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 Rev.CCAO draft 01/27/12
Rev. R.O. Draft 05/07/09
Rev. R. O. Draft 11/30/05
 Rev. CCAO Draft 08/15-2001
 M&I Only
 Contract No. 14-06-200-5198A-LTR1

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

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

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6 AND
7 SACRAMENTO MUNICIPAL UTILITY DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM THE AMERICAN RIVER DIVISION

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 referred
17 to as Federal Reclamation law, between the UNITED STATES OF AMERICA, hereinafter
18 referred to as the United States,, and the SACRAMENTO MUNICIPAL UTILITY DISTRICT,
19 hereinafter referred to as the Contractor, a public agency of the State of California, duly
20 organized, existing, and acting pursuant to the laws thereof;

21 WITNESSETH, That:

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EXPLANATORY RECITALS

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

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

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

[3.1] WHEREAS, on June 28, 1957, the City of Sacramento and the Contractor executed an Agreement of Assignment in which the City of Sacramento granted to the Contractor the right to divert up to 20 cubic feet per second for use in a thermal electric power generating plant, from either the American or Sacramento Rivers, under rights held by the City of Sacramento, hereinafter referred to as Assigned Water; and

[3.2] WHEREAS, the Contractor and the United States determined the Assigned Water shall be conveyed under a separate Warren Act contract; and

[4th] WHEREAS, the Contractor and the United States entered into Contract No. 14-06-200-5198A, dated November 20, 1970, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of a total of up to

44 75,000 acre-feet of water, including the Assigned Water, from the American River Division
45 through December 31, 2012; and

46 [4.1] WHEREAS, on July 12, 2006, the Contractor assigned to the Sacramento County
47 Water Agency the right, title, and interest in and to 30,000 acre-feet of Project Water under the
48 Existing Contract, including any rights to renew the Existing Contract; and

49 [5th] WHEREAS, the United States and the Contractor have subsequently entered into
50 a binding agreement, identified as Binding Agreement No. 14-06-200-5198A-BA, which sets out
51 the terms pursuant to which the Contractor agreed to renew the Existing Contract before its
52 expiration date after completion of a programmatic environmental impact statement (PEIS) and
53 other appropriate environmental documentation and negotiation of a renewal contract, and which
54 also sets out the consequences of a subsequent decision not to renew; and

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

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

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

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

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

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

76 [12th] 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 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and
80 partnerships to pursue measures to improve water supply, water quality, and reliability of the
81 Project for all Project purposes; and

82 [13.1] WHEREAS, the Contractor and the water users in its Service Area have improved
83 and will continue to improve water use efficiency through water conservation, water reclamation,
84 and other best management practices; however, implementing these measures have reduced and
85 continue to reduce the ability of the Contractor and the water users in its Service Area to
86 withstand a Condition of Shortage; and

87 [14th] WHEREAS, the mutual goals of the United States and the Contractor include:
88 to provide for reliable Project Water supplies; to control costs of those supplies; to achieve

89 repayment of the Project as required by law; to guard reasonably against Project Water shortages;
90 to achieve a reasonable balance among competing demands for use of Project Water; and to
91 comply with all applicable environmental statutes, all consistent with the legal obligations of the
92 United States relative to the Project; and

93 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
94 relationship in order to achieve their mutual goals; and

95 [15.1] WHEREAS, the Contractor is a signatory to the Water Forum Agreement, dated
96 April 2000, which has the co-equal objectives to (1) provide a reliable and safe water supply for
97 the Sacramento region's economic health and planned development through the year 2030, and
98 (2) preserve the fishery, wildlife, recreational and aesthetic values of the lower American River; and

99 [15.2] WHEREAS, the Contracting Officer is in support of the co-equal objectives of the
100 Water Forum Agreement and intends to work cooperatively with the Contractor to investigate
101 actions that they could take to implement the objectives of the Water Forum Agreement, which,
102 if agreed to, would be the subject of a separate agreement between them; and

