Officer acknowledges that the Contractor is within a county, watershed or other area
615 of origin, as those terms are utilized under California law, of water that constitutes the natural
616 flow of the American River and its tributaries above the confluence of the American and
617 Sacramento Rivers.

618 APPLICATION OF PAYMENTS AND ADJUSTMENTS

619 10. (a) The amount of any overpayment by the Contractor of the Contractor's
620 O&M, capital, interest and deficit (if any) obligations for the Year shall be applied first to any
621 current liabilities of the Contractor arising out of this Contract then due and payable.
622 Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a
623 refund, any amount of such overpayment, at the option of the Contractor, may be credited against
624 amounts to become due to the United States by the Contractor. With respect to overpayment,

625 such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or
626 claiming to have the right to the use of any of the Project Water supply provided for herein. All
627 credits and refunds of overpayments shall be made within 30 days of the Contracting Officer
628 obtaining direction as to how to credit or refund such overpayment in response to the notice to
629 the Contractor that it has finalized the accounts for the Year in which the overpayment was
630 made.

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

636 TEMPORARY REDUCTIONS--RETURN FLOWS

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

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

651 Project Water which would have been delivered hereunder in the absence of such discontinuance
652 or reduction.

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

659 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

665
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 UNAVOIDABLE GROUNDWATER PERCOLATION

683 13. Omitted.

684 RULES, REGULATIONS AND DETERMINATIONS

685 14. The parties agree that the delivery of M&I Water or use of Federal facilities
686 pursuant to this Contract is subject to Federal Reclamation law and the applicable rules and
687 regulations promulgated by the Secretary of the Interior under Federal Reclamation law.
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689

690 WATER AND AIR POLLUTION CONTROL

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

696 QUALITY OF WATER

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

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

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

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17. (a) Omitted.

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

(1) The Contractor may introduce non-Project water into Project facilities and deliver said water to lands within the Contractor’s Service Area, subject to payment to the United States of an appropriate rate as determined by the applicable Project ratesetting policy and the Project use power policy, if such Project use power policy is applicable, each as amended, modified, or superseded from time to time. In addition, if electrical power is required to pump non-Project water through the facilities, the Contractor shall be responsible for obtaining the necessary power and paying the necessary charges therefore.

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

(3) The United States shall not be responsible for control, care, or distribution of the non-Project water before it is introduced into or after it is delivered from the Project facilities. The Contractor hereby releases and agrees to defend and indemnify the United States and their respective officers, agents, and employees, from any claim for damage to

739 persons or property, direct or indirect, resulting from the acts of the Contractor or its officers,
740 employees, agents or assigns, in (i) extracting or diverting non-Project water from any source, or
741 (ii) diverting such non-Project water into Project facilities.

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

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

750 OPINIONS AND DETERMINATIONS

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

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

765 Contractor to the extent reasonably practicable.

766 COORDINATION AND COOPERATION

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

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

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

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

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

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

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

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

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

806 CHARGES FOR DELINQUENT PAYMENTS

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

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

821 (c) When a partial payment on a delinquent account is received, the amount

822 received shall be applied, first to the penalty, second to the administrative charges, third to the
823 accrued interest, and finally to the overdue payment.

824 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

861 otherwise provided by law.

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

871

872 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

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

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

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

885 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

886 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
887 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the
888 Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights
889 laws, as well as with their respective implementing regulations and guidelines imposed by the
890 U.S. Department of the Interior and/or Bureau of Reclamation.

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

897 (c) The Contractor makes this agreement in consideration of and for the

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

905
906

PRIVACY ACT COMPLIANCE

907 24. Omitted.

908 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

917 WATER CONSERVATION

918 26. (a) Prior to the delivery of water provided from or conveyed through
919 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
920 shall be implementing an effective water conservation and efficiency program based on the
921 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
922 the conservation and efficiency criteria for evaluating water conservation plans established under
923 Federal law. The water conservation and efficiency program shall contain definite water
924 conservation objectives, appropriate economically feasible water conservation measures, and
925 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
926 Contract shall be contingent upon the Contractor's continued implementation of such water
927 conservation program. In the event the Contractor's water conservation plan or any revised water

928 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
929 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
930 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
931 shall be made under this Contract so long as the Contractor diligently works with the Contracting
932 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
933 immediately begins implementing its water conservation and efficiency program in accordance
934 with the time schedules therein.

