

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

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

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10 THIS CONTRACT, made this _____ day of _____, 20____,
11 in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, November 5, 1990 (104 Stat. 2074), and
16 Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter
17 referred to as Federal Reclamation law, between the UNITED STATES OF AMERICA,
18 hereinafter referred to as the United States, and the SACRAMENTO COUNTY WATER
19 AGENCY, hereinafter referred to as the Contractor, a public agency of the State of California,
20 duly organized, existing, and acting pursuant to the laws thereof;

21 WITNESSETH, That:

22 EXPLANATORY RECITALS

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

27 other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River,
28 and the San Joaquin River and their tributaries; and

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

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

34 [4th] WHEREAS, the Sacramento Municipal Utility District (hereinafter referred to as
35 the District) and the United States entered into Contract No. 14-06-200-5198A, dated
36 November 20, 1970, hereinafter referred to as the Existing Contract, which established terms for
37 the delivery to the District of up to 75,000 acre-feet of water from the American River Division
38 through December 31, 2012; and

39 [4.1] WHEREAS, the District assigned to the Contractor on July 12, 2006, the right,
40 title, and interest in that portion of the Existing Contract consisting of 30,000 acre-feet of the
41 entitlement of the Project Water including any rights to renew the Existing Contract for the
42 entitlement. The Contractor agreed to enter into a long-term Contract with the United States for
43 30,000 acre-feet of assigned water; and

44 [4.2] WHEREAS, the Contractor and the United States also entered into Contract
45 No. 6-07-20-W1372, which established terms for the delivery to the Contractor of Project Water
46 from the American River Division from April 8, 1999, through a date determined pursuant to
47 Article 2 therein; and

48 [4.3] WHEREAS, except as specifically provided for in this Contract, the Contractor's
49 right, title, and interest in Contract No. 6-07-20-W1372 is provided for under the Contractor's
50 other Contract No. 6-07-20-W1372-LTR1; and

51 [5th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of
52 interim and existing long-term Central Valley Project Water service contracts following
53 completion of appropriate environmental documentation, including a programmatic
54 environmental impact statement (PEIS) pursuant to the National Environmental Policy
55 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA
56 and the potential renewal of all existing contracts for Project Water; and

57 [6th] WHEREAS, the United States has completed the PEIS and all other appropriate
58 environmental reviews that are necessary preconditions to entering into this Contract; and

59 [7th] WHEREAS, the Contractor has requested to enter into this Contract, pursuant to
60 the terms of the Existing Contract, Federal Reclamation law, and the laws of the State of
61 California, for water service from the Project; and

62 [8th] WHEREAS, the United States has determined that the Contractor has fulfilled all
63 of its obligations under the Existing Contract; and

64 [9th] WHEREAS, the Contractor has demonstrated to the satisfaction of the
65 Contracting Officer that the Contractor has utilized the Project Water supplies available to it for
66 reasonable and beneficial use and/or has demonstrated projected future demand for water use
67 such that the Contractor has the capability and expects to utilize fully for reasonable and beneficial
68 use the quantity of Project Water to be made available to it pursuant to this Contract; and

69 [10th] WHEREAS, water obtained from the Project has been relied upon by urban areas
70 within California for more than 50 years, and is considered by the Contractor as an essential
71 portion of its water supply; and

72 [11th] WHEREAS, the economies of regions within the Project, including the
73 Contractor's, depend upon the continued availability of water, including water service from the
74 Central Valley Project; and

75 [12th] WHEREAS, the Secretary intends through coordination, cooperation, and
76 partnerships to pursue measures to improve water supply, water quality, and reliability of the
77 Project for all Project purposes; and

78 [12.1] WHEREAS, the Contractor and the water users in its Service Area have improved
79 and will continue to improve water use efficiency through water conservation, water reclamation,
80 and other best management practices; however, implementing these measures has reduced and
81 will continue to reduce the ability of the Contractor and the water users in its Service Area to
82 withstand a Condition of Shortage; and

83 [13th] WHEREAS, the mutual goals of the United States and the Contractor
84 include: to provide for reliable Project Water supplies; to control costs of those supplies; to
85 achieve repayment of the Project as required by law; to guard reasonably against Project Water
86 shortages; to achieve a reasonable balance among competing demands for use of Project Water;
87 and to comply with all applicable environmental statutes, all consistent with the legal obligations
88 of the United States relative to the Project; and