103 [16th] WHEREAS, the United States and the Contractor entered into a settlement
104 agreement dated March 3, 2005 for settlement of certain issues related to Project M&I ratesetting
105 and acknowledge that this Contract does not alter or amend the terms and conditions of that
106 agreement; and

107 [17th] WHEREAS, the United States and the Contractor agreed to develop a separate
108 agreement¹ by the execution date of this Contract, which reserves the rights of Contractor with
109 respect to certain legal and other concerns expressed by the Contractor during the negotiation of

¹ The exact type and form of an agreement between the parties has yet to be determined

110 the Contract. These concerns relate to the financial and certain other terms of the existing
111 Contract and whether the terms of this Contract should be revised to address those concerns; and

112 [18th] WHEREAS, the United States and the Contractor are willing to enter into this
113 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

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

116 DEFINITIONS

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

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

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

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

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

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

132 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
133 permitted to provide Project Water obtained under this Contract as illustrated in Exhibit "A"
134 attached hereto, which may be modified from time to time in accordance with Article 35 of this
135 Contract without amendment of this Contract;

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

138 (h-i) Omitted;

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

149 (k-l) Omitted;

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

153 (n) Omitted;

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

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

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

166 (r) Omitted;

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

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

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

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

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

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

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

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

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

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

194 (cc) "Year" shall mean the period from and including March 1 of each
195 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 Reclamation-wide 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 10 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

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

236 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

237 3. (a) During each Year, consistent with all applicable State water rights,
238 permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of
239 this Contract, the Contracting Officer shall make available for delivery to the Contractor up to
240 30,000 acre-feet of M&I water. The quantity of Water Delivered to the Contractor in accordance

241 with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7
242 of this Contract.

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

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

255 (d) The Contractor shall make reasonable and beneficial use of all water
256 furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu),
257 groundwater banking programs, surface water storage programs, and other similar programs
258 utilizing Project Water or other water furnished pursuant to this Contract conducted within the
259 Contractor's Service Area which are consistent with applicable State law and result in use
260 consistent with Federal Reclamation law will be allowed; *Provided*, That any direct recharge
261 program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to
262 Article 26 of this Contract; *Provided, further*, That such water conservation plan demonstrates
263 sufficient lawful uses exist in the Contractor's Service Area to show reasonable and beneficial

264 use of the quantity of Delivered Water based on a long-term average in compliance with Federal
265 Reclamation law. Groundwater recharge programs, groundwater banking programs, surface
266 water storage programs, and other similar programs utilizing Project Water or other water
267 furnished pursuant to this Contract conducted outside the Contractor's Service Area may be
268 permitted upon written approval of the Contracting Officer, which approval will be based upon
269 environmental documentation, Project Water rights, and Project operational concerns. The
270 Contracting Officer will address such concerns in regulations, policies, or guidelines.

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

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

287 Project Water, or other water available to the Project, can be made available to the Contractor,
288 the Contracting Officer will announce the availability of such water and shall so notify the
289 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
290 and other Project Contractors capable of taking such water to determine the most equitable and
291 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
292 water, the Contracting Officer shall make such water available to the Contractor in accordance
293 with applicable statutes, regulations, guidelines, and policies.

294 (g) The Contractor may request permission to reschedule for use during the
295 subsequent Year some or all of the Water Made Available to the Contractor during the current
296 Year referred to as "carryover." The Contractor may request permission to use during the current
297 Year a quantity of Project Water which may be made available by the United States to the
298 Contractor during the subsequent Year referred to as "preuse." The Contracting Officer's written
299 approval may permit such uses in accordance with applicable statutes, regulations, guidelines,
300 and policies.

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

309 (i) Project Water furnished to the Contractor pursuant to this Contract may be
310 delivered for purposes other than those described in subdivision (o) of Article 1 of this Contract
311 upon written approval by the Contracting Officer in accordance with the terms and conditions of
312 such approval.

