

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

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY
FOR THE REPAYMENT OF EXTRAORDINARY
MAINTENANCE COSTS FOR THE C.W. "BILL" JONES PUMPING PLANT

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Exhibit A – Payment Schedule

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

17 [2nd] WHEREAS, the United States and the Contractor executed
18 Contract No. 8-07-20-X0354, dated March 1, 1998, as amended and supplemented which
19 transferred the responsibility for operation, maintenance and replacement of a certain portion of
20 CVP, Delta Division facilities, including C.W. "Bill" Jones Pumping Plant, formerly known as
21 the Tracy Pumping Plant, to the Contractor; and

22 [3rd] WHEREAS, pursuant to Section 9603 of P.L. 111-11, the Secretary of the
23 Interior, acting through the Bureau of Reclamation, hereinafter referred to as Reclamation, is
24 authorized to provide funds for Extraordinary Maintenance Work and to negotiate a contract for
25 repayment of those costs, with interest; and

26 [4th] WHEREAS, Reclamation, in consultation with the Contractor, has determined
27 that Extraordinary Maintenance Work is needed on the C.W. "Bill" Jones Pumping Plant to
28 ensure the continued safe, dependable, and reliable delivery of authorized project benefits of the
29 CVP.

30 NOW, THEREFORE, in consideration of the mutual and dependent covenants
31 herein contained, the parties mutually agree as follows:

32 DEFINITIONS

33 1. When used herein, unless otherwise distinctly expressed or manifestly
34 incompatible with the intent hereof, the term:

35 (a) “Contracting Officer” shall mean the Secretary of the Interior’s duly
36 authorized representative acting pursuant to this Contract or applicable Federal reclamation law
37 or regulation.

38 (b) “Existing Contract” shall mean Contract No. 8-07-20-X0354, dated March
39 1, 1998 as amended and supplemented, between the United States and the Contractor.

40 (c) “Extraordinary Maintenance Work” shall mean major, nonrecurring
41 maintenance on the C.W. “Bill” Jones Pumping Plant that is intended to ensure the continued
42 safe, dependable, and reliable delivery of authorized project benefits of the CVP.

43 (d) “Fiscal Year” shall mean the period October 1 through September 30 of
44 the following year.

45 (e) “CVP” or “Project” shall mean the Central Valley Project owned by the
46 United States and managed by the Department of the Interior, Bureau of Reclamation.

47 (f) “Substantially Complete” or “Substantial Completion” shall mean the
48 Contracting Officer’s determination, after consultation with the Contractor, that the XM Work #6
49 is sufficiently complete so that the United States or the Contractor can use, operate, or occupy
50 the XM Work #6 facilities for its intended purpose.

51 (g) “XM Work #6” shall mean the Extraordinary Maintenance Work
52 consisting of a rewind of Unit #6, which includes, but is not necessarily limited to, replacing the
53 existing windings and stator core, and the refurbishment of the motor rotor poles.

54 (h) "Year" shall mean the period January 1 through December 31, both dates
55 inclusive.

56 TERM OF THE CONTRACT

57 2. This Contract shall become effective on the date first written above and shall
58 remain in effect until the Contractor has fully repaid its repayment obligation to the United States
59 as described in Article 5 herein.

60 DESCRIPTION OF XM WORK #6

61 3. The XM Work #6 is to be performed by the Contractor. The XM Work #6 may
62 be modified upon advanced written request by the Contractor and advanced approval by the
63 Contracting Officer in accordance with Federal reclamation law and policy. All designs,
64 specifications, and work performed under this Contract shall be approved in advance and in
65 writing by the Contracting Officer.

66 FUNDS TO BE PROVIDED

67 4. (a) The United States shall provide the Contractor with funds up to
68 \$5,000,000 for the XM Work #6; *Provided*, That the Contractor shall expend at least \$1,200,000
69 of its own in funds towards Extraordinary Maintenance Work; *Provided further*, That the funds
70 to be provided by the Contractor shall be comprised of approximately \$400,000 of direct funding
71 and/or in-kind services of Extraordinary Maintenance Work and approximately \$800,000 from
72 the Contractor's Emergency Reserve Fund, provided in Article 13 of the Existing Contract;
73 *Provided further*, the Contracting Officer, after consultation with the Contractor, shall have the
74 sole discretion in determining which activities qualify for direct funding and/or in-kind services
75 of Extraordinary Maintenance Work.