89 [14th] WHEREAS, the parties intend by this Contract to develop a more cooperative
90 relationship in order to achieve their mutual goals; and

91 [14.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated
92 April 24, 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply
93 for the Sacramento region's economic health and planned development through the year 2030,
94 and (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American
95 River; and

96 [14.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the
97 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate
98 actions that they could take to implement the objectives of the Water Forum Agreement, which,
99 if agreed to, would be the subject of a separate agreement between them; and

100 [14.3] Omitted; and

101 [14.4] WHEREAS, the Contractor's Service Area provided in this Contract includes
102 areas that on the date of execution of this Contract receive water from a variety of sources,
103 including, but not limited to, ground water from private wells, surface supplies under privately
104 held rights, public utilities, public agencies other than the Contractor, water service from the
105 Contractor provided exclusively through wells operated by the Contractor, and water service
106 from the Contractor provided through a combination of wells and interim surface supplies; and

107 [14.5] WHEREAS, the Contractor's Service Area provided in this Contract also includes
108 areas to which Project Water or other surface water may be provided by the Contractor in the
109 future; and

110 [14.6] WHEREAS, recognizing the physical, legal and jurisdictional circumstances that
111 exist within the Contractor's Service Area, the parties have agreed to structure this Contract so
112 that areas within the Contractor's Service Area will become subject to certain terms and

113 conditions of this Contract at such time as such areas receive water service from the Contractor
114 consisting of Project Water or other surface water; and

115 [15th] WHEREAS, the United States and the Contractor are willing to enter into this
116 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

119 DEFINITIONS

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

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

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

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

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

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

135 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
136 permitted to provide Project Water obtained under this Contract. As of the date of this Contract,
137 the Contractor's Service Area is the area identified as "Zone 40" and "Zone 40 Expansion Area",
138 as described in Exhibit "A" attached hereto. The Contractor's Service Area may be modified
139 from time to time in accordance with Article 35 of this Contract without amendment of this
140 Contract.

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

143 (h-i) Omitted;

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

154 (k-l) Omitted;

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

- 158 (n) Omitted;
- 159 (o) “Municipal and Industrial (M&I) Water” shall mean Project Water, other
160 than Irrigation Water, made available to the Contractor. M&I Water shall include water used for
161 human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses)
162 which are kept for personal enjoyment or water delivered to land holdings operated in units of
163 less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer
164 that the use of water delivered to any such landholding is a use described in subdivision (m) of
165 this Article;
- 166 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to
167 the delivery of M&I Water;
- 168 (q) “Operation and Maintenance” or “O&M” shall mean normal and
169 reasonable care, control, operation, repair, replacement (other than capital replacement), and
170 maintenance of Project facilities;
- 171 (r) Omitted;
- 172 (s) “Project” shall mean the Central Valley Project owned by the United
173 States and managed by the Department of the Interior, Bureau of Reclamation;
- 174 (t) “Project Contractors” shall mean all parties who have water service and
175 repayment contracts for Project Water from the Project with the United States pursuant to
176 Federal Reclamation law;
- 177 (u) “Project Water” shall mean all water that is developed, diverted, stored, or
178 delivered by the Secretary in accordance with the statutes authorizing the Project and in
179 accordance with the terms and conditions of water rights acquired pursuant to California law;

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

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

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

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

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

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

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

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

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TERM OF CONTRACT

2. (a) This Contract shall be effective on the date first written above, and shall remain in effect through February 28, 20--, and supersedes the Existing Contract. In the event the Contractor wishes to renew this Contract beyond February 28, 20--, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two years prior to the date this Contract expires.

(b) Omitted.

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

(d) The Contracting Officer shall make a determination ten years after the date of execution of this Contract, and every five years thereafter during the term of this Contract, of whether a conversion to a contract under subsection (c)(1) of Section 9 of the Reclamation Project Act of 1939 can be accomplished. The Contracting Officer anticipates that during the term of this Contract, all authorized Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such allocation is made, and subject to satisfaction of the conditions set out in this subdivision of this Article, this Contract shall, at the request of the Contractor, be converted to a contract under said