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

321 (k) The delivery of Project Water to, and use of Project Water at, any electric
322 power generating facility within the Contractor's Service Area (i) from which the Contractor
323 purchases all of the electricity produced by such facility and (ii) which is owned by a joint
324 powers authority or other entity controlled by the Contractor, shall be deemed to be a delivery of
325 Project Water to, and use of such water by, the Contractor pursuant to this Contract.

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
336 Historic 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: (i) the turnout at milepost 24.681 (left side) on

355 the Folsom-South Canal located at a point 700 feet upstream from the inlet transition of the
356 Laguna Creek siphon, and (ii) any additional point or points of delivery either on Project
357 facilities or another location or locations mutually agreed to in writing by the Contracting Officer
358 and the Contractor.

359 (b) The Contracting Officer shall make all reasonable efforts to maintain
360 sufficient flows and levels of water in the Folsom-South Canal to deliver Project Water to the
361 Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

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

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

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

390 MEASUREMENT OF WATER WITHIN THE SERVICE AREA

391 6. (a) The Contractor shall ensure that, unless the Contractor establishes
392 an alternative measurement program satisfactory to the Contracting Officer, all surface water
393 delivered by the Contractor within the Contractor's Service Area for M&I purposes is measured
394 at each M&I service connection. The water measuring devices or water measuring methods of
395 comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be
396 responsible for installing, operating, and maintaining and repairing all such measuring devices
397 and implementing all such water measuring methods at no cost to the United States. The
398 Contractor shall use the information obtained from such water measuring devices or water
399 measuring methods to ensure its proper management of the water, to bill water users for water

400 delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by
401 customer class as defined in the Contractor's water conservation plan provided for in Article 26
402 of this Contract. Nothing herein contained, however, shall preclude the Contractor from
403 establishing and collecting any charges, assessments, or other revenues authorized by California
404 law. The Contractor shall include a summary of all its annual surface water deliveries in the
405 annual report described in subdivision (c) of Article 26.

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

422 (c) All new surface water delivery systems for the delivery of Project Water
423 under this Contract installed within the Contractor's Service Area after the effective date of this
424 Contract, shall also comply with the measurement provisions described in subdivision (a) of
425 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 by the Contractor 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 Project Water taken during the previous 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 Components 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 payment
478 at the Rates then in effect for such additional Project Water is made. Final adjustment between
479 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 Project Water delivered, at the Charges and
486 the appropriate Tiered Pricing Component then in effect, before the end of the month following
487 the month of delivery. The payments shall be consistent with the quantities of Project Water
488 delivered as shown in the water delivery report for the subject month prepared by the Contracting
489 Officer. The water delivery report shall be deemed a bill for the payment of Charges and the

490 applicable Tiered Pricing Component for Project Water delivered. Adjustment for overpayment
491 or underpayment of Charges shall be made through the adjustment of payments due to the United
492 States for Charges for the next month. Any amount to be paid for past due payment of Charges
493 and the 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 subdivision
499 (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, through Project facilities shall be allocated and applied in
504 accordance with Federal Reclamation law and the associated rules or regulations, and the
505 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 with
508 applicable Federal standards, so as to reflect the application of Project costs and revenues. The
509 Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a
510 detailed accounting of all Project and Contractor expense allocations, the disposition of all
511 Project and Contractor revenues, and a summary of all water delivery information. The

512 Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any
513 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 the
518 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 total Project Water deliveries, then before the end of the month
523 following the month of delivery the Contractor shall make an additional payment to the
524 United States equal to the applicable Tiered Pricing Component. The Tiered Pricing
525 Component for the amount of Project Water delivered in excess of 80 percent of the
526 Contract Total, but less than or equal to 90 percent of the total Project Water deliveries,
527 shall equal one-half of the difference between the Rate established under subdivision (a)
528 of this Article and the M&I Full Cost Water Rate. The Tiered Pricing Component for the
529 amount of Project Water delivered which exceeds 90 percent of the total Project Water
530 deliveries shall equal the difference between (i) the Rate established under subdivision (a)
531 of this Article and (ii) the M&I Full Cost Water Rate.

