

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

CONTRACT BETWEEN THE UNITED STATES
AND
CONTRA COSTA WATER DISTRICT
PROVIDING FOR PROJECT WATER SERVICE
FROM DELTA DIVISION AND FACILITIES REPAYMENT

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1 THIS CONTRACT, made this 28 day of DECEMBER, 2020, in
2 pursuance generally of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or
3 supplementary thereto, including but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
4 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
5 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
6 October 27, 1986 (100 Stat. 3050), as amended, Title XXXIV of the Act of October 30, 1992
7 (106 Stat. 4706), as amended, and the Water Infrastructure Improvements for the Nation Act
8 (Public Law (Pub. L.) 114-322, 130 Stat. 1628), Section 4011 (a-d) and (f) ("WIIN Act"), all
9 collectively hereinafter referred to as Federal Reclamation law, between the UNITED STATES
10 OF AMERICA, hereinafter referred to as the United States, represented by the officer executing
11 this Contract, hereinafter referred to as the Contracting Officer, and CONTRA COSTA WATER
12 DISTRICT, hereinafter referred to as the Contractor, a public agency of the State of California,
13 duly organized, existing, and acting pursuant to the laws thereof;

14 WITNESSETH, That:

EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the California Central Valley Project (Project), 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 the Contra Costa Canal and related 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 Contractor has constructed the Los Vaqueros Project, that is intended to exclusively serve the Contractor to assist in attaining its goals of providing high quality water to the Contractor's customers, while also providing reliability to the Contractor's existing contract water supply during emergencies, droughts or other water shortages; and

[4th] WHEREAS, it is necessary for the Contractor and the United States to agree on how the Los Vaqueros Project will be utilized in conjunction with Project Water and Project facilities; and

[5th] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[6th] WHEREAS, the Contractor and the United States entered into Contract No. I75r-3401, on September 18, 1951, which established terms for the delivery to the Contractor of Project Water and for construction and repayment of certain facilities. This

contract was amended on November 9, 1970, April 26, 1973, May 26, 1994, and February 7, 2000; and

[7th] WHEREAS, the United States and the Contractor executed Memorandum of Agreement No. 14-06-200-6072A dated June 28, 1972, and subsequent Amendment 1 dated May 15, 1995, that requires the Contractor to operate and maintain the Contra Costa Canal System and Contra Loma Dam and Reservoir; and

[8th] WHEREAS, the United States and the Contractor have, pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into a binding agreement, identified as Binding Agreement No. I75r-3401-BA, and Supplemental Agreement No. I75r-3401-SA, which sets out the terms pursuant to which the Contractor agreed to renew the Existing Contract before its expiration date after completion of a programmatic environmental impact statement (PEIS) and other appropriate environmental documentation and negotiation of a renewal contract, and which also sets out the consequences of a subsequent decision not to renew; and

[9th] WHEREAS, the United States and the Contractor entered into a long-term contract identified as Contract No. I75r-3401A -LTR1, hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor following expiration of Contract No. I75r-3401, and which was in effect the date the WIIN Act was enacted; and

[10th] WHEREAS, on December 16, 2016, the 114th Congress of the United States of America enacted the WIIN Act; and

[11th] WHEREAS, Section 4011(a)(1) provides that “upon request of the contractor, the Secretary of the Interior shall convert any water service contract in effect on the

date of enactment of this subtitle and between the United States and a water users' association [Contractor] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.”; and

[12th] WHEREAS, Section 4011(a)(1) further provides that “the manner of conversion under this paragraph shall be as follows: (A) Water service contracts that were entered into under Section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this Section shall be converted to repayment contracts under Section 9(d) of that Act (53 Stat. 1195)”; and “(B) Water service contracts that were entered under subsection (c)(2) of Section 9 of the Act of August 4, 1939 (53 Stat. 1194), to be converted under this Section shall be converted to a contract under subsection (c)(1) of Section 9 of that Act (53 Stat. 1195).”; and

[13th] WHEREAS, Section 4011(a)(4)(C) further provides all contracts entered into pursuant to Section 4011(a)(1), (2), and (3) shall “not modify other water service, repayment, exchange and transfer contractual rights between the water users' association [Contractor], and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association [Contractor] and their landowners as provided under State law.”; and

[14th] WHEREAS, Section 4011(d)(3) and (4) of the WIIN Act provides that “implementation of the provisions of this subtitle shall not alter...(3) the priority of a water service or repayment contractor to receive water; or (4) except as expressly provided in this Section, any obligations under the Federal Reclamation law, including the continuation of Restoration Fund charges pursuant to Section 3407(d) (Pub. L. 102-575), of the water service and repayment contractors making prepayments pursuant to this Section.”; and

[15th] WHEREAS, upon the request of the Contractor, the WIIN Act directs the Secretary to convert irrigation water service contracts and municipal and industrial (M&I) water service contracts into repayment contracts, amend existing repayment contracts, and allow contractors to prepay their construction cost obligations pursuant to applicable Federal Reclamation law; and

[16th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its obligations under the Existing Contract; and

[17th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use and/or has demonstrated future demand for water use such that the Contractor has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and

[18th] WHEREAS, water obtained from the Project has been relied upon by urban areas within California for more than 50 years, and is considered by the Contractor as an essential portion of its water supply; and

[19th] WHEREAS, the economies of regions within the Project, including the Contractor's, depend upon the continued availability of water, including water service from the Project; and

[20th] WHEREAS, in the CALFED Programmatic Record of Decision, dated August 28, 2000, the United States and the State of California adopted a general target of continuously improving Delta water quality for all uses. The CALFED Agencies' target for providing safe, reliable, and affordable drinking water in a cost-effective way, is to achieve

either: (a) average concentrations at Clifton Forebay and other southern and central Delta drinking water intakes of 50 ug/L bromide and 3.0 mg/L total organic carbon, or (b) an equivalent level of public health protection using a cost-effective combination of alternative source waters, source control and treatment technologies; and

[21st] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to pursue measures to improve water supply, water quality, and reliability of the Project for all Project purposes; and

[22nd] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a reasonable balance among competing demands for use of Project Water; and to comply with all applicable environmental statutes, all consistent with the legal obligations of the United States relative to the Project; and

[23rd] WHEREAS, the parties intend by this Contract to maintain a cooperative relationship in order to achieve their mutual goals; and

[24th] WHEREAS, the Contracting Officer and the Contractor agree that this Contract complies with Section 4011 of the WIIN Act; and

[25th] WHEREAS, the Contracting Officer and the Contractor agree to amend and convert the Existing Contract pursuant to Section 4011 of the WIIN Act and other Federal Reclamation law on the terms and conditions set forth below;

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

DEFINITIONS

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

(a) "Additional Capital Obligation" shall mean construction costs or other capitalized costs incurred after the Effective Date or not reflected in the Existing Capital Obligation as defined herein and in accordance with Section 4011, subsection (a)(2)(B) and (a)(3)(B) of the Water Infrastructure Improvements for the Nation Act (Pub. L. 114-322, 130 Stat. 1628) ("WIIN Act");

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

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

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

(e) "Contra Costa Canal System" shall mean the Contra Costa Canal, including the intake channel from Rock Slough, Clayton, and Ygnacio Relift Canals and pumping plants, the Martinez Reservoir and Pumping Plants 1, 2, 3, and 4, and such other facilities as may be authorized by Congress from time to time for rehabilitation or replacement thereof;

(f) "Contra Loma Dam and Reservoir" shall mean the dam, pumping plant, and reservoir constructed as an addition to the Contra Costa Canal System;

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

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

(i) "Contractor's Service Area" shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto, which may be modified from time to time in accordance with Article 37 of this Contract without amendment of this Contract;

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

(k) "Excess Lands" shall mean all lands in excess of the limitations contained in Section 204 of the Reclamation Reform Act of 1982, other than those lands exempt from acreage limitation under Federal Reclamation law;

(l) "Existing Capital Obligation" shall mean the remaining amount of construction costs or other capitalized costs allocable to the Contractor as described in Section 4011, subsections (a)(2)(A) and (a)(3)(A) of the WIIN Act, and as identified in the Central Valley Project Irrigation Water Rates and/or Municipal and Industrial Water Rates, respectively, in the Final 2020 Ratebooks, as adjusted to reflect payments not reflected in such schedule. The

Contracting Officer has computed the Existing Capital Obligation and such amount is set forth in Exhibit "C", which is incorporated herein by reference;

(m) "Full Cost Rate" shall mean an annual rate, as determined by the Contracting Officer that shall amortize the expenditures for construction properly allocable to the Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the Reclamation Reform Act of 1982.