225 subsection (c)(1) of Section 9, subject to applicable Federal law and under stated terms and
 226 conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for
 227 such conversion to occur shall be a determination by the Contracting Officer that, account being
 228 taken of the amount credited to return by the Contractor as provided for under Federal
 229 Reclamation law, the remaining amount of construction costs assignable for ultimate return by
 230 the Contractor can probably be repaid to the United States within the term of a contract under
 231 said subsection (c)(1) of Section 9. If the remaining amount of costs that are properly assignable
 232 to the Contractor cannot be determined during the term of this Contract, the Contracting Officer
 233 shall notify the Contractor, and provide the reason(s) why such a determination could not be
 234 made. Further, the Contracting Officer shall make such a determination as soon thereafter as
 235 possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out
 236 above, conversion to a contract under said subsection (c)(1) of Section 9. In the event such
 237 determination of costs has not been made at a time which allows conversion of this Contract
 238 during the term of this Contract or the Contractor has not requested conversion of this Contract
 239 within such term, the parties shall incorporate in any subsequent renewal contract as described in
 240 subdivision (c) of this Article a provision that carries forth in substantially identical terms the
 241 provisions of this subdivision (d).

242 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

243 3. (a) During each Year, consistent with all applicable State water rights,
 244 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
 245 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to
 246 30,000 acre-feet of M&I Water. The quantity of Water Delivered to the Contractor in

247 accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of
248 Articles 4 and 7 of this Contract.

249 (b) Because the capacity of the Project to deliver Project Water has been
250 constrained in recent years and may be constrained in the future due to many factors including
251 hydrologic conditions and implementation of Federal and State laws, the likelihood of the
252 Contractor actually receiving the total amount of Project Water set out in subdivision (a) of this
253 Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the
254 PEIS projected that the Contract Total set forth in this Contract will not be available to the
255 Contractor in many years. During the most recent five years, the Recent Historic Average of
256 Water Made Available to the Contractor was 28,500 acre-feet. Nothing in subdivision (b) of this
257 Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

260 (d) The Contractor shall make reasonable and beneficial use of all water
261 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
262 groundwater banking programs, surface water storage programs, and other similar programs
263 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
264 Contractor's Service Area which are consistent with applicable State law and result in use
265 consistent with Federal Reclamation law will be allowed; *Provided*, That any direct recharge
266 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
267 Article 26 of this Contract; *Provided, further*, That such water conservation plan demonstrates
268 sufficient lawful uses exist in the Contractor's Service Area to show reasonable and beneficial
269 use of the quantity of Delivered Water based on a long-term average in compliance with Federal

270 Reclamation law. Groundwater recharge programs, groundwater banking programs, surface
271 water storage programs, and other similar programs utilizing Project Water or other water
272 furnished pursuant to this Contract conducted outside the Contractor's Service Area may be
273 permitted upon written approval of the Contracting Officer, which approval will be based upon
274 environmental documentation, Project Water rights, and Project operational concerns. The
275 Contracting Officer will address such concerns in regulations, policies, or guidelines.

276 (e) The Contractor shall comply with requirements applicable to the
277 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
278 of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA),
279 as amended, that are within the Contractor's legal authority to implement. The Existing Contract
280 which evidences in excess of 40 years of diversion for M&I purposes of the quantities of water
281 provided in subdivision 3 (a) of Article 3 of this Contract, will be considered in developing an
282 appropriate baseline for biological assessments (s) prepared pursuant to ESA and any other
283 needed environmental review. Nothing herein shall be construed to prevent the Contractor from
284 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
285 biological opinion or other environmental documentation referred to in this Article.

286 (f) Following the declaration of Water Made Available under Article 4 of this
287 Contract, the Contracting Officer will make a determination whether Project Water, or other
288 water available to the Project, can be made available to the Contractor in addition to the Contract
289 Total under Article 3 of this Contract during the Year without adversely impacting other Project
290 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
291 Contractor prior to making such a determination. If the Contracting Officer determines that
292 Project Water, or other water available to the Project, can be made available to the Contractor,

293 the Contracting Officer will announce the availability of such water and shall so notify the
294 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
295 and other Project Contractors capable of taking such water to determine the most equitable and
296 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
297 water, the Contracting Officer shall make such water available to the Contractor in accordance
298 with applicable statutes, regulations, guidelines, and policies.

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

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

314 (i) Project Water furnished to the Contractor pursuant to this Contract may be
315 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract

316 upon written approval by the Contracting Officer in accordance with the terms and conditions of
317 such approval.