532 (2) Omitted.

533 (3) For purposes of determining the applicability of the Tiered Pricing
534 Component pursuant to this Article, total Project Water deliveries shall include Project

535 Water that the Contractor transfers to others but shall not include Project Water
536 transferred to the Contractor, nor shall it include other water furnished pursuant to
537 Article 3(f) of this Contract.

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

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

551 (m) Omitted.

552 (n) Omitted.

553 NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS

554 8. Omitted.

555 SALES, TRANSFERS, OR EXCHANGES OF WATER

556 9. (a) The right to receive Project Water provided for in this Contract may be
557 sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of

558 California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
559 and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
560 Water under this Contract may take place without the prior written approval of the Contracting
561 Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
562 exchanges shall be approved absent all appropriate environmental documentation, including but
563 not limited to documents prepared pursuant to the NEPA and the ESA. Such environmental
564 documentation should include, as appropriate, an analysis of groundwater impacts and economic
565 and social effects, including environmental justice, of the proposed water transfers on both the
566 transferor and transferee.

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

581 (c) For a water transfer to qualify under subdivision (b) of this Article, such
582 water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three
583 years, or to be delivered to established wildlife refuges, groundwater basins or for M&I use or for
584 fish and wildlife purposes; (ii) occur within a single Year; (iii) occur between a willing seller
585 and a willing buyer; (iv) convey water through existing Project facilities with no new
586 construction or modifications to Project facilities and be between existing Project Contractors
587 and/or the Contractor and the United States, Department of the Interior; and (v) comply with all
588 applicable Federal, State, and local or tribal laws and requirements imposed for protection of the
589 environment and Indian Trust Assets, as defined under Federal law. Such water transfers must
590 not lead to land conversion.

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

597 APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

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

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

614 TEMPORARY REDUCTIONS—RETURN FLOWS

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

620 (b) The Contracting Officer may temporarily discontinue or reduce the
621 quantity of Water Delivered to the Contractor as herein provided for the purposes of
622 investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or
623 any part thereof necessary for the delivery of Project Water to the Contractor, but so far as
624 feasible the Contracting Officer will give the Contractor due notice in advance of such temporary
625 discontinuance or reduction, except in case of emergency, in which case no notice need be given;
626 *Provided*, That the United States shall use its best efforts to avoid any discontinuance or

627 reduction in such service. Upon resumption of service after such reduction or discontinuance,
628 and if requested by the Contractor, the United States will, if possible, deliver the quantity of
629 Project Water which would have been delivered hereunder in the absence of such discontinuance
630 or reduction.

631 (c) The United States reserves the right to all seepage and return flow water
632 derived from Project Water delivered to the Contractor hereunder which escapes or is discharged
633 beyond the Contractor's Service Area; *Provided*, That this shall not be construed as claiming for
634 the United States any right to seepage or return flow being put to reasonable and beneficial use
635 pursuant to this Contract within the Contractor's Service Area by the Contractor or those
636 claiming by, through, or under the Contractor.

637 CONSTRAINTS ON THE AVAILABILITY OF WATER

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

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

649 (c) Omitted.

650 (d) Project Water furnished under this Contract will be allocated in
651 accordance with the then-existing Project M&I Water Shortage Policy; *Provided*, That any

652 increases in the Contractor's demand that have arisen since the delivery of Project Water to the
653 Contractor the previous year, which are the result of Contractor providing additional water to an
654 electrical power generating plant (including a cogeneration plant), shall, in addition to any other
655 applicable adjustments pursuant to the policy, result in a corresponding increase in the
656 Contractor's "historic use" quantity. Such policy shall be amended, modified, or superseded only
657 through a public notice and comment procedure.

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

665 UNAVOIDABLE GROUNDWATER PERCOLATION

666 13. Omitted.