The Full Cost Rate includes actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the Reclamation Reform Act of 1982;

(n) "Irrigation Water" shall mean the use of Project Water to irrigate lands primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto;

(o) "Lateral Distribution System" shall mean the water conveyance system constructed by the United States which consists of pipelines extending to Contractor's water users from the Contra Costa Canal at milepost 5.3, 6.2, 7.1, 7.3, 9.1, 14.0, 25.6, 36.6, and Y-2-6;

(p) "Los Vaqueros" shall mean the Los Vaqueros Project consisting of a storage reservoir and associated facilities constructed by the Contractor on property which is owned by the Contractor, and in which the United States has no legal interest, to store and convey Los Vaqueros Water Rights Water and Project Water as well as additional water that may be acquired by the Contractor;

189 (q) “Los Vaqueros Water Rights Water” shall mean that water appropriated
190 pursuant to State Water Rights Application 20245 (Permit 20749), which is in addition to Project
191 Water;

192 (r) “Municipal and Industrial (M&I) Water” shall mean the use of Project
193 Water for municipal, industrial, and miscellaneous other purposes not falling under the definition
194 of “Irrigation Water” or within another category of water use under an applicable Federal
195 authority;

196 (s) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to
197 the delivery of M&I Water;

198 (t) “New Facilities” shall mean the Short Cut Pipeline located between
199 Contra Costa Canal at milepost 25.70 and at milepost 47.77 and the Pump Units in Pumping
200 Plant 1, 2, 3, and 4 of the Contra Costa Canal System;

201 (1) “Pump Units” shall mean the pump, motor, motor controls, wiring,
202 structural supports and discharge control apparatus for pumping 100 cubic feet per second
203 (“cfs”) of water; and

204 (2) “Short Cut Pipeline” shall mean the Contra Costa Canal intake,
205 pipeline, pipeline appurtenances, Martinez Reservoir inlet;

206 (u) “Operation and Maintenance” or “O&M” shall mean normal and
207 reasonable care, control, operation, repair, replacement (other than capital replacement), and
208 maintenance of Project facilities;

209 (v) “Project” shall mean the Central Valley Project owned by the United
210 States and managed by the Department of the Interior, Bureau of Reclamation;

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

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

(y) "Project Works" shall mean all those facilities defined in subsections (e), (f), (o), and (t) of this Article;

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

(aa) "Recent Historic Average" shall mean the most recent five (5)-year average of the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding contract(s);

(bb) "Repayment Obligation" for Water Delivered as Irrigation Water shall mean the Existing Capital Obligation discounted by $\frac{1}{2}$ of the Treasury rate, which shall be the amount due and payable to the United States, pursuant to Section 4011(a)(2)(A) of the WIIN Act; and for Water Delivered as M&I Water shall mean the amount due and payable to the United States, pursuant to Section 4011(a)(3)(A) of the WIIN Act;

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

(dd) "Substantial Change" shall mean a modification in, or addition to, a project facility which involves changes in the original design intent, function, and/or operational parameters of the facility, or changes in project benefits, including non-routine maintenance activities that involve construction or reconstruction of a portion of the facility. These modifications may be capitalized or non-capitalized. A substantial change is not a characterization of the proposed action in terms of being a major or minor action as defined in the National Environmental Policy Act;

(ee) "Tiered Pricing Component" shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in Article 7 of this Contract and as provided for in Exhibit "B";

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

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

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

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

TERM OF CONTRACT – RIGHT TO USE OF WATER

2. (a) This Contract shall be effective January 1, 2021, hereinafter known as the "Effective Date", and shall continue so long as the Contractor pays applicable Rates and Charges

under this Contract, consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law;

(1) Provided, That the Contracting Officer shall not seek to terminate this Contract for failure to fully or timely pay applicable Rates and Charges by the Contactor, unless the Contracting Officer has first provided at least sixty (60) calendar days written notice to the Contractor of such failure to pay and the Contractor has failed to cure such failure to pay, or to diligently commence and maintain full curative payments satisfactory to the Contracting Officer within the sixty (60) calendar days' notice period;

(2) Provided, further, That the Contracting Officer shall not seek to suspend making water available or declaring Water Made Available pursuant to this Contract for non-compliance by the Contractor with the terms of this Contract or Federal law, unless the Contracting Officer has first provided at least thirty (30) calendar days written notice to the Contractor and the Contractor has failed to cure such non-compliance, or to diligently commence curative actions satisfactory to the Contracting Officer for a non-compliance that cannot be fully cured within the thirty (30) calendar days' notice period. If the Contracting Officer has suspended making water available pursuant to this paragraph, upon cure of such non-compliance satisfactory to the to the Contracting Officer, the Contracting Officer shall resume making water available and declaring Water Made Available pursuant to this Contract;

(3) Provided, further, That this Contract may be terminated at any time by mutual consent of the parties hereto.

(b) Upon complete payment of the Repayment Obligation by the Contractor, and notwithstanding any Additional Capital Obligation that may later be established, the acreage

limitations, reporting, and Full Cost pricing provisions of the Reclamation Reform Act of 1982 shall no longer be applicable to the Contractor pursuant to this Contract.

(c) Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of June 21, 1963 (77 Stat. 68), to the extent allowed by law.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (a) During each Year, consistent with all applicable State water rights permits, and licenses, Federal law, and subject to the provisions set forth in Articles 12 and 13 of this Contract, the Contracting Officer shall make available for delivery to the Contractor 195,000 acre-feet of Project Water for M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the programmatic environmental impact statement prepared pursuant to Section 3404(c) of the CVPIA projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years prior to execution of the Existing Contract, the Recent Historic Average Water Made Available to the Contractor was 152,100

acre-feet. Nothing in this subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

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

(d) The Contractor shall make reasonable and beneficial use of all Project Water furnished pursuant to subdivision (f) this Article. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 24 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

321 (e) The Contractor shall comply with requirements applicable to the
 322 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
 323 of any water service contract between the Contracting Officer and the Contractor in effect
 324 immediately prior to the Effective Date undertaken pursuant to Section 7 of the Endangered
 325 Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to
 326 implement. The Existing Contract, which evidences in excess of 50 years of diversions for
 327 irrigation and/or M&I purposes of the quantities of Project Water provided in subdivision (a) of
 328 Article 3 of this Contract, will be considered in developing an appropriate baseline for any
 329 required biological assessment(s) prepared pursuant to the ESA, and any other needed
 330 environmental review. Nothing herein shall be construed to prevent the Contractor from
 331 challenging or seeking judicial relief in a court of competent jurisdiction with respect to any
 332 biological opinion or other environmental documentation referred to in this Article.

333 (f) Following the declaration of Water Made Available under Article 4 of this
 334 Contract, the Contracting Officer will make a determination whether Project Water, or other
 335 water available to the Project, can be made available to the Contractor in addition to the Contract
 336 Total under this Article during the Year without adversely impacting other Project Contractors.
 337 At the request of the Contractor, the Contracting Officer will consult with the Contractor prior to
 338 making such a determination. If the Contracting Officer determines that Project Water, or other
 339 water available to the Project, can be made available to the Contractor, the Contracting Officer
 340 will announce the availability of such water and shall so notify the Contractor as soon as
 341 practical. The Contracting Officer will thereafter meet with the Contractor and other Project
 342 Contractors capable of taking such water to determine the most equitable and efficient allocation

of such water. If the Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and policies.

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

(h) The Contractor's right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of the Water Delivered pursuant to this Contract shall not be disturbed, and this Contract shall continue so long as the Contractor pays applicable Rates and Charges under this Contract consistent with Section 9(d) or 9(c)(1) of the Act of August 4, 1939 (53 Stat. 1195) as applicable, and applicable law. Nothing in the preceding sentence shall affect the Contracting Officer's ability to impose shortages under Article 12 or subdivision (b) of Article 13 of this Contract.

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

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

TIME FOR DELIVERY OF WATER

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

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such

March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

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

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

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at the Contra Costa Canal System or the Sacramento-San Joaquin Delta at the intakes described in Exhibit "D" upon execution of this Contract, and any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor. Exhibit "D" may be revised from time to time pursuant to this Article 5 to reflect the addition or removal of any point of Diversion. Los Vaqueros Water Rights Water shall be delivered and/or diversion of Los Vaqueros Water Rights Water shall be subject to change by written agreements of the parties hereto and described in Exhibit "D" as provided for herein: Provided, That such change(s) is/are consistent with the applicable state water right permit(s) or license(s) as they

may be amended or modified. The United States shall not be obligated to construct additional facilities for the delivery and/or diversion of water under this Contract.

(b) Omitted.

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

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the Contracting Officer, or the Contractor at the point or points of delivery established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer or the Contractor shall investigate the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor prior to making a final determination of the quantity delivered for that period of time.

(e) The Contracting Officer shall not be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery points, except for any damage or claim arising out of: (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, with the intent of creating the

situation resulting in any damage or claim; (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns; (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns; or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States; Provided, That the Contractor is not the entity that owned or operated the malfunctioning facility(ies) from which the damage claim arose.

(f) Water diverted by the Contractor pursuant to this Contract shall be measured and recorded by the Contractor for each of the points set forth below through measuring and recording devices, acceptable to the Contracting Officer: Provided, That the parties thereto, may agree in writing that such points and/or method of water measurement may be changed or added to. Except for Rock Slough at the intake of Pumping Plant 1, the Contractor shall O&M each of the measuring and recording devices at no cost to the United States. The Contractor shall install all measuring and recording devices:

(1) At the intake to Pumping Plant 1 of the Contra Costa Canal System;

(2) At the Los Vaqueros intake in Old River;

(3) At the intake to the Los Vaqueros storage reservoir; and

(4) At the point at which the Los Vaqueros Water Rights Water and Project Water diverted from other than Rock Slough are introduced into the Contra Costa Canal System from Los Vaqueros.

(g) The Contractor shall measure or compute and record daily, or at such other intervals as may be agreed upon in writing by the parties, and provide to the Contracting

Officer on or before the 20th day of each month following the month in which the measurement or computation was made the rates and quantities associated with the following:

- (1) Diversion of Project Water at Rock Slough;
- (2) Diversion of Project Water from Old River for direct use;
- (3) Diversion of Los Vaqueros Water Rights Water to storage in Los Vaqueros storage reservoir;
- (4) Diversion of Project Water to storage in Los Vaqueros storage reservoir;
- (5) Diversion to storage in Contra Loma Dam and Reservoir;
- (6) Withdrawal of Project Water from Los Vaqueros storage reservoir;
- (7) Withdrawal of Los Vaqueros Water Rights Water from Los Vaqueros storage reservoir;
- (8) Withdrawal of water from Contra Loma Dam and Reservoir for delivery to the East Bay Regional Park District pursuant to Contract No. 4-06-200-6023A, dated September 18, 1972, as amended on November 29, 1977;
- (9) Withdrawal of water from Contra Loma Dam and Reservoir for purposes other than that specified in subdivision (g)(8) above; and
- (10) Total M&I water distributed.

MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

6. (a) The Contractor has established a measuring program satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water delivered for M&I purposes within the Contractor's Service Area is measured at each M&I service connection. The

water measuring devices or water measuring methods of comparable effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible for installing, operating, maintaining, and repairing all such measuring devices and implementing all such water measuring methods at no cost to the United States. The Contractor shall use the information obtained from such water measuring devices or water measuring methods to ensure its proper management of the water; to bill water users for water delivered by the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class as defined in the Contractor's water conservation plan provided for in Article 24 of this Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and collecting any charges, assessments, or other revenues authorized by California law. The Contractor shall include a summary of all its annual surface water deliveries in the annual report described in subdivision (c) of Article 24 of this Contract.

(b) To the extent the information has not otherwise been provided, upon execution of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the measurement devices or water measuring methods being used or to be used to implement subdivision (a) of this Article and identifying the M&I service connections or alternative measurement programs approved by the Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the

Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

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

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

(e) Omitted.

RATES, METHOD OF PAYMENT FOR WATER AND ACCELERATED
REPAYMENT OF FACILITIES

7. (a) Notwithstanding the Contractor's full prepayment of the Repayment Obligation pursuant to Section 4011, subsection (a)(2)(A) and subsection (a)(3)(A) of the WIIN Act, as set forth in Exhibit "C", and any payments required pursuant to Section 4011, subsection (b) of the WIIN Act, to reflect the adjustment for the final cost allocation as described in this Article, subsection (b), the Contractor's Project construction and other obligations shall be determined in accordance with: (i) the Secretary's then-existing ratesetting policy for M&I Water, consistent with the WIIN Act; and such ratesetting policies shall be amended, modified,

or superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies, and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfers, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B", as may be revised annually.

(1) The Contractor shall pay the United States as provided for in this Article of this Contract for all Delivered Water and Los Vaqueros Water Rights Water at applicable Rates, Charges, and Tiered Pricing Component in accordance with policies for M&I Water. The Contractor's Rates shall be established to recover its estimated reimbursable costs included in the Operation and Maintenance component of the Rate and amounts established to recover deficits and other charges, if any, including construction costs as identified in the following subdivisions.

(2) In accordance with the WIIN Act, the Contractor's allocable share of Project construction costs will be repaid pursuant to the provisions of this Contract.

(A) The amount due and payable to the United States, pursuant to the WIIN Act, shall be the Repayment Obligation. The Repayment Obligation has been computed by the Contracting Officer in a manner consistent with the WIIN Act and is set forth as a lump sum payment for M&I as set forth in Exhibit "C". The Repayment Obligation is due in lump sum by March 1, 2021 as provided by the WIIN Act. Notwithstanding any Additional Capital Obligation that may later be established, receipt of the Contractor's payment of the

Repayment Obligation to the United States shall fully and permanently satisfy the Existing Capital Obligation.

(B) Additional Capital Obligations that are not reflected in, the schedules referenced in Exhibit "C" and properly assignable to the Contractor, shall be repaid as prescribed by the WIIN Act without interest except as required by law. Consistent with Federal Reclamation law, interest shall continue to accrue on the M&I portion of the Additional Capital Obligation assigned to the Contractor until such costs are paid. Increases or decreases in the Additional Capital Obligation assigned to the Contractor caused solely by annual adjustment of the Additional Capital Obligation assigned to each Project contractor by the Secretary shall not be considered in determining the amounts to be paid pursuant to this subdivision (a)(2)(B), however, will be considered under subdivision (b) of this Article. A separate agreement shall be established by the Contractor and the Contracting Officer to accomplish repayment of the Additional Capital Obligation assigned to the Contractor within the timeframe prescribed by the WIIN Act, subject to the following:

(1) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act is less than five million dollars (\$5,000,000), then the portion of such costs properly assignable to the Contractor shall be repaid not more than five (5)-years after the Contracting Officer notifies the Contractor of the Additional Capital Obligation; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

(2) If the collective Additional Capital Obligation properly assignable to the contractors exercising conversion under Section 4011 of the WIIN Act

is equal to or greater than five million dollars (\$5,000,000), then the portion of such costs properly assignable to the Contractor shall be repaid as provided by applicable Federal Reclamation law and Project ratesetting policy; Provided, That the reference to the amount of five million dollars (\$5,000,000) shall not be a precedent in any other context.

(b) In the event that the final cost allocation referenced in Section 4011(b) of the WIIN Act determines that the costs properly assignable to the Contractor are greater than what has been paid by the Contractor, the Contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be not less than one (1) year and not more than ten (10) years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the Contractor and Contracting Officer. In the event that the final cost allocation indicates that the costs properly assignable to the Contractor are less than what the Contractor has paid, the Contracting Officer shall credit such overpayment as an offset against any outstanding or future obligations of the Contractor, with the exception of Restoration Fund charges pursuant to Section 3407(d) of Pub. L. 102-575.

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

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

the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B".

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

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

then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this Contract shall be made as soon as practicable but no later than April 30th of the following Year, or 60 days after the delivery of Project Water rescheduled under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(e) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (d) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Contractor. The water delivery report shall be deemed a bill for the payment of Charges and applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 19 of this Contract.

(f) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to

applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this Contract shall be no more than the otherwise applicable Rate for M&I Water under subdivision (a) of this Article.

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

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

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

(j) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Component, and/or for making and allocating payments, other than those set forth in this Article may be in

the mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

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

(2) Omitted.

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

(4) The Tiered Pricing Component does not apply to Los Vaqueros Water Rights Water.

(l) For the term of this Contract, Rates applied under the respective

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

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

(n) Omitted.

(o) Omitted.

REPAYMENT OF PROJECT WORKS

8. (a) Contra Costa Canal System. The remaining capitalized cost of the Contra Costa Canal System on December 31, 2004, was \$839,101. The Contractor shall fully repay \$914,032.56, including interest at 2.5 percent per annum, by making six annual payments of \$152,338.76, beginning January 1, 2005, and ending January 1, 2010. The Contractor fully repaid these capitalized costs as of January 1, 2010.

(b) New Facilities. The remaining capitalized cost of the New Facilities on December 31, 2004, was \$1,446,457.07. The Contractor shall fully repay \$1,620,281.05, plus

interest at 3.342 percent per annum, by making six annual payments of \$270,046.84 beginning January 1, 2005, and ending January 1, 2010. The Contractor fully repaid these capitalized costs as of January 1, 2010.

(c) Contra Loma Dam and Reservoir. The remaining capitalized costs of the Contra Loma Dam and Reservoir on December 31, 2004, was \$1,689,039.16. The Contractor shall fully repay \$1,879,257.85, including interest at 3.137 percent per annum, by making six annual payments of \$313,209.63 beginning January 1, 2005, and ending January 1, 2010. The Contractor fully repaid these capitalized costs as of January 1, 2010.

(d) The Contractor may, instead of making the payments provided for in subdivisions (a), (b), and (c) above, at any time, make full payment of the sum then due and owing on any or all of the facilities described in those subdivisions: Provided, That the Contractor agrees that such accelerated repayment shall not exempt the Contractor from compliance with the otherwise applicable ownership and full cost pricing provisions of Federal Reclamation laws. If payment is made at any time in the year other than that specified in subdivisions (a), (b), and (c) of this Article, the remaining payment balance as of such date will be determined by the Contracting Officer and provided to the Contractor. Upon full repayment, the Contractor shall have no further repayment obligations associated with the capitalized costs specified in subdivisions (a), (b), and (c) of this Article.

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,

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

(b) In order to facilitate efficient water management by means of water transfers of the type historically carried out among Project Contractors located within the same geographical area and to allow the Contractor to participate in an accelerated water transfer program during the term of this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental documentation, including, but not limited to, documents prepared pursuant to the NEPA and ESA, analyzing annual transfers within such geographical areas and the Contracting Officer shall determine whether such transfers comply with applicable law. Following the completion of the environmental documentation, such transfers addressed in such documentation shall be conducted with advance notice to the Contracting Officer, but shall not require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then existing five (5)-year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

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

PROJECT USE POWER

10. (a) During each Year, the United States shall furnish to the Contractor the quantity of Project use power, not to exceed 164.8 kWh of energy for each acre-foot of Project Water or Los Vaqueros Water Rights Water, required to operate facilities needed to pump through the Contra Costa Canal System and Contra Loma Dam and Reservoir the full quantity of Project Water scheduled and the Los Vaqueros Water Rights Water forecasted for delivery and diversion to and by the Contractor for use within the Contractor's Service Area during that Year. Such quantity of Project use power may be utilized at one or more of the following locations: the Contra Costa Canal System; the intake of Los Vaqueros in Old River; Contra Loma Dam and Reservoir; and such other points of diversion set forth in Article 5(a) as may be mutually agreed upon. Project use power can only be used to convey Project Water or Los Vaqueros Water

Rights Water and shall be available to pump no more than 195,000 acre-feet annually.