76 (b) The Contractor may request in writing additional funds from the United
77 States to complete the XM Work #6 and the United States may provide such additional funds
78 subject to approval by the Contracting Officer in accordance with the terms of this Contract,
79 Federal reclamation law, and policy.

80 (c) Notwithstanding Article 13(h), the Contracting Officer may provide
81 oversight and inspection of the XM Work #6 as determined by the Contracting Officer, which
82 shall be reimbursable by the Contractor. The Contracting Officer, after consultation with the
83 Contractor, shall provide a statement of work, within 30 days of the effective date provided in
84 Article 2 of this Contract. The statement of work shall include an estimate of costs to be incurred
85 by the United States for any inspection and oversight activities to be performed by the
86 Contracting Officer, including but not limited to the cost of salaries, travel, per diem, leave of
87 employees, and overhead and general expense of the United States. Should the Contracting
88 Officer determine the actual costs are likely to exceed the estimated costs, the Contracting
89 Officer shall immediately notify and, after consultation with the Contractor, provide the
90 Contractor with a revised written estimate. The Contracting Officer will retain sufficient funds,
91 not otherwise provided by the Contractor, to cover the estimated costs from the funds provided in
92 Article 4(a) of this Contract and will provide the Contractor each month, until the determination
93 in Article 4(f) of this Contract is made, with an accounting of the United States expenditures
94 from the funds provided; *Provided*, That the Contractor may comment on each accounting. The
95 oversight and inspection will be coordinated with the Contractor.

96 (d) Funds may be provided to the Contractor in advance of the XM Work #6;
97 *Provided*, That the Contractor must provide the Contracting Officer justification for the
98 immediate need for the requested advance of funds; and *Provided further*, the Contracting

99 Officer shall have the final determination of whether or not to grant the requested advance of
100 funds, and if granted, how, and when any installments may be transmitted.

101 (e) All funds provided to the Contractor shall be deposited and maintained in
102 a non-interest bearing fully insured or secured account, until such time as the Contractor applies
103 the funds against the XM Work #6; *Provided*, That the Contractor shall use the funds solely to
104 finance the XM Work #6; *Provided further*, That the Contractor shall return any and all
105 unexpended, unobligated, or unencumbered funds within 30 days after the date on which the
106 Contracting Officer determines and notifies the Contractor in writing that the XM Work #6 is
107 Substantially Complete.

108 (f) Funds will no longer be provided once the Contracting Officer determines
109 that: (1) the XM Work #6 is complete; or (2) the Contractor no longer requires additional funds
110 to complete the XM Work #6; or (3) the amount provided in accordance with Article 4(a) of this
111 Contract has been expended.

112 CONTRACTOR'S REPAYMENT OBLIGATION

113 5. (a) The Contractor shall be obligated to repay the entire sum of funds
114 provided by the United States to the Contractor pursuant to this Contract, plus accrued interest,
115 as determined by the Contracting Officer, which total amount is hereinafter referred to as the
116 Repayment Obligation.

117 (b) The interest rate used for computing interest on funds provided for XM
118 Work #6 in progress and interest on the unpaid balance of the reimbursable costs of XM Work
119 #6 in accordance with this Contract is the Department of the Treasury rate as of the beginning of
120 the Fiscal Year in which XM Work #6 is commenced, on the basis of average market yields on
121 outstanding marketable obligations of the United States with the remaining periods of maturity

122 comparable to the applicable reimbursement period of the project, adjusted to the nearest 1/8 of 1
123 percent on the unamortized balance of any portion of the Repayment Obligation. Interest accrual
124 shall commence on each date funds are advanced by the United States to the Contractor and be
125 computed on an annual basis on the unpaid balance of the reimbursable costs of XM Work #6, as
126 determined by the Contracting Officer.

127 (c) Interest accrual shall commence on funds retained by the United States
128 when expended and shall be computed as provided in Article 5(b) of this Contract.

129 (d) The first installment shall be due and payable on or before the last day of
130 February of the Year following the date on which the Contracting Officer determines and notifies
131 the Contractor in writing that the XM Work #6 is Substantially Complete.

132 (e) As soon as practicable following the determination that the XM Work #6
133 is Substantially Complete, and after consultation with the Contractor, the Contracting Officer
134 shall provide the Contractor with a repayment schedule requiring equal annual installments over
135 a period of 15 years, beginning with the first installment as provided in Article 5(c) of this
136 Contract, which schedule shall be incorporated into this Contract as Exhibit "A", and may be
137 updated by the Contracting Officer both without amendment of this Contract.