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

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

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

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

951 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

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

959 OPERATION AND MAINTENANCE BY THE OPERATING NON-FEDERAL ENTITY

960 28. Omitted.

961 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

962 29. The expenditure or advance of any money or the performance of any obligation of
963 the United States under this Contract shall be contingent upon appropriation or allotment of
964 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
965 obligations under this Contract. No liability shall accrue to the United States in case funds are
966 not appropriated or allotted.

967 BOOKS, RECORDS, AND REPORTS

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

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

982 (c) Omitted.

983

984 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

993 SEVERABILITY

994 32. In the event that a person or entity who is neither (i) a party to a Project contract,
995 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
996 an association or other form of organization whose primary function is to represent parties to
997 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
998 enforceability of a provision included in this Contract and said person, entity, association, or
999 organization obtains a final court decision holding that such provision is legally invalid or
1000 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1001 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1002 final court decision identify by mutual agreement the provisions in this Contract which must be
1003 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1004 The time periods specified above may be extended by mutual agreement of the parties. Pending
1005 the completion of the actions designated above, to the extent it can do so without violating any
1006 applicable provisions of law, the United States shall continue to make the quantities of Project
1007 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1008 Contract which were not found to be legally invalid or unenforceable in the final court decision.

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RESOLUTION OF DISPUTES

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

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

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

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

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

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

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

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

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

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United States may have.

1021

OFFICIALS NOT TO BENEFIT

1022

34. No Member of or Delegate to Congress, Resident Commissioner, or official of the

1023

Contractor shall benefit from this Contract other than as a water user or landowner in the same

1024

manner as other water users or landowners.

1025

CHANGES IN CONTRACTOR'S SERVICE AREA

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35. (a) While this Contract is in effect, no change may be made in the

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Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,

1028

or otherwise, except upon the Contracting Officer's written consent.

1029

(b) Within 30 days of receipt of a request for such a change, the Contracting

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Officer will notify the Contractor of any additional information required by the Contracting

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Officer for processing said request, and both parties will meet to establish a mutually agreeable

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schedule for timely completion of the process. Such process will analyze whether the proposed

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change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;

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(ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or

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to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)

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have an impact on any Project Water rights applications, permits, or licenses. In addition, the

1037

Contracting Officer shall comply with the NEPA and ESA. The Contractor will be responsible

1038 for all costs incurred by the Contracting Officer in this process, and such costs will be paid in
1039 accordance with Article 25 of this Contract.

1040 FEDERAL LAWS

1041 36. By entering into this Contract, the Contractor does not waive its rights to contest
1042 the validity or application in connection with the performance of the terms and conditions of this
1043 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1044 the terms and conditions of this Contract unless and until relief from application of such Federal
1045 law or regulation to the implementing provision of the Contract is granted by a court of
1046 competent jurisdiction.

1047 NOTICES

1048 37. Any notice, demand, or request authorized or required by this Contract shall be
1049 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1050 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom,
1051 California 95630-1777, and on behalf of the United States, when mailed, postage prepaid, or
1052 delivered to the Board of Directors of the Placer County Water Agency, P. O. Box 6570,
1053 Auburn, California 95604. The designation of the addressee or the address may be changed by
1054 notice given in the same manner as provided in this Article for other notices.

1055 CONFIRMATION OF CONTRACT

1056 38. The Contractor, after the execution of this Contract, shall furnish to the
1057 Contracting Officer evidence that pursuant to the laws of the State of California, the Contractor
1058 is a legally constituted entity and the Contract is lawful, valid, and binding on the Contractor.
1059 This Contract shall not be binding on the United States until such evidence has been provided to
1060 the Contracting Officer's satisfaction.

1061 CONTRACT DRAFTING CONSIDERATIONS

1062
1063
1064 39. This Contract has been negotiated and reviewed by the parties hereto, each of
1065 whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 39 of the
1066 Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be
1067 considered to have drafted the stated articles.
1068

1069

1070

1071 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of

1072 the day and year first above written.

1073

THE UNITED STATES OF AMERICA

1074

By: _____

1075

Regional Director, Mid-Pacific Region

1076

Bureau of Reclamation

1077 (SEAL)

1078

PLACER COUNTY WATER AGENCY

1079

By: _____

1080

Chair of the Board of Directors

1081 Attest:

1082

By: _____

1083

Secretary of the Board of Directors

EXHIBIT A

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

DRAFT

EXHIBIT B

RATES AND CHARGES
(PLACEHOLDER)

DRAFT