(b) The United States may, at any time, request in writing that the Contractor take delivery of some or all of the Project Water Made Available to the Contractor pursuant to this Contract at the point of diversion for Los Vaqueros Water Rights Water in lieu of taking delivery of such water at the intake of Pumping Plant 1 of the Contra Costa Canal System at Rock Slough. If the Contractor agrees in writing to such a request, the United States shall furnish to the Contractor during the term of the agreement, the quantity of Project use power required to pump said Project Water and Los Vaqueros Water Rights Water from the point of diversion for Los Vaqueros Water Rights Water to the Los Vaqueros transfer reservoir, not to exceed 350 kWh of energy per acre-foot; Provided, That such a written agreement by the parties for the delivery to and diversion at the point of diversion for Los Vaqueros Water Rights Water of the full supply of Project Water Made Available under this Contract during the term of such agreement shall not be implemented absent modification acceptable to the Contracting Officer of applicable Sacramento-San Joaquin Delta water quality standards during the entire term of such agreement.

(c) If the Contracting Officer and the Contractor are required under any biological opinion issued by an agency of the United States to take delivery of some or all of the Project Water Made Available to the Contractor pursuant to this Contract at the point of diversion for Los Vaqueros Water Rights Water in lieu of taking delivery of such water at the intake to Pumping Plant 1 of the Contra Costa Canal System at Rock Slough, the United States shall furnish to the Contractor the quantity of Project use power required to pump said Project water from the point of diversion for Los Vaqueros Water Rights Water to the Los Vaqueros

transfer reservoir, not to exceed 350 kWh of energy per acre-foot; Provided, That the quantity of Project use power furnished pursuant to this subdivision shall not exceed the quantity of Project use power needed to convey the quantity of Project Water diverted at the point of diversion of Los Vaqueros Water Rights Water for immediate delivery through the Contra Costa Canal; and Provided further, That the Contractor shall notify the Contracting Officer by March 1 of each calendar year, in accordance with the written schedules submitted pursuant to Article 4(b), of the projected quantity of Project Water which will be pumped with Project use power described in this subdivision.

(d) The Contractor shall pay the United States for the quantity of Project use power as set forth in subdivision (a), (b), and (c) above as a component of the water Rates described in Article 7(a) of this Contract.

(e) The Contracting Officer may adjust the quantity of Project use power required to pump each acre-foot of Project Water or Los Vaqueros Water Rights Water if the Contracting Officer determines based on substantial evidence that the actual energy required for such pumping is different from the quantity set forth in this Article. Such determinations and adjustments by the Contracting Officer shall not require further amendment to this Contract.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

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

amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project Water supply provided for by this Contract. All credits and refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in response to the notice to the Contractor that it has finalized the accounts for the Year in which the overpayment was made.

(b) All advances for miscellaneous costs incurred for work requested by the Contractor pursuant to Article 23 of this Contract shall be adjusted to reflect the actual costs when the work has been completed. If the advances exceed the actual costs incurred, the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be billed for the additional costs pursuant to Article 23 of this Contract.

TEMPORARY REDUCTIONS – RETURN FLOWS

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

(b) The Contracting Officer may temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project facilities or

any part thereof necessary for the delivery of Project Water to the Contractor, but so far as feasible the Contracting Officer will give the Contractor due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given; Provided, That the United States shall use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of service after such discontinuance or reduction, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

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

CONSTRAINTS ON THE AVAILABILITY OF WATER

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

(b) If there is a Condition of Shortage because of inaccurate runoff forecasting or other similar operational errors affecting the Project; drought and other physical or natural causes beyond the control of the Contracting Officer; or actions taken by the Contracting Officer to meet current and future legal obligations, then, except as provided in subdivision (a) of Article 17 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

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

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

RULES, REGULATIONS, AND DETERMINATIONS

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

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with its expressed and implied 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.

PROTECTION OF WATER AND AIR QUALITY

15. (a) The Contractor, without expense to the United States, will care for, operate and maintain transferred works in a manner that preserves the quality of the water at the highest feasible level as determined by the Contracting Officer.

(b) The United States will care for, operate and maintain reserved works in a manner that preserves the quality of the water at the highest level possible as determined by the Contracting Officer. The United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

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

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

(e) Omitted

WATER ACQUIRED BY THE CONTRACTOR OTHER THAN FROM THE UNITED STATES

16. (a) Omitted.

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

(1) The Contractor may introduce non-Project water into Project facilities, other than Project Works, subject to payment to the United States of an appropriate rate as determined by the applicable Project ratesetting policy, the Reclamation Reform Act of 1982, and the Project use power policy, if such Project use power policy is applicable, each as amended, modified, or superseded from time to time. In Addition, if electrical power is required to pump non-Project water through the facilities, the Contractor shall be responsible for obtaining necessary power and paying the necessary charges therefore.

(2) Delivery of such non-Project water in and through Project

facilities, other than Project Works, shall only be allowed to the extent such deliveries do not: (i) interfere with other Project purposes as determined by the Contracting Officer; (ii) reduce the quantity or quality of water available to other Project Contractors; (iii) interfere with the delivery of contractual water entitlements to any other Project Contractors; or (iv) interfere with the physical maintenance of the Project facilities.

(c) The Contractor may use Project Works to convey non-Project water, subject to each of the following conditions:

(1) Such conveyance shall not interfere with deliveries of water hereunder;

(2) Non-Project water for irrigation shall utilize in accordance with the applicable acreage limitation provisions of the Federal reclamation laws;

(3) Project use power shall not be used to pump or convey non-Project water except as provided for in Article 10(a);

(4) The United States shall not incur any liability or unreimbursed cost or expense thereby;

(5) The quantities of non-Project water introduced into and conveyed through the Project Works shall be measured or otherwise determined by the Contractor in a manner consistent with Article 6 of this contract, acceptable to the Contracting Officer and at no cost to the United States;

(6) The amount the Contractor is to pay to the United States for conveying non-Project water through Project Works shall be determined annually by the United States in accordance with the applicable provisions of Federal law, including but not limited to

the Warren Act of February 21, 1911 (36 Stat. 935), as amended and supplemented, associated regulations, and the then-current applicable federal ratesetting policies.

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

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

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

OPINIONS AND DETERMINATIONS

17. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly

950 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
951 or unreasonable opinion or determination. Each opinion or determination by either party shall be
952 provided in a timely manner. Nothing in this subdivision (a) of this Article is intended to or shall
953 affect or alter the standard of judicial review applicable under Federal law to any opinion or
954 determination implementing a specific provision of Federal law embodied in statute or
955 regulation.

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

961 COORDINATION AND COOPERATION

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

971 (b) Within 120 days following the Effective Date, 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 O&M 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, the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water quality, and reliability.

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

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

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

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

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

CHARGES FOR DELINQUENT PAYMENTS

19. (a) The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

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

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

EQUAL EMPLOYMENT OPPORTUNITY

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

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous

1027 places, available to employees and applicants for employment, notices to be provided by the
1028 Contracting Officer setting forth the provisions of this nondiscrimination clause.

1029 (b) The Contractor will, in all solicitations or advertisements for employees
1030 placed by or on behalf of the Contractor, state that all qualified applicants will receive
1031 consideration for employment without regard to race, color, religion, sex, sexual orientation,
1032 gender identity, or national origin.

1033 (c) The Contractor will not discharge or in any other manner discriminate
1034 against any employee or applicant for employment because such employee or applicant has
1035 inquired about, discussed, or disclosed the compensation of the employee or applicant or another
1036 employee or applicant. This provision shall not apply to instances in which an employee who
1037 has access to the compensation information of other employees or applicants as part of such
1038 employee's essential job functions discloses the compensation of such other employees or
1039 applicants to individuals who do not otherwise have access to such information, unless such
1040 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,
1041 proceeding, hearing, or action, including an investigation conducted by the employer, or is
1042 consistent with the Contractor's legal duty to furnish information.

1043 (d) The Contractor will send to each labor union or representative of workers
1044 with which it has a collective bargaining agreement or other contract or understanding, a notice,
1045 to be provided by the Contracting Officer, advising the labor union or workers' representative of
1046 the Contractor's commitments under Section 202 of Executive Order No. 11246 of September
1047 24, 1965, and shall post copies of the notice in conspicuous places available to employees and
1048 applicants for employment.

1049 (e) The Contractor will comply with all provisions of Executive Order No.
1050 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of
1051 Labor.

1052 (f) The Contractor will furnish all information and reports required by
1053 Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the
1054 Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts
1055 by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain
1056 compliance with such rules, regulations, and orders.

1057 (g) In the event of the Contractor's noncompliance with the nondiscrimination
1058 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
1059 canceled, terminated, or suspended in whole or in part and the Contractor may be declared
1060 ineligible for further Government contracts in accordance with procedures authorized in
1061 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and
1062 remedies invoked as provided in Executive Order No. 11246 of Sept. 24, 1965, or by rule,
1063 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however, That* in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION – BENEFITS CONDITIONED UPON PAYMENT

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

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

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

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

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

(b) These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this

Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

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

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

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

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

WATER CONSERVATION

24. (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 develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

Additionally, an effective water conservation and efficiency program shall be based on the Contractor's water conservation plan that has been determined by the Contracting Officer to meet

1129 the conservation and efficiency criteria for evaluating water conservation plans established under
1130 Federal law. The water conservation and efficiency program shall contain definite water
1131 conservation objectives, appropriate economically feasible water conservation measures, and
1132 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1133 Contract shall be contingent upon the Contractor's continued implementation of such water
1134 conservation program. In the event the Contractor's water conservation plan or any revised water
1135 conservation plan completed pursuant to subdivision (d) of this Article 24 have not yet been
1136 determined by the Contracting Officer to meet such criteria, due to circumstances which the
1137 Contracting Officer determines are beyond the control of the Contractor, water deliveries shall be
1138 made under this Contract so long as the Contractor diligently works with the Contracting Officer
1139 to obtain such determination at the earliest practicable date, and thereafter the Contractor
1140 immediately begins implementing its water conservation and efficiency program in accordance
1141 with the time schedules therein.