138 (f) The Contractor may, at any time, prepay all or a portion of the unpaid
139 Repayment Obligation balance as provided herein without penalty, notwithstanding any interest
140 accrued.

141 PRESERVATION OF EXISTING CONTRACT

142 6. Except as specifically provided herein, the Existing Contract shall continue in full
143 force and effect as originally written, executed, and amended. Any dispute between this
144 Contract and the Existing Contract shall be resolved pursuant to Article 8 of this Contract.

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SEVERABILITY

7. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Contract, but this Contract shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein, unless the deletion of such provisions would result in such a material change so as to cause the fundamental benefits afforded the parties to this Contract to become unavailable or materially altered.

RESOLUTION OF DISPUTES

8. Should any dispute arise concerning any provision of this Contract, the Area Manager, South-Central California Area Office, shall meet and confer with the Contractor in an attempt to resolve the dispute within 90 days. If the dispute has not been resolved within the 90 days, it shall be referred to the Contracting Officer to resolve the dispute within 90 days.

ENVIRONMENTAL COMPLIANCE

9. (a) The Contractor will comply with any applicable environmental measures contained in any environmental documentation prepared in connection with the XM Work #6.

(b) The Contractor will comply with all Federal, state, local, and tribal law, and requirements imposed for protection of the environment and Indian trust assets, including, but not limited to, the Native American Graves Protection and Repatriation Act (Pub. L. 101-601, 104 Stat. 3048, 25 U.S.C. §3001 et seq.) and the Archaeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. §470aa et seq.).

CONTRACTS WITH THIRD PARTIES

10. (a) The Contractor shall advertise each construction (as “construction” is defined in the Federal Acquisition Regulations (FAR) at 48 C.F.R. §2.101), equipment, or supply

169 contract exceeding \$25,000 (twenty-five thousand dollars) for competitive bidding. Any action
170 proposed by the Contractor other than making the award to the lowest responsible bidder shall be
171 subject to the Contracting Officer's approval.

172 (b) For all construction contracts exceeding \$100,000 (one hundred thousand
173 dollars), the Contractor shall require construction contractors to furnish performance and
174 payment bonds, each in amounts equal to at least 100 percent of the contract price. For
175 construction contracts exceeding \$30,000 (thirty thousand dollars), but not exceeding \$100,000
176 (one hundred thousand dollars), the Contracting Officer shall select at least two of the payment
177 protections set forth in the FAR at 48 C.F.R. § 28.102-1(b)(1), and the Contractor shall require
178 the construction contractor to secure one of the selected protections. Supply and equipment
179 contractors may be required to furnish performance bonds on supply or equipment contracts
180 exceeding \$100,000 (one hundred thousand dollars) when the contract calls for substantial
181 progress payments before delivery of end items.

182 (c) The United States shall not be a party to or obligated in any manner by
183 contracts entered into between the Contractor and other parties pursuant to this Contract.

184 FAILURE TO COMPLETE WORK

185 11. (a) In the event that the Contractor fails to complete the work to be performed
186 pursuant to this Contract for any reason other than the failure of the United States to appropriate
187 and allocate funds, the Contractor shall, upon receipt of written notice from the Contracting
188 Officer, suspend payment on all current contracts and return to the United States any unexpended
189 balance of funds advanced by the United States and contributed by the Contractor in such
190 amounts as determined to be equitable by the Contracting Officer. Following delivery of the
191 notice, the Contracting Officer may adopt either of the following two alternatives:

192 (1) Perform, or cause to be performed, all or any part of the work
193 remaining under this Contract and within the limits of the funds provided herein by the United
194 States and by the Contractor for the XM Work #6, as well as operate and maintain the project
195 concurrently. The Contractor shall transfer to the United States custody and use of all
196 equipment, materials, and supplies used or useful in the performance of the work; permit the
197 United States, its contractors, and its agents ingress to and egress from lands, project works, and
198 facilities of the Contractor for the performance of such work; and assign to the United States the
199 Contractor's interest in any contract for the performance of work or the supplying of equipment
200 or material in connection with such work where requested by the United States and agreed to by
201 the other contracting party; or

202 (2) Declare the XM Work #6 Substantially Complete within the
203 provisions of this Contract by giving written notice to the Contractor that (a) the construction
204 work on a feature is Substantially Complete, or (b) the feature is providing benefits and services
205 for the intended purpose(s), or (c) the feature is generating revenue, where applicable.
206 Repayment of the Repayment Obligation shall be carried out in accordance with the provisions
207 of this Contract; Provided, That the first annual payment shall become due in the year following
208 the year in which the Contractor is notified of such declaration of completion.