318 (j) The Contracting Officer shall make reasonable efforts to protect the water
319 rights necessary for the Project and to provide the water available under this Contract. The
320 Contracting Officer shall not object to participation by the Contractor, in the capacity and to the
321 extent permitted by law, in administrative proceedings related to the Project Water rights;
322 *Provided*, That the Contracting Officer retains the right to object to the substance of the
323 Contractor's position in such a proceeding; *Provided further*, That in such proceedings the
324 Contracting Officer shall recognize the Contractor has a legal right under the terms of this
325 Contract to use Project Water.

326 TIME FOR DELIVERY OF WATER

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

337 (b) On or before each March 1 and at such other times as necessary, the
338 Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the

339 Contracting Officer, showing the monthly quantities of Project Water to be delivered by the
340 United States to the Contractor pursuant to this Contract for the Year commencing on such
341 March 1. The Contracting Officer shall use all reasonable means to deliver Project Water
342 according to the approved schedule for the Year commencing on such March 1.

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

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

352 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

353 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this
354 Contract shall be delivered to the Contractor at the Contractor's option: (i) at the intake for the
355 Sacramento River Water Treatment Plant owned by the City of Sacramento; (ii) at the intake for
356 the Freeport Regional Water Project on the Sacramento River ; (iii) at an intake for the Fairbairn
357 Water Treatment Plant owned by the City of Sacramento on the American River ; and (iv) any
358 additional point or points of delivery either on Project facilities or another location or locations
359 mutually agreed to in writing by the Contracting Officer and the Contractor.

360 (b) The Contracting Officer shall make all reasonable efforts to maintain
361 sufficient flows and levels of water in Project facilities to deliver Project Water to the Contractor
362 at the point or points of delivery established pursuant to subdivision (a) of this Article.

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

365 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
366 measured and recorded with equipment furnished, installed, operated, and maintained by the
367 United States, or other appropriate entity as designated by the Contracting Officer at the point or
368 points of delivery established pursuant to subdivision (a) of this Article; *Provided*, That if the
369 Project Water delivered pursuant to this Contract is diverted at a location or in a manner so as to
370 be commingled with water diverted by any other entity, the point of measurement for Project
371 Water delivered to the Contractor shall be a location at which Project Water diverted for
372 Contractor's use can be measured separately from water diverted by any such entity or entities.
373 Upon the request of either party to this Contract, the Contracting Officer shall investigate, or
374 cause to be investigated, the accuracy of such measurements and shall take any necessary steps
375 to adjust any errors appearing therein. For any period of time when accurate measurements have
376 not been made, the Contracting Officer shall consult with the Contractor prior to making a final
377 determination of the quantity delivered for that period of time.

378 (e) The Contracting Officer shall not be responsible for the control, carriage,
379 handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this
380 Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor
381 shall indemnify the United States, its officers, employees, agents, and assigns on account of
382 damage or claim of damage of any nature whatsoever for which there is legal responsibility,

383 including property damage, personal injury, or death arising out of or connected with the control,
384 carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery
385 points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting
386 Officer or any of its officers, employees, agents, or assigns with the intent of creating the
387 situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or
388 any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or
389 any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a
390 malfunction of facilities owned and/or operated by the United States.

391 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

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

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

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

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

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

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

431 RATES AND METHOD OF PAYMENT FOR WATER

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

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

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

449 before September 15 of each Calendar Year, the Contracting Officer shall notify the
450 Contractor in writing of the Charges to be in effect during the period October 1 of the
451 current Calendar Year, through September 30, of the following Calendar Year, and such
452 notification shall revise Exhibit "B".

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

461 (c) At the time the Contractor submits the initial schedule for the delivery of
462 Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the
463 Contractor shall make an advance payment to the United States equal to the total amount payable
464 pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water
465 scheduled to be delivered pursuant to this Contract during the first two calendar months of the
466 Year. Before the end of the first month and before the end of each calendar month thereafter, the
467 Contractor shall make an advance payment to the United States, at the Rate(s) set under
468 subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract
469 during the second month immediately following. Adjustments between advance payments for
470 Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of
471 the following month; *Provided*, That any revised schedule submitted by the Contractor pursuant

472 to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
473 Contract during any month shall be accompanied with appropriate advance payment, at the Rates
474 then in effect, to assure that Project Water is not delivered to the Contractor in advance of such
475 payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to
476 this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no
477 additional Project Water shall be delivered to the Contractor unless and until an advance
478 payment at the Rates then in effect for such additional Project Water is made. Final adjustment
479 between the advance payments for the Water Scheduled and payments for the quantities of Water
480 Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no
481 later than April 30th of the following Year, or 60 days after the delivery of Project Water carried
482 over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last
483 day of February.