1142 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1143 Article 3 of this Contract equal or exceed two thousand (2,000) acre-feet per Year, the
1144 Contractor shall implement the Best Management Practices identified by the time frames issued
1145 by the Mid-Pacific Region's then-existing conservation and efficiency criteria for such M&I
1146 Water unless any such practice is determined by the Contracting Officer to be inappropriate for
1147 the Contractor.

1148 (c) The Contractor shall submit to the Contracting Officer a report on the
1149 status of its implementation of the water conservation plan on the reporting dates specified in the
1150 then-existing conservation and efficiency criteria established under Federal law.

(d) At five (5)-year intervals, the Contractor shall revise its water conservation plan to reflect the then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law and submit such revised water management plan to the Contracting Officer for review and evaluation. The Contracting Officer will then determine if the water conservation plan meets the Bureau of Reclamation's then-existing conservation and efficiency criteria for evaluating water conservation plans established under Federal law.

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

EXISTING OR ACQUIRED WATER OR WATER RIGHTS

25. Except as specifically provided in Article 16 of this Contract, the provisions of this Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such water shall not be considered Project Water under this Contract. In addition, this Contract shall not be construed as limiting or curtailing any rights which the Contractor or any water user within the Contractor's Service Area acquires or has available under any other contract pursuant to Federal Reclamation law.

CLEAN AIR AND WATER

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

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations owned, leased, or

supervised by a contractor or subcontractor to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

OPERATION AND MAINTENANCE OF TRANSFERRED WORKS

27. (a) Upon substantial completion of the Project works, or as otherwise determined by the Contracting Officer, and following written notification, the care, operation, and maintenance of any or all of those Project works may be transferred to the Contractor. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.

(b) The Contractor, without expense to the United States, will care for, operate, and maintain the transferred works in full compliance with the terms of this Contract and in such a manner that the transferred works remain in good and efficient condition.

(1) The provisions of this Article shall be implemented by the Memorandum of Agreement relating to Details of Transfer Operations and Maintenance of Contra Costa Canal System, dated June 28, 1972, and Amendment 1, dated May 15, 1995, and may be amended from time to time.

(c) Necessary repairs of the transferred works shall be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary repairs. Except in the case of an emergency, the Contractor will be given 60 days to either: 1) make the necessary repairs; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting Officer that contains a timeframe for completing the necessary repairs. In the case of an emergency the written notice of necessary repairs will include a timeframe for completion of the repairs. If the Contractor fails to either: 1) make the necessary repairs within the identified timeframe; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice and accomplish the repairs within the timeframe identified therein, the Contracting Officer may cause the repairs to be made, and the cost of those repairs shall be paid by the Contractor as directed by the Contracting Officer.

(1) If at any time, in the opinion of the Contracting Officer one or more of the Project Works shall from any cause be in a condition unfit for service, the

1242 Contracting Officer may order that the water be shut off from that Project Works until, in the
1243 Contracting Officer's opinion, said Project Works are put in proper condition for service.

1244 (d) The Contractor shall not make any Substantial Changes in the transferred
1245 works without first obtaining written consent of the Contracting Officer. The Contractor will
1246 take all reasonable measures to prevent any unauthorized encroachment on project land and
1247 rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its
1248 existence.

1249 (e) The Contractor agrees to indemnify the United States for, and hold the
1250 United States and all of its representatives harmless from, all damages resulting from suits,
1251 actions, or claims of any character, except for intentional torts committed by employees of the
1252 United States, brought on account of any injury to any person or property arising out of any act,
1253 omission, neglect, or misconduct in the manner or method of performing any construction, care,
1254 operation, maintenance, supervision, examination, inspection, or other duties of the Contractor or
1255 the United States on transferred works required under this Contract, regardless of who performs
1256 those duties;

1257 Provided, That for the purposes of this Article 27(e), the term "intentional torts" includes acts or
1258 omissions under California law that constitute gross or willful misconduct, gross or willful
1259 negligence, and sole negligence; and, provided further, that the term "employees of the United
1260 States," includes agents and independent contractors who are directly responsible to the United
1261 States.

1262 (f) The Contractor will cooperate with the Contracting Officer in
1263 implementing an effective dam safety program. The United States agrees to provide the
1264 Contractor and the appropriate agency of the State or States in which the Project facilities are
1265 located with design data, designs, and an operating plan for the dam(s) and related facilities
1266 consistent with the current memorandum of understanding between the United States and the
1267 State of California relating to the coordination of planning, design, construction, operation, and
1268 maintenance processes for dams and related facilities.

1269 (g) In the event the Contractor is found to be operating the transferred works
1270 or any part thereof in violation of this Contract or the Contractor is found to be failing any
1271 financial commitments or other commitments to the United States under the terms and conditions
1272 of this Contract, then upon the election of the Contracting Officer, the United States may take
1273 over from the Contractor the care, operation, and maintenance of the transferred works by giving
1274 written notice to the Contractor of such election and the effective date thereof. Thereafter,

during the period of operation by the United States, upon notification by the Contracting Officer the Contractor will pay to the United States, annually in advance, the cost of Operation and Maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, operation, and maintenance of the works may be transferred back to the Contractor.

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

(1) The Contractor at its own expense shall repair any damage to the Project Works resulting from negligence of its officers, employee, or agents.

(i) Nothing in this article will be deemed to waive the sovereign immunity of the United States.

(j) The Contractor shall have the right to abandon one or more of the Project Works with the prior written approval of the Contracting Officer: Provided, That abandonment of one or more of the Project Works shall not relieve the Contractor of its obligation to repay the capital cost plus interest as appropriate of such Project Works less any disposal or salvage value which may be realized.

TRANSFER OF TITLE OF PROJECT WORKS

28. (a) Upon repayment of all outstanding capitalized costs of one or more of the Project Works, and upon appropriate authorization of Congress, all rights, title, and interests in and to the relevant Project Work(s) shall be transferred to the Contractor.

(b) If and when the Contractor fully repays the United States the costs of one or more of the Project Works and the ownership of such Project Works is transferred to the

Contractor pursuant to an Act of Congress, the provisions of Articles 26, 29, 38, 39, 40, and 41 and subdivision (c) of Article 16 of this Contract shall no longer apply to such Project Works.

PERFORMANCE OF PROJECT WORKS WITH CONTRIBUTED FUNDS

29. (a) Pursuant to the Act of March 4, 1921 (41 Stat. 1367, 1404), the Contracting Officer may accept funds contributed by the Contractor to finance any authorized construction work on the Project facilities not otherwise provided for by this Contract for which funds may not be available. Pursuant to the Act of January 12, 1927 (44 Stat. 957, 43 U.S.C. § 397a), the Contracting Officer may also accept funds contributed by the Contractor to finance any authorized O&M work on the Project facilities not otherwise provided for by this Contract for which funds may not be available. When the undertaking of such work is approved, funds therefore shall be advanced by the Contractor as may be directed by the Contracting Officers and there shall be submitted to the Contracting Officer a certified copy of the resolution of the Board of Directors of the Contractor describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work on Project facilities financed in whole or in part with funds contributed by the Contractor under subdivision (a) of this Article, the Contractor shall be furnished with a statement of the final cost thereof. Any unexpended balance of funds shall be refunded to the Contractor or applied as otherwise directed by the Contractor. The amount by which the cost of such work exceeds the amount of funds advanced by the Contractor therefore shall be paid by the Contractor to the United States as the Contracting Officer may direct.

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

30. (a) The Contracting Officer may, from time to time, examine the following: the Contractor's books, records, and reports; the project works being operated by the Contractor; the adequacy of the Operation and Maintenance program[s]; the reserve fund; and the water conservation program including the water conservation fund, if applicable. Notwithstanding title ownership, where the United States retains a financial, physical, or liability interest in facilities either constructed by the United States or with funds provided by the United States, the Contracting Officer may examine any or all of the project works providing such interest to the United States.

(b) The Contracting Officer may, or the Contractor may ask the Contracting Officer to, conduct special inspections of any project works being operated by the Contractor and special audits of the Contractor's books and records to ascertain the extent of any Operation and Maintenance deficiencies to determine the remedial measures required for their correction and to assist the Contractor in solving specific problems. Except in an emergency, any special inspection or audit shall be made only after written notice thereof has been delivered to the Contractor by the Contracting Officer.

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

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

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

1354 (e) (1) The Contractor shall reimburse the actual cost incurred by the
1355 United States in making O&M examinations, inspections, and audits, and preparing associated
1356 reports and recommendations.

1357 (f) Expenses incurred by the Contractor, as applicable, in participating in the
1358 Operation and Maintenance site examination will be borne by the Contractor.

1359 (g) Requests by the Contractor for consultations, design services, or
1360 modification reviews, and the completion of any Operation and Maintenance activities identified
1361 in the formal recommendations resulting from the examination (unless otherwise noted) are to be
1362 funded as project Operation and Maintenance and are reimbursable by the Contractor to the
1363 extent of current project Operation and Maintenance allocations.