209 (b) In the event the United States shall proceed as provided in (a)(1) of this
210 Article, the United States may, at any time and regardless of the progress of work performed
211 thereunder, declare the XM Work #6 complete by giving written notice thereof to the Contractor,
212 in which event the provisions of (a)(2) of this Article shall apply; *Provided*, That the loan
213 obligation shall not exceed the limitation specified in this Contract, including all expenditures
214 made pursuant to provisions of (a)(1) of this Article.

215 (c) Upon giving written notice of XM Work #6 completion to the Contractor
216 as provided above, the United States shall have the right, without further notice, to take over the
217 care, operation, and maintenance.

218 OPERATION AND MAINTENANCE OF XM WORK #6 FACILITIES

219 12. (a) Upon Substantial Completion of the XM Work #6, or as otherwise
220 determined by the Contracting Officer, and following written notification, the care, operation,
221 and maintenance of any or all of the XM Work #6 facilities may be transferred to the Contractor.
222 Title to the XM Work # 6 facilities will remain in the name of the United States, unless
223 otherwise provided by the Congress of the United States.

224 (b) The Contractor, without expense to the United States, shall care for,
225 operate, and maintain the XM Work # 6 facilities in full compliance with the terms of this
226 Contract and in such a manner that the XM Work # 6 facilities remain in good and efficient
227 condition.

228 (c) Necessary repairs of the XM Work # 6 facilities shall be made promptly
229 by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation,
230 and maintenance of the transferred works threatening or causing interruption of water service,
231 the Contracting Officer may issue to the Contractor a special written notice of those necessary
232 repairs. Except in the case of an emergency, the Contractor will be given 60 days to either make
233 the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting
234 Officer. In the case of an emergency, or if the Contractor fails to either make the necessary
235 repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer
236 within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made,
237 and the cost of those repairs shall be paid by the Contractor as directed by the Contracting
238 Officer.

239 (d) The Contractor shall not make any substantial changes in the XM Work #
240 6 facilities without first obtaining written consent of the Contracting Officer. The Contractor
241 shall ensure that no unauthorized encroachment occurs on XM Work # 6 facilities land and
242 rights-of-way.

243 (e) The Contractor agrees to indemnify the United States for, and hold the
244 United States and all of its representatives harmless from, all damages resulting from suits,
245 actions, or claims of any character brought on account of any injury to any person or property
246 arising out of any act, omission, neglect, or misconduct in the manner or method of performing
247 any construction, care, operation, maintenance, supervision, examination, inspection, or other
248 duties of the Contractor or the United States on XM Work # 6 facilities required under this

249 Contract, regardless of who performs those duties. The Contractor does not agree to indemnify
250 the United States for any damages arising from intentional torts or malicious actions committed
251 by employees of the United States.

252 (f) The Contractor shall cooperate with the Contracting Officer in
253 implementing an effective dam safety program. The United States agrees to provide the
254 Contractor and the appropriate agency of the State in which the Project facilities are located with
255 design data, designs, and an operating plan for the dam(s) and related facilities consistent with
256 the current memorandum of understanding between the United States and the State of California
257 relating to the coordination of planning, design, construction, operation, and maintenance
258 processes for dams and related facilities.

259 (g) In the event the Contractor is found to be operating the XM Work # 6
260 facilities or any part thereof in violation of this Contract, and/or the Existing Contract, or the
261 Contractor is found to be failing any financial commitments or other commitments to the United
262 States under the terms and conditions of this Contract, and/or the Existing Contract, then upon
263 the election of the Contracting Officer, the United States may take over from the Contractor the
264 care, operation, and maintenance of the XM Work # 6 facilities by giving written notice to the
265 Contractor of such election and the effective date thereof. Thereafter, during the period of
266 operation by the United States, upon notification by the Contracting Officer the Contractor shall
267 pay to the United States, annually in advance, the cost of operation and maintenance of the works
268 as determined by the Contracting Officer. Following written notification from the Contracting
269 Officer the care, operation, and maintenance of the works may be transferred back to the
270 Contractor.