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

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

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

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

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

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

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

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

531 (2) Omitted.

532 (3) For purposes of determining the applicability of the Tiered Pricing
533 Components pursuant to this Article, Water Delivered shall include Project Water that the
534 Contractor transfers to others but shall not include Project Water transferred to the
535 Contractor, nor shall it include the additional water provided to the Contractor under the
536 provisions of subdivision (f) of Article 3 of this Contract.

537 (k) For the term of this Contract, Rates under the respective ratesetting
538 policies will be established to recover only reimbursable O&M (including any deficits) and
539 capital costs of the Project, as those terms are used in the then-current Project ratesetting

540 policies, and interest, where appropriate, except in instances where a minimum Rate is applicable
541 in accordance with the relevant Project ratesetting policy. Changes of significance in practices
542 which implement the Contracting Officer's ratesetting policies will not be implemented until the
543 Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and
544 impact of the proposed change.

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

550 (m) Omitted.

551 (n) Omitted.

552 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

553 8. Omitted.

554 SALES, TRANSFERS, OR EXCHANGES OF WATER

555 9. (a) The right to receive Project Water provided for in this Contract may be
556 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State if
557 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and
558 applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
559 Water under this Contract may take place without the prior written approval of the Contracting
560 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
561 exchanges shall be approved absent all appropriate environmental documentation, including but
562 not limited to documents prepared pursuant to the NEPA and ESA. Such environmental

563 documentation should include, as appropriate, an analysis of groundwater impacts and economic
564 and social effects, including environmental justice, of the proposed water transfers on both the
565 transferor and transferee.

566 (b) In order to facilitate efficient water management, among Project
567 Contractors located within the same geographical area, by means of water transfers and to allow
568 the Contractor to participate in an accelerated water transfer program during the term of this
569 Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
570 documentation including, but not limited to, documents prepared pursuant to NEPA and ESA
571 analyzing annual transfers within such geographical areas, and the Contracting Officer shall
572 determine whether such transfers comply with applicable law. Following the completion of the
573 environmental documentation, such transfers addressed in such documentation shall be
574 conducted with advance notice to the Contracting Officer, but shall not require prior written
575 approval by the Contracting Officer. Such environmental documentation and the Contracting
576 Officer's compliance determination shall be reviewed every five years and updated, as necessary,
577 prior to the expiration of the then-existing five-year period. All subsequent environmental
578 documentation shall include an alternative to evaluate not less than the quantity of Project Water
579 historically transferred within the same geographical area.

580 (c) For a water transfer to qualify under subdivision (b) of this Article, such
581 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
582 years, or to be delivered to established wildlife refuges, groundwater basins, or for M&I use or
583 for fish and wildlife purposes; (ii) occur within a single Year; (iii) occur between a willing seller
584 and a willing buyer; (iv) convey water through existing Project facilities with no new
585 construction or modifications to Project facilities and be between existing Project Contractors

586 and/or the Contractor and the United States, Department of the Interior; and (v) comply with all
587 applicable Federal, State, and local or tribal laws and requirements imposed for protection of the
588 environment and Indian Trust Assets, as defined under Federal law.

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

595 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

607 (b) All advances for miscellaneous costs incurred for work requested by the
608 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs

609 when the work has been completed. If the advances exceed the actual costs incurred, the
610 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
611 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

612 TEMPORARY REDUCTIONS—RETURN FLOWS

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

618 (b) The Contracting Officer may temporarily discontinue or reduce the
619 quantity of Water Delivered to the Contractor as herein provided for the purposes of
620 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
621 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
622 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
623 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
624 *Provided*, That the United States shall use its best efforts to avoid any discontinuance or
625 reduction in such service. Upon resumption of service after such reduction or discontinuance,
626 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
627 Project Water which would have been delivered hereunder in the absence of such discontinuance
628 or reduction.

629 (c) The United States reserves the right to all seepage and return flow water
630 derived from Water Delivered to the Contractor hereunder which escapes or is discharged
631 beyond the Contractor's Service Area; *Provided*, That this shall not be construed as claiming for

632 the United States any right to seepage or return flow being put to reasonable and beneficial use
633 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
634 claiming by, through, or under the Contractor.

635 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

647 (c) Omitted.

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

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

658 UNAVOIDABLE GROUNDWATER PERCOLATION

659 13. Omitted.