1364 (h) Site visit special inspections that are beyond the regularly scheduled
1365 Operation and Maintenance examinations conducted to evaluate particular concerns or problems
1366 and provide assistance relative to any corrective action (either as a follow up to an Operation and
1367 Maintenance examination or when requested by the Contractor) shall be nonreimbursable.

1368 (i) The Contracting Officer may provide the State(s) an opportunity to
1369 observe and participate in, at its (their) own expense, the examinations and inspections. The
1370 State(s) may be provided copies of reports and any recommendations relating to such
1371 examinations and inspections.

1372 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1373 31. The expenditure or advance of any money or the performance of any obligation of
1374 the United States under this Contract shall be contingent upon appropriation or allotment of
1375 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any
1376 obligations under this Contract. No liability shall accrue to the United States in case funds are
1377 not appropriated or allotted.

1378 BOOKS, RECORDS, AND REPORTS

1379 32. (a) The Contractor shall establish and maintain accounts and other books and
1380 records pertaining to administration of the terms and conditions of this Contract, including the
1381 Contractor's financial transactions; water supply data; project operations, maintenance, and
1382 replacement logs; project land and rights-of-way use agreements; the water users' land-use (crop
1383 census), land-ownership, land-leasing, and water-use data; and other matters that the Contracting
1384 Officer may require. Reports shall be furnished to the Contracting Officer in such form and on

such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

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

ASSIGNMENT LIMITED – SUCCESSORS AND ASSIGNS OBLIGATED

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

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

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

SEVERABILITY

34. In the event that a person or entity who is neither (i) a party to a Project contract, nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an association or other form of organization whose primary function is to represent parties to Project contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability of a provision included in this Contract and said person, entity, association, or organization obtains a final court decision holding that such provision is legally invalid or

1410 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1411 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1412 final court decision identify by mutual agreement the provisions in this Contract which must be
1413 revised and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1414 The time periods specified above may be extended by mutual agreement of the parties. Pending
1415 the completion of the actions designated above, to the extent it can do so without violating any
1416 applicable provisions of law, the United States shall continue to make the quantities of Project
1417 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1418 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1419 RESOLUTION OF DISPUTES

1420 35. Should any dispute arise concerning any provisions of this Contract, or the
1421 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1422 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1423 Officer referring any matter to the Department of Justice, the party shall provide to the other
1424 party 30 days' written notice of the intent to take such action; Provided, That such notice shall
1425 not be required where a delay in commencing an action would prejudice the interests of the party
1426 that intends to file suit. During the 30-day notice period, the Contractor and the Contracting
1427 Officer shall meet and confer in an attempt to resolve the dispute. Except as specifically
1428 provided, nothing herein is intended to waive or abridge any right or remedy that the Contractor
1429 or the United States may have.

1430

OFFICIALS NOT TO BENEFIT

1431 36. No Member of or Delegate to the Congress, Resident Commissioner, or official of
1432 the Contractor shall benefit from this Contract other than as a water user or landowner in the
1433 same manner as other water users or landowners.

1434

CHANGES IN CONTRACTOR'S ORGANIZATION AND/OR SERVICE AREA

1435 37. (a) While this Contract is in effect, no change may be made in the
1436 Contractor's Service Area or organization, by inclusion or exclusion of lands or by any other
1437 changes which may affect the respective rights, obligations, privileges, and duties of either the
1438 United States or the Contractor under this Contract, including, but not limited to, dissolution,
1439 consolidation, or merger, except upon the Contracting Officer's written consent.

1440

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

1441 Officer will notify the Contractor of any additional information required by the Contracting

1442 Officer for processing said request, and both parties will meet to establish a mutually agreeable

1443 schedule for timely completion of the process. Such process will analyze whether the proposed

1444 change, is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;

1445 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or

1446 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)

1447 have an impact on any Project Water rights applications, permits, or licenses. In addition, the

1448 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be

1449 responsible for all costs incurred by the Contracting Officer in this process, and such costs will

1450 be paid in accordance with Article 23 of this Contract.

1451

FEDERAL LAWS

1452 38. By entering into this Contract, the Contractor does not waive its rights to contest

1453 the validity or application in connection with the performance of the terms and conditions of this

1454 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with

the terms and conditions of this Contract unless and until relief from application of such Federal law or regulation to the implementing provision of the Contract is granted by a court of competent jurisdiction.

EMERGENCY RESERVE FUND

39. (a) Commencing on May 26, 1994, the Contractor shall accumulate and maintain a reserve fund or demonstrate to the satisfaction of the Contracting Officer that other funds are available for use as an emergency reserve fund. The Contractor shall establish and maintain that emergency reserve fund to meet costs incurred during periods of special stress caused by damaging droughts, storms, earthquakes, floods, or other emergencies threatening or causing interruption of water service.

(b) The Contractor shall accumulate the reserve fund with annual deposits or investments of not less than \$250,000 to a Federally insured, interest- or dividend-bearing account or in securities guaranteed by the Federal Government: *Provided, That* money in the reserve fund, including accrued interest, shall be available within a reasonable time to meet expenses for such purposes as those identified in paragraph (d) herein. Such annual deposits and the accumulation of interest to the reserve fund shall continue until the basic amount of \$1,000,000 is accumulated. Following an emergency expenditure from the fund, the annual deposits shall continue from the year following the emergency expenditure until the previous balance is restored. After the initial amount is accumulated or after the previous balance is restored, the annual deposits may be discontinued, and the interest earnings shall continue to accumulate and be retained as part of the reserve fund.

(1) The Contracting Officer acknowledges that the Contractor has accumulated and maintained the required reserve fund of \$1,000,000 under the Existing Contract.

(c) Upon mutual written agreement between the Contractor and the Contracting Officer, the basic reserve fund or the accumulated reserve fund may be adjusted to account for risk and uncertainty stemming from the size and complexity of the project; the size of the annual Operation and Maintenance budget; additions to, deletions from, or changes in project works; and Operation and Maintenance costs not contemplated when this Contract was executed.

(d) The Contractor may make expenditures from the reserve fund only for meeting routine or recurring Operation and Maintenance costs incurred during periods of special stress, as described in paragraph (a) herein; or for meeting unforeseen extraordinary Operation and Maintenance costs; or for meeting unusual or extraordinary repair or replacement costs; or

for meeting betterment costs (in situations where recurrence of severe problems can be eliminated) during periods of special stress. Proposed expenditures from the fund shall be submitted to the Contracting Officer in writing for review and written approval prior to disbursement. Whenever the reserve fund is reduced below the current balance by expenditures therefrom, the Contractor shall restore that balance by the accumulation of annual deposits as specified in paragraph (b) herein.

(e) During any period in which any of the project works are operated and maintained by the United States, the Contractor agrees the reserve fund shall be available for like use by the United States.

(f) On or before August 1 of each year, the Contractor shall provide a current statement of the principal and accumulated interest of the reserve fund account to the Contracting Officer.

ADMINISTRATION OF FEDERAL PROJECT LANDS

40. (a) The lands and interests in lands acquired, withdrawn, or reserved and needed by the United States for the purposes of care, operation, and maintenance of Project Works may be used by the Contractor for such purposes. The Contractor shall ensure that no unauthorized encroachment occurs on Federal project lands and rights-of-way. The Contractor does not have the authority to issue any land-use agreement or grant that conveys an interest in Federal real property, nor to lease or dispose of any interest of the United States.

(1) No substantial installation of Contractor facilities on the lands and rights of way of Project Works shall be made by the Contractor without first obtaining the written consent of the contracting Officer.

(2) The provisions of this Article shall not affect the authority to grant limited licenses conveyed to the Contractor by the Contracting Officer in the Memorandum of Agreement relating to Details of Transfer Operations and Maintenance of Contra Costa Canal System, dated June 28, 1972, and Amendment 1, dated May 15, 1995, and as may be amended from time to time.

(b) The United States retains responsibility for compliance with the National Historic Preservation Act of 1966 (NHPA), and the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). The Contractor will notify the Contracting Officer and, only when on tribal land, also notify the appropriate tribal official, immediately upon the

1520 discovery of any potential historic properties or Native American human remains, funerary
1521 objects, sacred objects, or objects of cultural patrimony.

1522 CONTAMINATION OR POLLUTION OF FEDERAL PROPERTY

1523 41. (a) The Contractor shall not allow contamination or pollution of Federal
1524 project lands, project waters, or project works of the United States or administered by the United
1525 States and for which the Contractor has the responsibility for care, operation, and maintenance
1526 by its employees or agents. The Contractor shall also take reasonable precautions to prevent
1527 such contamination or pollution by third parties.

1528 (b) The Contractor shall comply with all applicable Federal, State, and local
1529 laws and regulations and Bureau of Reclamation policies and instructions existing, or hereafter
1530 enacted or promulgated, concerning any hazardous material that will be used, produced,
1531 transported, stored, released, or disposed of on or in Federal project lands, project waters, or
1532 project works.

1533 (c) "Hazardous material" means (1) any substance falling within the
1534 definition of "hazardous substance," "pollutant or contaminant," or "hazardous waste" under the
1535 Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §
1536 9601(14), (29), and (33)); (2) oil, as defined by the Clean Water Act (33 U.S.C. § 1321(a)) and
1537 the Oil Pollution Act (33 U.S.C. § 2701(23)); (3) thermal pollution, refuse, garbage, sewage
1538 effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste,
1539 and (4) any other substance regulated as hazardous or toxic under Federal, State, local or Tribal
1540 law.