271 (h) In addition to all other payments to be made by the Contractor under this
272 Contract, the Contractor shall reimburse to the United States, following the receipt of a statement
273 from the Contracting Officer, all miscellaneous costs incurred by the United States for any work
274 involved in the administration and supervision of this Contract.

275 EXAMINATION, INSPECTION, AND AUDIT OF PROJECT WORKS, RECORDS, AND
276 REPORTS FOR DETERMINING ADEQUACY OF OPERATION AND MAINTENANCE

277 13. (a) The Contracting Officer may, from time to time, examine the following:
278 the Contractor's books, records, and reports; the project works being operated by the Contractor;
279 the adequacy of the operation and maintenance program; the reserve fund; and the water
280 conservation program including the water conservation fund, if applicable. Notwithstanding title
281 ownership, where the United States retains a financial, physical, or liability interest in facilities
282 either constructed by the United States or with funds provided by the United States, the
283 Contracting Officer may examine any or all of the project works providing such interest to the
284 United States.

285 (b) The Contracting Officer may, or the Contractor may ask the Contracting
286 Officer to, conduct special inspections of any project works being operated by the Contractor and
287 special audits of the Contractor's books and records to ascertain the extent of any operation and
288 maintenance deficiencies to determine the remedial measures required for their correction and to
289 assist the Contractor in solving specific problems. Except in an emergency, any special

290 inspection or audit shall be made only after written notice thereof has been delivered to the
291 Contractor by the Contracting Officer.

292 (c) The Contractor shall provide access to the project works, operate any
293 mechanical or electrical equipment, and be available to assist in the examination, inspection, or
294 audit.

295 (d) The Contracting Officer shall prepare reports based on the examinations,
296 inspections, or audits and furnish copies of such reports and any recommendations to the
297 Contractor.

298 (e) The costs incurred by the United States in conducting operation and
299 maintenance examinations, inspections, and audits and preparing associated reports and
300 recommendations related to high- and significant-hazard dams and associated facilities shall be
301 nonreimbursable. Associated facilities include carriage, distribution, and drainage systems;
302 pumping and pump-generating plants; powerplant structures; tunnels/pipelines; diversion and
303 storage dams (low-hazard); Type 2 bridges which are Reclamation-owned bridges not located on
304 a public road; regulating reservoirs (low-hazard); fish passage and protective facilities, including
305 hatcheries; river channelization features; rural/municipal water systems; desalting and other
306 water treatment plants; maintenance buildings and service yards; facilities constructed under
307 Federal loan programs (until paid out); and recreation facilities (reserved works only); and any
308 other facilities as determined by the Contracting Officer.

309 (f) Expenses incurred by the Contractor, as applicable, in participating in the
310 operation and maintenance site examination will be borne by the Contractor.

311 (g) Requests by the Contractor for consultations, design services, or
312 modification reviews, and the completion of any operation and maintenance activities identified
313 in the formal recommendations resulting from the examination (unless otherwise noted) are to be
314 funded as project operation and maintenance and are reimbursable by the Contractor to the extent
315 of current project operation and maintenance allocations.

316 (h) Site visit special inspections that are beyond the regularly scheduled
317 operation and maintenance examinations conducted to evaluate particular concerns or problems
318 and provide assistance relative to any corrective action (either as a follow up to an operation and
319 maintenance examination or when requested by the Contractor) shall be nonreimbursable.

320 (i) The Contracting Officer may provide the State an opportunity to observe
321 and participate in, at its own expense, the examinations and inspections. The State may be
322 provided copies of reports and any recommendations relating to such examinations and
323 inspections.

324 CHARGES FOR DELINQUENT PAYMENTS

325 14. (a) The Contractor shall be subject to interest, administrative, and penalty
326 charges on delinquent payments. If a payment is not received by the due date, the Contractor
327 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
328 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in

329 addition to the interest charge, an administrative charge to cover additional costs of billing and
330 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor
331 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the
332 payment is delinquent beyond the due date, based on the remaining balance of the payment due
333 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
334 collection services associated with a delinquent payment.

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

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

342 BOOKS, RECORDS, AND REPORTS

343
344 15. (a) The Contractor shall establish and maintain accounts and other books and
345 records pertaining to administration of the terms and conditions of this Contract, including the
346 Contractor's financial transactions; water supply data; project operation, maintenance, and
347 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
348 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
349 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on
350 such date or dates as the Contracting Officer may require. Subject to applicable Federal laws
351 and regulations, each party to this Contract shall have the right during office hours to examine
352 and make copies of the other party's books and records relating to matters covered by this
353 Contract.