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RULES AND REGULATIONS

14. The parties agree that the delivery of M&I Water or use of Federal facilities

pursuant to this Contract is subject to the applicable provisions of Federal Reclamation law and

any applicable rules and regulations promulgated by the Secretary of the Interior under such law.

PROTECTION OF WATER AND AIR QUALITY

15. (a) Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the Contracting Officer: *Provided*, That the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

(b) The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within the Contractor’s Project Water Service Area.

(c) This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

QUALITY OF WATER

16. Combined with Article 15.

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

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:

690 (1) The Contractor may introduce non-Project water into Project
691 facilities and deliver said water to lands within the Contractor's Service Area, subject to
692 payment to the United States of an appropriate rate as determined by the applicable
693 Project ratesetting policy and the Project use power policy, if such Project use power
694 policy is applicable, each as amended, modified, or superseded from time to time.

695 (2) Delivery of such non-Project water in and through Project facilities
696 shall only be allowed to the extent such deliveries do not: (i) interfere with other Project
697 purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of
698 water available to other Project Contractors; (iii) interfere with the delivery of contractual
699 water entitlements to any other Project Contractors; or (iv) interfere with the physical
700 maintenance of the Project facilities; *Provided*, That nothing in this Article is intended to
701 preclude the United States from passing the Contractor's water rights water through
702 Project storage facilities to the extent required to satisfy the Contractor's water rights that
703 are senior to those of the Project under the applicable provisions of California water law.

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

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

716 (5) After Project purposes are met, as determined by the Contracting
717 Officer, the United States and the Contractor shall share priority to utilize the remaining
718 capacity of the facilities declared to be available by the Contracting Officer for
719 conveyance and transportation of non-Project water prior to any such remaining capacity
720 being made available to non-Project Contractors.

721 OPINIONS AND DETERMINATIONS

722 18. (a) Where the terms of this Contract provide for actions to be based upon the
723 opinion or determination of either party to this Contract, said terms shall not be construed as
724 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
725 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
726 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
727 or unreasonable opinion or determination. Each opinion or determination by either party shall be
728 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is
729 intended to or shall affect or alter the standard of judicial review applicable under Federal law to
730 any opinion or determination implementing a specific provision of Federal law embodied in
731 statute or regulation.

732 (b) The Contracting Officer shall have the right to make determinations
733 necessary to administer this Contract that are consistent with the provisions of this Contract, the
734 laws of the United States and of the State of California, and the rules and regulations

735 promulgated by the Secretary of the Interior. Such determinations shall be made in consultation
736 with the Contractor to the extent reasonably practicable.

737 COORDINATION AND COOPERATION

738 19. (a) In order to further their mutual goals and objectives, the Contracting
739 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
740 with other affected Project Contractors, in order to improve the operation and management of the
741 Project. The communication, coordination, and cooperation regarding operations and
742 management shall include, but not be limited to, any action which will or may materially affect
743 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
744 Project financial matters including, but not limited to, budget issues. The communication,
745 coordination, and cooperation provided for hereunder shall extend to all provisions of this
746 Contract. Each party shall retain exclusive decision making authority for all actions, opinion,
747 and determinations to be made by the respective party.

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

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

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

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

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

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

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

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

777 CHARGES FOR DELINQUENT PAYMENTS

778 20. (a) The Contractor shall be subject to interest, administrative, and penalty
779 charges on delinquent payments. If a payment is not received by the due date, the Contractor
780 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
781 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
782 addition to the interest charge, an administrative charge to cover additional costs of billing and
783 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor

784 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
785 payment is delinquent beyond the due date, based on the remaining balance of the payment due
786 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
787 collection services associated with a delinquent payment.

788 (b) The interest rate charged shall be the greater of either the rate prescribed
789 quarterly in the Federal Register by the Department of the Treasury for application to overdue
790 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be
791 determined as of the due date and remain fixed for the duration of the delinquent period.

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

795 EQUAL OPPORTUNITY

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

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

807 (b) The Contractor will, in all solicitations or advertisements for employees
808 placed by or on behalf of the Contractor, state that all qualified applicants will receive
809 consideration for employment without regard to race, color, religion, sex, disability, or national
810 origin.

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

817 (d) The Contractor will comply with all provisions of EO 11246, and of the
818 rules, regulations, and relevant orders of the Secretary of Labor.

819 (e) The Contractor will furnish all information and reports required by
820 EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant
821 thereto, and will permit access to his books, records, and accounts by the Contracting Agency

822 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
823 regulations, and orders.