667 RULES AND REGULATIONS

668 14. The parties agree that the delivery of Project Water , or use of Federal facilities
669 pursuant to this Contract, is subject to the applicable provisions of Federal Reclamation law; and
670 any applicable rules and regulations promulgated by the Secretary of the Interior under Federal
671 Reclamation law.

672 PROTECTION OF WATER AND AIR QUALITY

673 15. (a) Project facilities used to make available and deliver water to the
674 Contractor shall be operated and maintained in the most practical manner to maintain the quality
675 of the water at the highest level possible as determined by the Contracting Officer: *Provided,*

676 That the United States does not warrant the quality of the water delivered to the Contractor and is
677 under no obligation to furnish or construct water treatment facilities to maintain or improve the
678 quality of water delivered to the Contractor.

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

686 (c) Any new, additional or proposed water to be introduced into the facility by
687 existing or future Project contractors may be allowed to the extent such introduction does not:

688 (i) interfere with Project purposes as determined by the Contracting Officer; (ii) reduce the
689 quantity or quality of water to the extent that such a reduction would significantly affect the use
690 of water, or the cost of putting such water to use, by Project contractors as reasonably determined
691 by the Contracting Officer, following consultation with the affected contractor; (iii) interfere with
692 delivery of contractual water entitlements to any other Project Contractors; or (iv) interfere with
693 structural integrity, operation or physical maintenance of Project facilities.

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

696 QUALITY OF WATER

697 16. Combined with Article 15.

698 WATER ACQUIRED BY THE CONTRACTOR OTHER THAN
699 FROM THE UNITED STATES

700 17. (a) Omitted.

701 (b) Except for, water or water rights now owned or hereafter acquired by the
702 Contractor, other than from the United States may be stored, conveyed and/or diverted through
703 Project facilities, subject to the completion of appropriate environmental documentation, with the

704 approval of the Contracting Officer and the execution of any contract determined by the
705 Contracting Officer to be necessary, consistent with the following provisions:

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

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

717 (3) The United States shall not be responsible for control, care or
718 distribution of the non-Project water before it is introduced into or after it is delivered
719 from the Project facilities. The Contractor hereby releases and agrees to defend and
720 indemnify the United States and their respective officers, agents, and employees, from
721 any claim for damage to persons or property, direct or indirect, resulting from the acts of
722 the Contractor, its officers, employees, agents or assigns of (i) extracting or diverting
723 non-Project water from any source, or (ii) diverting such non-Project water into
724 Project facilities.

725 (4) Diversion of such non-Project water into Project facilities shall be
726 consistent with all applicable laws, and if involving groundwater, consistent with any

727 applicable groundwater management plan applicable to the Contractor for the area from
728 which it was extracted.

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

734 OPINIONS AND DETERMINATIONS

735 18. (a) Where the terms of this Contract provide for actions to be based upon the
736 opinion or determination of either party to this Contract, said terms shall not be construed as
737 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
738 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
739 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
740 or unreasonable opinion or determination. Each opinion or determination by either party shall be
741 provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended
742 to or shall affect or alter the standard of judicial review applicable under federal law to any
743 opinion or determination implementing a specific provision of Federal law embodied in statute
744 or regulation.

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

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COORDINATION AND COOPERATION

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

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

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

- (1) The Contracting Officer will, at the request of the Contractor, assist in the development of integrated resource management plans for the Contractor. Further,

773 the Contracting Officer will, as appropriate, seek authorizations for implementation of
774 partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

790 CHARGES FOR DELINQUENT PAYMENTS

791 20. (a) The Contractor shall be subject to interest, administrative, and penalty
792 charges on delinquent payments. If a payment is not received by the due date, the Contractor
793 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
794 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in
795 addition to the interest charge, an administrative charge to cover additional costs of billing and
796 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
797 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
798 payment is delinquent beyond the due date, based on the remaining balance of the payment due at

799 the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection
800 services associated with a delinquent payment.