354 (b) Nothing in this Article 14 shall be construed to limit or constrain the
355 ability of the Contracting Officer to conduct contract compliance reviews of this Contract in
356 accordance with Federal reclamation law and policy.

357 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

358 16. (a) The obligation of the Contractor to pay the United States as provided in
359 this Contract is a general obligation of the Contractor notwithstanding the manner in which the
360 obligation may be distributed among the Contractor's water users and notwithstanding the default
361 of individual water users in their obligations to the Contractor.

362 (b) The payment of charges becoming due pursuant to this Contract is a
363 condition precedent to receiving benefits under this Contract.

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NOTICES

17. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno, California 93721, and on behalf of the United States, when mailed, postage prepaid, or delivered to the Executive Director, San Luis & Delta-Mendota Water Authority, PO Box 2157, Los Banos, California 93635. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this Article 16 for other notices.

CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

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

OFFICIALS NOT TO BENEFIT

19. No Member of or Delegate to the 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.

PROTECTION OF WATER AND AIR QUALITY

20. (a) Project facilities used by the Contractor to make available and deliver water to the Contractor's water users 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 and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered.

(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.

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

CLEAN AIR AND WATER

21. (a) The Contractor agrees as follows:

(1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. § 7414), and section 308 of the Clean Water Act (33 U.S.C. § 1318), relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in those sections, and all applicable regulations and guidelines issued thereunder.

(2) That no portion of the work required by this Contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this Contract was executed unless and until the Environmental Protection Agency eliminates the name of such facility or facilities from such listing.

(3) To use its best efforts to comply with clean air standards and clean water standards at the facility where the XM Work #6 is being performed.

(4) To insert the substance of the provisions of this Article into any nonexempt subcontract, including this subparagraph (a)(4).

(b) The following definitions apply for purposes of this Article:

(1) The term “Clean Air Act” means the Act enacted by Pub. L. 88-206 of Dec. 17, 1963, and amendments thereto, as codified at 42 U.S.C. § 7401, et seq.

(2) The term “Clean Water Act” means the Act enacted by Pub. L. 92-500 of Oct. 18, 1972, and amendments thereto, as codified at 33 U.S.C. § 1251, et seq.

(3) The term “clean air standards” refers to all enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, and other requirements which are contained in, issued under, or otherwise adopted pursuant to the Clean Air Act or Executive Order 11738, an applicable implementation plan as described in section 110 of the Clean Air Act (42 U.S.C. § 7410), an approved implementation procedure or plan under subsection 111(c) or subsection 111(d) of the Clean Air Act (42 U.S.C. § 7411(c) or (d)), or an approved implementation procedure under subsection 112(d) of the Clean Air Act (42 U.S.C. § 7412(d)).

(4) The term “clean water standards” refers to all enforceable limitations, controls, conditions, prohibitions, standards, and other requirements which are promulgated pursuant to the Clean Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by section 402 of the Clean Water Act (33 U.S.C. § 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Clean Water Act (33 U.S.C. § 1317).

(5) The term “comply” refers to compliance with clean air or water standards. It also refers to compliance with a schedule or plan ordered or approved by a court of

440 competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control
441 agency in accordance with the requirements of the Clean Air Act or Clean Water Act and
442 regulations issued pursuant thereto.

443 (6) The term “facility” means any building, plant, installation,
444 structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or
445 supervised by a contractor or subcontractor to be utilized in the performance of a contract or
446 subcontract. Where a location or site of operations contains or includes more than one building,
447 plant, installation, or structure, the entire location or site shall be deemed to be a facility except
448 where the Director, Office of Federal Activities, Environmental Protection Agency, determines
449 that independent facilities are collocated in one geographical area.

450
451 CHANGES IN CONTRACTOR'S ORGANIZATION

452 22. While this Contract is in effect, no change may be made in the Contractor’s
453 organization which may affect the respective rights, obligations, privileges, and duties of either
454 the United States or the Contractor under this Contract including, but not limited to, dissolution,
455 consolidation, or merger, except upon the Contracting Officer’s written consent.

456 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED

457 23. The provisions of this Contract shall apply to and bind the successors and assigns
458 of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein
459 by either party shall be valid until approved in writing by the other party.