824 (f) In the event of the Contractor's noncompliance with the nondiscrimination
825 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
826 canceled, terminated or suspended in whole or in part and the Contractor may be declared
827 ineligible for further Government contracts in accordance with procedures authorized in
828 EO 11246, and such other sanctions may be imposed and remedies invoked as provided in
829 EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

830 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
831 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
832 Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be
833 binding upon each subcontractor or vendor. The Contractor will take such action with respect to
834 any subcontract or purchase order as may be directed by the Secretary of Labor as a means of
835 enforcing such provisions, including sanctions for noncompliance: *Provided, however*, that in
836 the event the Contractor becomes involved in, or is threatened with, litigation with a
837 subcontractor or vendor as a result of such direction, the Contractor may request that the United
838 States enter into such litigation to protect the interests of the United States.

839 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

844 (b) The payment of charges becoming due pursuant to this Contract is a condition
845 precedent to receiving benefits under this Contract. The United States shall not make water
846 available to the Contractor through Project facilities during any period in which the Contractor is
847 in arrears in the advance payment of water rates due the United States. The Contractor shall not
848 deliver water under the terms and conditions of this Contract for lands or parties that are in
849 arrears in the advance payment of water rates as levied or established by the Contractor.

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

852 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

853 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
854 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
855 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,
856 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990
857 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and
858 with the applicable implementing regulations and any guidelines imposed by the U.S.
859 Department of the Interior and/or Bureau of Reclamation.

860 (b) These statutes prohibit any person in the United States from being
861 excluded from participation in, being denied the benefits of, or being otherwise subjected to
862 discrimination under any program or activity receiving financial assistance from the Bureau of
863 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
864 Contract, the Contractor agrees to immediately take any measures necessary to implement this
865 obligation, including permitting officials of the United States to inspect premises, programs, and
866 documents.

867 (c) The Contractor makes this agreement in consideration of and for the
868 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other
869 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of
870 Reclamation, including installment payments after such date on account of arrangements for
871 Federal financial assistance which were approved before such date. The Contractor recognizes
872 and agrees that such Federal assistance will be extended in reliance on the representations and
873 agreements made in this article and that the United States reserves the right to seek judicial
874 enforcement thereof.

875 (d) Complaints of discrimination against the Contractor shall be investigated
876 by the Contracting Officer's Office of Civil Rights.

PRIVACY ACT COMPLIANCE

877 24. Omitted.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

888 26. (a) Prior to the delivery of water provided from or conveyed through
889 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor

890 shall be implementing an effective water conservation and efficiency program based on the
891 Contractor's water conservation plan that has been determined by the Contracting Officer to
892 meet the conservation and efficiency criteria for evaluating water conservation plans established
893 under Federal law. The water conservation and efficiency program shall contain definite water
894 conservation objectives, appropriate economically feasible water conservation measures, and
895 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
896 Contract shall be contingent upon the Contractor's continued implementation of such water
897 conservation program. In the event the Contractor's water conservation plan or any revised
898 water conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have
899 not yet been determined by the Contracting Officer to meet such criteria, due to circumstances
900 which the Contracting Officer determines are beyond the control of the Contractor, water
901 deliveries shall be made under this Contract so long as the Contractor diligently works with the
902 Contracting Officer to obtain such determination at the earliest practicable date, and thereafter
903 the Contractor immediately begins implementing its water conservation and efficiency program
904 in accordance with the time schedules therein.

905 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
906 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall
907 implement the best management practices identified by the time frames issued by the California
908 Urban Water Conservation Council for such M&I Water unless any such practice is determined
909 by the Contracting Officer to be inappropriate for the Contractor.

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

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

919 (e) If the Contractor is engaged in direct groundwater recharge, such activity
920 shall be described in the Contractor's water conservation plan. Such water conservation plan
921 shall demonstrate sufficient lawful uses exist in the Contractor's Service Area to show
922 reasonable and beneficial use of the quantity of Delivered Water based on a long-term average in
923 compliance with Federal Reclamation law.

924 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

932 OPERATION AND MAINTENANCE BY THE OPERATING
933 NON-FEDERAL ENTITY

934 28. Omitted.

935 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

936 29. The expenditure or advance of any money or the performance of any obligation of
937 the United States under this Contract shall be contingent upon appropriation or allotment of
938 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
939 obligations under this Contract. No liability shall accrue to the United States in case funds are
940 not appropriated or allotted.