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

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

808 EQUAL OPPORTUNITY

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

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

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

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

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

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

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

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

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

853 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

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

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

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

867 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

868 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
869 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as
870 amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135,
871 Title III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990

872 (Pub. L. 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and
873 with the applicable implementing regulations and any guidelines imposed by the U.S.
874 Department of the Interior and/or Bureau of Reclamation.

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

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

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

892 PRIVACY ACT COMPLIANCE

893 24. Omitted.

894 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

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WATER CONSERVATION

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

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

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

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

935 (e) If the Contractor is engaged in direct groundwater recharge, such activity
936 shall be described in the Contractor's water conservation plan. Such water conservation plan
937 shall demonstrate sufficient lawful uses exist in the Contractor's Service Area so that using a
938 long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such
939 uses and in compliance with Reclamation law.

940 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

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

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OPERATION AND MAINTENANCE BY THE OPERATING
NON-FEDERAL ENTITY

950 28. Omitted.

951

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

957

BOOKS, RECORDS, AND REPORTS

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

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

972 (c) Omitted.

973

ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

982 SEVERABILITY

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

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RESOLUTION OF DISPUTES

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

OFFICIALS NOT TO BENEFIT

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

CHANGES IN CONTRACTOR'S ORGANIZATION

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

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

1024 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1025 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1026 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1027 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1028 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1029 be paid in accordance with Article 25 of this Contract.

1030 FEDERAL LAWS

1031 36. By entering into this Contract, the Contractor does not waive its rights to contest
1032 the validity or application in connection with the performance of the terms and conditions of this
1033 Contract of any Federal law or regulation; *Provided*, That the Contractor agrees to comply with
1034 the terms and conditions of this Contract unless and until relief from application of such Federal
1035 law or regulation to the implementing provision of the Contract is granted by a court of
1036 competent jurisdiction.

1037 NOTICES

1038 37. Any notice, demand, or request authorized or required by this Contract shall be
1039 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1040 delivered to the Area Manager, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom,
1041 California 95630-1799, and on behalf of the United States, when mailed, postage prepaid, or
1042 delivered to the Board of Directors of the Sacramento Municipal Utility District, P.O. Box 15830,
1043 MS B406, Sacramento, CA 95852-1830. The designation of the addressee or the address may
1044 be changed by notice given in the same manner as provided in this Article for other notices.

1045 CONFIRMATION OF CONTRACT

1046 38. Promptly after the execution of this Contract, the Contractor shall provide
1047 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1048 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the
1049 Contractor. This Contract shall not be binding on the United States until such evidence has been
1050 provided to the Contracting Officer's satisfaction.

1051 SUBCONTRACT FOR RESALE OF WATER

1052 39. Omitted.

1053 MEDIUM FOR TRANSMITTING PAYMENTS

1054 40. (a) All payments from the Contractor to the United States under this Contract
1055 shall be by the medium requested by the United States on or before the date payment is due. The
1056 required method of payment may include checks, wire transfers, or other types of payment
1057 specified by the United States.

1058 (b) Upon execution of the Contract, the Contractor shall furnish the
1059 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1060 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1061 out of the Contractor's relationship with the United States.

1062 CONTRACT DRAFTING CONSIDERATIONS

1063 41. This Contract has been, negotiated and reviewed by the parties hereto, each of
1064 whom is sophisticated in the matters to which this Contract pertains. The double spaced Articles
1065 of this Contract have been drafted, negotiated, and reviewed by the parties, and no one party shall
1066 be considered to have drafted the stated articles.
1067

1068 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the
1069 day and year first above written.

1070 THE UNITED STATES OF AMERICA

1071 By: _____
1072 Regional Director, Mid-Pacific Region
1073 Bureau of Reclamation

1074 SACRAMENTO MUNICIPAL UTILITY
1075 DISTRICT

1076 By: _____
1077 President of the Board of Directors

1078 Attest:

1079 By: _____
1080 Secretary of the Board of Directors

EXHIBIT A

[Map of Contractor's Service Area]

Draft

EXHIBIT B
[Rates and Charges]

Draft