460 EQUAL EMPLOYMENT OPPORTUNITY

461 24. During the performance of this Contract, the Contractor agrees as follows:

462 (a) The Contractor will not discriminate against any employee or applicant for
463 employment because of race, color, religion, sex, sexual orientation, gender identity, disability,
464 or national origin. The Contractor will take affirmative action to ensure that applicants are
465 employed, and that employees are treated during employment, without regard to their race, color,
466 religion, sex, sexual orientation, gender identity, disability, or national origin. Such action shall
467 include, but not be limited to the following: employment, upgrading, demotion, or transfer;
468 recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of
469 compensation; and selection for training, including apprenticeship. The Contractor agrees to
470 post in conspicuous places, available to employees and applicants for employment, notices to be
471 provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

472 (b) The Contractor will, in all solicitations or advertisements for employees
473 placed by or on behalf of the Contractor, state that all qualified applicants will receive
474 consideration for employment without regard to race, color, religion, sex, sexual orientation,
475 gender identity, disability, or national origin.

476 (c) The Contractor will send to each labor union or representative of workers
477 with which it has a collective bargaining agreement or other contract or understanding, a notice,

478 to be provided by the Contracting Officer, advising the labor union or workers' representative of
479 the Contractor's commitments under section 202 of Executive Order 11246 of September 24,
480 1965 (EO 11246), and shall post copies of the notice in conspicuous places available to
481 employees and applicants for employment.

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

484 (e) The Contractor will furnish all information and reports required by EO
485 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,
486 and will permit access to his books, records, and accounts by the Contracting Agency and the
487 Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
488 regulations, and orders.

489 (f) In the event of the Contractor's noncompliance with the nondiscrimination
490 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
491 canceled, terminated or suspended in whole or in part and the Contractor may be declared
492 ineligible for further Government contracts in accordance with procedures authorized in EO
493 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246
494 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

504 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

512 (b) These statutes prohibit any person in the United States from being
513 excluded from participation in, being denied the benefits of, or being otherwise subjected to
514 discrimination under any program or activity receiving financial assistance from the Bureau of
515 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this
516 Contract, the Contractor agrees to immediately take any measures necessary to implement this

517 obligation, including permitting officials of the United States to inspect premises, programs, and
518 documents.

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

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

529 CERTIFICATION OF NONSEGREGATED FACILITIES

530 26. The Contractor hereby certifies that it does not maintain or provide for its
531 employees any segregated facilities at any of its establishments and that it does not permit its
532 employees to perform their services at any location under its control where segregated facilities
533 are maintained. It certifies further that it will not maintain or provide for its employees any
534 segregated facilities at any of its establishments and that it will not permit its employees to
535 perform their services at any location under its control where segregated facilities are
536 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal
537 Employment Opportunity clause in this Contract. As used in this certification, the term
538 "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms,
539 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,
540 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing
541 facilities provided for employees which are segregated by explicit directive or are in fact
542 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,
543 disability, or otherwise. The Contractor further agrees that (except where it has obtained
544 identical certifications from proposed subcontractors for specific time periods) it will obtain
545 identical certifications from proposed subcontractors prior to the award of subcontracts
546 exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause;
547 that it will retain such certifications in its files; and that it will forward the following notice to
548 such proposed subcontractors (except where the proposed subcontractors have submitted
549 identical certifications for specific time periods):

550 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR
551 CERTIFICATIONS OF NONSEGREGATED FACILITIES

552 A Certification of Nonsegregated Facilities must be submitted prior to the award of a
553 subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment
554 Opportunity clause. The certification may be submitted either for each subcontract or for all
555 subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The penalty for
556 making false statements in offers is prescribed in 18 U.S.C. § 1001.

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PEST MANAGEMENT

27. The Contractor and any of its subcontractors are responsible for complying with applicable Federal, State, and local laws, rules, and regulations related to pest management in performing its responsibilities under this Contract, including but not limited to, the Department of the Interior Manual, Part 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February 3, 1999.

MEDIUM FOR TRANSMITTING PAYMENTS

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

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

RULES, REGULATIONS, AND DETERMINATIONS

29. The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with its provisions, the laws of the United States and the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor.

CONTRACT DRAFTING CONSIDERATIONS

30. 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.

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

UNITED STATES OF AMERICA

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

(SEAL)

SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY

By: _____
Executive Director

Attest:

By: _____
General Counsel

EXHIBIT A

San Luis & Delta-Mendota Water Authority
Delta Division, Central Valley Project

PAYMENT SCHEDULE