1541 (d) Upon discovery of any event which may or does result in contamination or
1542 pollution of Federal project lands, project water, or project works, the Contractor shall
1543 immediately undertake all measures necessary to protect public health and the environment,
1544 including measures necessary to contain or abate any such contamination or pollution, and shall
1545 report such discovery with full details of the actions taken to the Contracting Officer. Reporting
1546 shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery
1547 if it is an emergency and the first working day following discovery in the event of a non-
1548 emergency.

1549 (e) If violation of the provisions of this Article occurs and the Contractor does
1550 not take immediate corrective action, as determined by the Contracting Officer, the Contractor
1551 may be subject to remedies imposed by the Contracting Officer, which may include termination
1552 of this Contract.

1553 (f) The Contractor shall be liable for any response action or corrective
1554 measure necessary to protect public health and the environment or to restore Federal project
1555 lands, project waters, or project works that are adversely affected as a result of such violation,
1556 and for all costs, penalties or other sanctions that are imposed for violation of any Federal, State,

1557 local, or Tribal laws and regulations concerning hazardous material. At the discretion of the
1558 Contracting Officer, the United States may also terminate this Contract, as a result of such
1559 violation.

1560 (g) The Contractor shall defend, indemnify, protect and save the United States
1561 harmless from and against any costs, expenses, claims, damages, demands, or other liability
1562 arising from or relating to Contractor's violation of this Article.

1563 (h) The Bureau of Reclamation agrees to provide information necessary for
1564 the Contractor, using reasonable diligence, to comply with the provisions of this Article.

1565 PEST MANAGEMENT

1566 42. (a) The Contractor is responsible for complying with applicable Federal,
1567 State, and local laws, rules, and regulations related to pest management in performing its
1568 responsibilities under this contract.

1569 (b) The Contractor is responsible for effectively avoiding the introduction and
1570 spread of, and for otherwise controlling, undesirable plants and animals, as defined by the
1571 Contracting Officer, on or in Federal project lands, Federal project waters, and Federal project
1572 works for which and to the extent that the Contractor has Operation and Maintenance
1573 responsibility. The Contractor is responsible for exercising the level of precaution necessary in
1574 meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for
1575 reproductive and vegetative parts, foreign soil, mud, or other debris that may cause the spread of
1576 weeds, invasive species and other pests, and removing such materials before moving its vehicles,
1577 watercraft, and equipment onto any Federal land, into any Federal project facility waters, or out
1578 of any area on Federal project land where work is performed.

1579 (c) Where decontamination of the Contractor's vehicles, watercraft, or
1580 equipment is required prior to entering Federal project land or waters, the decontamination shall
1581 be performed by the Contractor at the point of prior use, or at an approved offsite facility able to
1582 process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the
1583 completion of work, the Contractor will perform any required decontamination within the work
1584 area before moving the vehicles, watercraft, and equipment from Federal project lands and
1585 waters.

1586 (d) Programs for the control of undesirable plants and animals on Federal
1587 project lands, and in Federal project waters and Federal project works for which the Contractor
1588 has Operation and Maintenance responsibility will incorporate Integrated Pest Management
1589 (IPM) concepts and practices. IPM refers to a systematic and environmentally compatible
1590 program to maintain pest populations within economically and environmentally tolerable levels.
1591 In implementing an IPM program, the Contractor will adhere to applicable Federal and State
1592 laws and regulations and Department of the Interior and Bureau of Reclamation policies,
1593 directives, guidelines, and manuals, including but not limited to, the Department of the Interior

1594 Manual, Part 517 *Integrated Pest Management Policy* and Part 609 *Weed Control Program*, the
1595 Plant Protection Act of June 20, 2000 (Pub. L. 106-224), and Executive Order 13112 of February
1596 3, 1999.

1597 NOTICES

1598 43. Any notice, demand, or request authorized or required by this Contract shall be
1599 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1600 delivered to the Area Manager, South-Central California Area Office, 1243 N Street, Fresno,
1601 California 93721, Bureau of Reclamation, and on behalf of the United States, when mailed,
1602 postage prepaid, or delivered to the Board of Directors of the Contra Costa Water District, P.O.
1603 Box H20, Concord, California, 94504. The designation of the addressee or the address may be
1604 changed by notice given in the same manner as provided in this Article for other notices.

1605 MEDIUM FOR TRANSMITTING PAYMENT

1606 44. (a) All payments from the Contractor to the United States under this Contract
1607 shall be by the medium requested by the United States on or before the date payment is due. The
1608 required method of payment may include checks, wire transfers, or other types of payment
1609 specified by the United States.

1610 (b) Upon execution of this Contract, the Contractor shall furnish the
1611 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
1612 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
1613 out of the Contractor's relationship with the United States.

1614 CONTRACT DRAFTING CONSIDERATIONS

1615 45. This amended Contract has been negotiated and reviewed by the parties hereto,
1616 each of whom is sophisticated in the matters to which this amended Contract pertains. The
1617 double-spaced Articles of this amended Contract have been drafted, negotiated, and reviewed by
1618 the parties, and no one party shall be considered to have drafted the stated Articles. Single-
1619 spaced Articles are standard Articles pursuant to Bureau of Reclamation policy.


1620 CONFIRMATION OF CONTRACT

1621 46. Promptly after the execution of this Contract, the Contractor will provide
1622 evidence to the Contracting Officer that, pursuant to the laws of the State of California, the
1623 Contractor is a legally constituted entity and the Contract is lawful, valid, and binding on the
1624 Contractor. This Contract will not be binding on the United States until the Contractor provides
1625 evidence to the Contracting Officer's satisfaction. In addition to other forms of evidence to meet
1626 the requirements of this Article, the Contractor may provide or the Contracting Officer may
1627 require a certified copy of a final decree of a court of competent jurisdiction in the State of

1628 California, confirming the proceedings on the part of the Contractor for the authorization of the
1629 execution of this Contract.

1630 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1631 day and year first above written.


1632 UNITED STATES OF AMERICA

1633 By: 
1634 Regional Director
1635 Interior Region 10: California-Great Basin
1636 Bureau of Reclamation

1637 CONTRA COSTA WATER DISTRICT
1638 (SEAL)

1639 By: 
1640 President of the Board of Directors

1641 Attest:

1642 By: 
1643 Secretary of the Board of Directors

1630 IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the
1631 day and year first above written.

1632 UNITED STATES OF AMERICA

APPROVED AS TO LEGAL FORM AND
SUFFICIENCY - REVIEWED BY:



OFFICE OF THE REGIONAL SOLICITOR

DEPARTMENT OF THE INTERIOR

TIME STAMP: 

1633

1634

1635

1636

By: 

Regional Director

Interior Region 10: California-Great Basin

Bureau of Reclamation

1637

1638 (SEAL)

CONTRA COSTA WATER DISTRICT

1639

1640

By: _____

President of the Board of Directors

1641 Attest:

1642

1643

By: _____

Secretary of the Board of Directors

**EXHIBIT B
CONTRA COSTA WATER DISTRICT
2020 Rates and Charges
(Per Acre-Foot)**

	Non-Project Water ¹		
	CVP M&I Water	Los Vaqueros M&I Water	Other M&I Water
COST-OF-SERVICE (COS) RATE			
Construction Costs	\$0.00	-	-
O&M Components			
Water Marketing	\$6.12	\$6.12	\$6.12
Storage	\$14.99	-	-
Credit for other PUE Remittance ²	(\$1.62)	-	-
Direct Pumping Offset	\$0.00		
Conveyance Pumping			
TOTAL COS RATE¹	\$19.49	\$6.12	\$6.12
M&I FULL COST RATE	\$19.49		
Project Use Energy Payment³			
Direct Pumping	\$8.52	\$8.52	
Other PUE Remittance	\$1.62	\$1.62	
M&I			
Tier 2 Rate: >80% <=90% of Contract Total [M&I Full Cost Rate - M&I COS Rate]/2 (Amount to be Added to Tier 1 Rate)	\$0.00		
Tier 3 Rate: >90% of Contract Total [M&I Full Cost Rate - M&I COS Rate] (Amount to Be Added to Tier 1 Rate)	\$0.00		
CHARGES AND ASSESSMENTS (Payments in addition to Rates)			
P.L. 102-575 Surcharge (Restoration Fund Payment) [Section 3407(d)(2)(A)]	\$21.82		
P.L. 106-377 Assessment (Trinity Public Utilities District) [Appendix B, Section 203]	\$0.12		

EXPLANATORY NOTES

¹ Non-Project rates/charges may be modified by various methods on a CVP-wide basis at some future point.

² Project Use Energy payment is being remitted to Western Area Power Authority for storage and direct pumping based on the deliveries of a select few contractors. The rates for the select few contractors are reduced as a credit in the O&M rates. All Contractors will ultimately pay for the storage and direct pumping service but as an offset to the amount paid by the select few.

³ Project Use Energy payment is in addition to the Contract Rate and Full-Cost Water Rates. Refer to the water rate books for more information.