941 BOOKS, RECORDS, AND REPORTS

942 30. (a) The Contractor shall establish and maintain accounts and other books and
943 records pertaining to administration of the terms and conditions of this Contract, including the
944 Contractor's financial transactions; water supply data; project operation, maintenance, and
945 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
946 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
947 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
948 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
949 and regulations, each party to this Contract shall have the right during office hours to examine
950 and make copies of the other party's books and records relating to matters covered by this
951 Contract.

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

957 (c) Omitted.

958 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

959 31. (a) The provisions of this Contract shall apply to and bind the successors and
960 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
961 therein by either party shall be valid until approved in writing by the other party.

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

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

967 SEVERABILITY

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

983 RESOLUTION OF DISPUTES

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

988 30 days' written notice of the intent to take such action; *Provided*, That such notice shall not be
989 required where a delay in commencing an action would prejudice the interests of the party that
990 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
991 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
992 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
993 United States may have.

994 OFFICIALS NOT TO BENEFIT

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

998 CHANGES IN CONTRACTOR'S ORGANIZATION

999 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1000 organization, by inclusion or exclusion of lands or by any other changes which may affect the
1001 respective rights, obligations, privileges, and duties of either the United States or the Contractor
1002 under this Contract including, but not limited to, dissolution, consolidation, or merger, except
1003 upon the Contracting Officer's written consent.

1004 (b) Within 30 days of receipt of a request for such a change, the Contracting
1005 Officer will notify the Contractor of any additional information required by the Contracting
1006 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1007 schedule for timely completion of the process. Such process will analyze whether the proposed
1008 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1009 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1010 to pay for any Federally-constructed facilities for which the Contractor is responsible; and
1011 (iii) have an impact on any Project Water rights applications, permits, or licenses. In addition,
1012 the Contracting Officer shall comply with the NEPA and ESA. The Contractor will be
1013 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1014 be paid in accordance with Article 25 of this Contract.

1015 FEDERAL LAWS

1016 36. By entering into this Contract, the Contractor does not waive its rights to contest
1017 the validity or application in connection with the performance of the terms and conditions of this
1018 Contract of any Federal law or regulation; *Provided*, That the Contractor agrees to comply with
1019 the terms and conditions of this Contract unless and until relief from application of such Federal
1020 law or regulation to the implementing provision of the Contract is granted by a court of
1021 competent jurisdiction.

1022 NOTICES

1023 37. Any notice, demand, or request authorized or required by this Contract shall be
1024 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1025 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom,
1026 California 95630-1799, and on behalf of the United States, when mailed, postage prepaid, or
1027 delivered to the Chief, Water Resources Division, County of Sacramento, 827 Seventh Street,
1028 Room 301, Sacramento, California 95814. The designation of the addressee or the address may
1029 be changed by notice given in the same manner as provided in this Article for other notices.

1030 CONFIRMATION OF CONTRACT

1031 38. Promptly after the execution of this Contract, the Contractor shall provide
1032 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1033 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the
1034 Contractor. This Contract shall not be binding on the United States until such evidence has been
1035 provided to the Contracting Officer's satisfaction.

1036 SUBCONTRACT FOR RESALE OF WATER

1037 39. Omitted.

1038 MEDIUM FOR TRANSMITTING PAYMENTS

1039 40. (a) All payments from the Contractor to the United States under this Contract
1040 shall be by the medium requested by the United States on or before the date payment is due. The
1041 required method of payment may include checks, wire transfers, or other types of payment
1042 specified by the United States.

1043 (b) Upon execution of the Contract, the Contractor shall furnish the
1044 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1045 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1046 out of the Contractor's relationship with the United States.

1047

CONTRACT DRAFTING CONSIDERATIONS

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1049
1050
1051

41. This Contract has been, negotiated and reviewed by the parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. The double spaced Articles of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall be considered to have drafted the stated articles.

1052
1053

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

1054

THE UNITED STATES OF AMERICA

1055
1056
1057

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

1058 (SEAL)
1059

SACRAMENTO COUNTY WATER AGENCY

1060
1061

By: _____
Chairman of the Board of Directors

1062 Attest:

1063
1064

By: _____
Secretary of the Board of Directors

EXHIBIT A
[Map of Contractor's Service Area]

Draft

EXHIBIT "B"
Rates and Charges
(Placeholder)

Draft