Recent Historic Use, as defined in the CVP M&I Water shortage Policy, is 170,000 acre-feet

Additional detail of rate components is available on the Internet at:

<http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

2/18/2020 jh

Exhibit C

Repayment Obligation - Current Calculation under the WIIN Act, Section 4011 (a) (2)

Unpaid Construction Cost from the 2020 Water Rate Books*

Contractor: Contra Costa Water District
Facility: Contra Costa Canal
Contract: I75r-3401A-LTR1-P

Irrigation Construction Cost (2020 Irrigation Ratebook, Schedule A-2Ba)		
	Unpaid Cost	Discount
Construction Cost	\$ -	
2019 Repayment **	\$ -	
Adjusted Construction Cost	\$ -	\$ -
Intertie Construction Cost (N/A):	\$ -	\$ -
Total	\$ -	\$ -
If Paid in Installments (Used 20 yr CMT)		
Due****		
Payment 1 1/1/2021		\$ -
Payment 2 1/1/2022		\$ -
Payment 3 1/1/2023		\$ -
Payment 4 1/1/2024		\$ -
Total Installment Payments		\$ -
20 yr CMT Rates - 12/01/2020 (to be adjusted to effective date of contract)		0.000%
Discount Rate (1/2 of the Treasury Rate per the WIIN Act, Section 4011(a)(2)(A))		0.000%

M&I Construction Cost (2020 M&I Ratebook, Sch A-2Ba)	
	Unpaid Cost
Construction Cost:	\$ (196,361)
2019 Repayment **	\$ -
Adjusted Construction Cost***:	\$ (196,361)

Calculation Support: Irrigation Lump Sum or First Payment**** 1/1/2021
Days Until the End of the Fiscal Year 272

Fiscal Yr	Unpaid Allocated Construction Cost			Unpaid Intertie Construction Cost			Total
	Beginning Balance	Straight Line Repayment	Present Value	Beginning Balance	Straight Line Repayment	Present Value	Present Values
2021	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2022	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2023	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2024	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2025	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2026	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2027	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2028	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2029	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2030	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2031-63				\$ -	\$ -	\$ -	\$ -
Total, Lump Sum Payment			\$ -			\$ -	\$ -

Amount of Reduction, Lump Sum \$ - \$ - \$ -

* Costs are assumed to be paid and all charges are assumed to be accurate. If at a later date charges are determined to need update, they are still required. Also, unpaid charges are still a requirement under contract.

** 2019 Repayment is based on the Annual Accounting Analysis for the District.

*** Excludes Interest to payment date as Interest will be computed as an annual expense as usual.

**** Contractor has 60 days from the effective date of the contract or installment dates to make payment.

~ M&I Credit from Schedule A-2Ba has been applied to Irrigation Unpaid Amount.

EXHIBIT D

Points of Diversion:

- Rock Slough at the Intake of Pumping Plant 1 of the Contra Costa Canal System;
- Los Vaqueros Intake at Old River;
- Victoria Canal Intake;
- Freeport Regional Water Authority Sacramento River Intake;
- Tracy Pumping Plant Intake at Old River;
- State Water Project Intake to Clifton Court at Old River



BOARD OF DIRECTORS

Lisa M. Borba, AICP
PRESIDENT

Ernesto A. Avila, P.E.
VICE PRESIDENT

John A. Burgh
Connstance Holdaway
Antonio Martinez

December 23, 2020

Via Federal Express

GENERAL MANAGER
Stephen J. Welch, P.E., S.E.

Bureau of Reclamation
California-Great Basin, Interior Region 10
Attn: Mr. Stanley Data
2800 Cottage Way (CGB-440)
Sacramento, CA 95825

RE: Transmittal of Contract No. 175r-3401A-LTR1-P (Contract) Between the United States and
Contra Costa Water District – Delta Division – Central Valley Project (CVP), California

Mr. Stanley Data:

This letter is to transmit Contract No. 175r-3401A-LTR1-P (Contract) between The United States and Contra Costa Water District (CCWD). Enclosed are the three blue bound originals and original CCWD Resolution No. 20-021 executed by CCWD Board President Lisa M. Borba and attested to by District Secretary Mary A. Neher. A validation letter will be sent under separate cover by CCWD general counsel, Bold, Polisner, Maddow, Nelson & Judson. Once the contract has been executed and the final processing has been completed, please mail a fully executed Contract to:

Mary A. Neher, District Secretary
Contra Costa Water District
1331 Concord Avenue
Concord, CA 94520

Please contact me if you have questions at telephone (925-688-8024) or email (mneher@ccwater.com).

Regards,

Mary A. Neher
District Secretary

Enclosures

cc: Erma Leal, Bureau of Reclamation (letter only – via email)
Douglas E. Coty, Bold, Polisner, Maddow, Nelson & Judson (letter only – via email)

RESOLUTION NO. 20-021

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
CONTRA COSTA WATER DISTRICT APPROVING THE FORM AND CONTENT OF
AND AUTHORIZING EXECUTION OF THE PERMANENT REPAYMENT CONTRACT
BETWEEN THE UNITED STATES AND CONTRA COSTA WATER DISTRICT
PURSUANT TO THE WATER INFRASTRUCTURE IMPROVEMENTS FOR THE NATION ACT
OF 2016 AND AUTHORIZING CERTAIN RELATED ACTIONS AND EXPENDITURES**

WHEREAS, the Contra Costa Water District (the "District") entered into an Amended Contract No. I75r-3401, with the United States, providing for water service from the United States' Central Valley Project and for construction of facilities, on November 9, 1970, which Contract was subsequently amended on April 26, 1973, May 26, 1994, September 30, 1997, and February 7, 2000; and

WHEREAS, on May 10, 2005, the District entered into Long-Term Renewal Contract No. I75r-3401A-LTR1, with the United States, providing for water service from the United States' Central Valley Project and for construction of facilities, which contract remains in effect; and

WHEREAS, on December 16, 2016, the United States Congress enacted the Water Infrastructure Improvements for the Nation Act (the "WIIN Act") which directs the United States Bureau of Reclamation ("Reclamation") to convert any existing Central Valley Project water service contract, upon the contractor's request, into a contract which (1) provides for the contractor to make a lump sum repayment of its remaining share of the Central Valley Project's construction costs as determined by applicable law and Reclamation policy, (2) continues in effect so long as the contractor pays applicable charges, and (3) does not otherwise modify water service, repayment, exchange and transfer contractual rights between the contractor and Reclamation (the "Repayment Contract"); and

WHEREAS, in accordance with the WIIN Act, the proposed Repayment Contract would not substantively modify the terms and conditions of the Long Term Renewal Contract, except the Repayment Contract (1) would continue in effect so long as the District pays all required charges, and

(2) provides for early repayment of the District's remaining outstanding share of the capital cost of Central Valley Project facilities; and

WHEREAS, as of the date of this Resolution, the District's remaining outstanding share of Central Valley Project facility construction costs is estimated as \$4,400,000, which sum is attributable to (1) Reclamation's forthcoming incorporation into its rate setting process of the conclusions of its January 2020 Final Central Valley Project Cost Allocation Study, (2) changes in the District's usage of Reclamation's facilities relative to other Central Valley Project contractors, and (3) associated interest charges; and

WHEREAS, the District certified a Programmatic Environmental Impact Report (PEIR) for the Future Water Supply Implementation (FWSI) program in February 1999 which identified the long term renewal of the CVP contract as an important element of the District future water supply and analyzed the environmental impacts of contract renewal, and subsequently adopted Findings, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Plan; and

WHEREAS, the new contract does not add or increase the severity of environmental impacts identified in the PEIR and an Addendum to the FWSI PEIR has been completed in compliance with the California Environmental Quality Act, and the Board of Directors independently reviewed and analyzed the PEIR and Addendum thereto; and

WHEREAS, the Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, div. 35, 85000 et seq.) (the "Delta Reform Act") specifies certain requirements applicable to any action which constitutes a "covered action" under that statute; and

WHEREAS, it is in the best interest of the District that its existing water service contract with the United States of America be renewed, thereby providing continued water service to all lands within the District, providing water supply and project power, and providing a method for facilities repayment to the United States, all in accordance with existing law.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Contra Costa Water District that:

1. None of the conditions exist requiring the preparation of subsequent or supplemental CEQA review pursuant to Public Resources Code section 21166 or CEQA Guidelines section 15162.

2. The District's Board of Directors hereby finds and determines that the conversion of the District's Long Term Renewal Contract to a permanent repayment contract (i) is not a "covered action" within the meaning of the Delta Reform Act pursuant to California Water Code section 85057.5, and (ii) will not result in adverse impacts to public trust resources.

3. The form and content of the contract entitled "Contract Between the United States and Contra Costa Water District Providing for Project Water Service From Delta Division and Facilities Repayment," a copy of which is on file with the Secretary of the District, are acceptable to the Contra Costa Water District, and the Board of Directors hereby determines that the contract is adopted and the contract is approved and may be executed by the District.

4. The President of the Board of Directors is hereby authorized to execute the contract on behalf of the District.

5. The General Manager, or designee(s), are hereby authorized to pay all rates, charges, and fees which are or may become due under the Repayment Contract, and to take all other actions reasonably necessary to maintain compliance with said contract. Without limiting the foregoing, the General Manager or his designee is authorized to repay any additional remaining share of construction costs, currently estimated at \$4,400,000, which may be calculated as properly allocable to and payable by the District in accordance with the terms of the Repayment Contract and applicable law, including the WIIN Act, and duly-adopted Reclamation policies.

6. The Secretary of the District is directed to file a Notice of Determination in compliance with CEQA in the County of Contra Costa.

7. The General Manager, or designee, is hereby authorized to take such further steps as the General Manager shall determine to be necessary to implement the contract.

* * * * *

The foregoing resolution was duly and regularly adopted at a meeting held on the 16th of December 2020 by the Board of Directors of Contra Costa Water District by the following vote:

AYES: Holdaway, Burgh, Avila, Borba, Martinez

NOES:

ABSTAIN:

ABSENT:



Lisa M. Borba, President

ATTEST:



Mary A. Meher, District Secretary